**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: HU/04857/2017

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Decision & Reasons Promulgated** |
|---|---|
| **On 31st January 2019** | **On 27th February 2019** |

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS**

**Between**

**MRS SAMAR BEREKET**
**(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr A Moran, Legal Representative
For the Respondent: Mr E Tufan, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Syria born on 10th July 1993. The Appellant applied for entry clearance to settle in the United Kingdom pursuant to paragraph 352A of the Immigration Rules on the basis that she sought leave to join her Sponsor in the UK as a spouse. That application was refused by the Entry Clearance Officer Istanbul on 24th January 2017.

2. The Appellant appealed and the appeal came before Immigration Judge Watson on 10th April 2018 at Taylor House. The appeal was made on the basis that the Appellant was the spouse of [HA] who had been granted refugee status in the UK. The Appellant's appeal was dismissed on human rights grounds on 25th April 2018.

3. Grounds of Appeal were lodged to the Upper Tribunal on 22nd May 2018. Those grounds contended:-

> "That the First-tier Tribunal Judge had erred in law by failing to take into account relevant evidence, by making findings with no basis in evidence, and by failing to take note of and apply relevant Home Office policy and by failing to apply relevant case law. It was submitted that there was a procedural unfairness in the First-tier Tribunal Judge allowing the Respondent to rely on evidence (or the lack thereof) which was in her possession or served on the day of the hearing."

4. The Appellant's application for permission was refused by First-tier Tribunal Judge Parkes on 4th June 2018. Renewed Grounds of Appeal were lodged on 20th June 2018.

5. On 19th December 2018 Deputy Upper Tribunal Judge O'Ryan granted permission to appeal. Judge O'Ryan gave a very detailed and helpful grant of permission. He noted that it had been argued that in finding at paragraph 14 that there had been no valid marriage the judge had left relevant evidence out of account this being the Appellant's "family booklet" seemingly issued by the Syrian authorities and recording the details of the Appellant's marriage to the Sponsor. Judge O'Ryan considered that this was evidence which arguably may have made a material difference to the approach to be taken as to whether the Appellant was validly married.

6. He further considered that whereas the Respondent's decision raised a number of queries over the Appellant's satisfaction of the Immigration Rules no point had been taken about whether proxy marriages were valid per se under Syrian law. For the judge to have found at paragraph 14 that the Appellant had not provided "information" that proxy marriages were permitted was, Judge O'Ryan considered, arguably to have raised a matter not put in issue by the Respondent and was procedurally unfair to the Appellant. Further it was arguable that the judge had not provided reasons which were adequate in law for finding the newspaper article on the subject which suggested that 54% of marriages in Syria now proceed by way of proxy did not represent the requisite "information".

7. In granting permission Judge O'Ryan further found that it was arguable that the judge had failed to direct himself in law as to the likely minimum period before residence in a particular country could be deemed "habitual" and have failed to make sufficient clear findings of fact as to what period or periods the Sponsor actually spent in Turkey. Judge O'Ryan considered

that given that the timing of the Sponsor's presence in Turkey was put in issue by the Respondent in the decision, he was less confident about the merit of Ground 5 arguing that it was procedurally unfair to allow the Respondent to rely on further evidence regarding the documentation process in Turkey and for the judge to criticise the Sponsor for not providing independent evidence of his presence in Turkey. However, he considered that if it ultimately transpired that the judge had erred in other respects such as whether the Appellant was validly married to the Respondent then it would be arguable that the judge's assessment of the Sponsor's credibility overall may have been affected by such a result.

8. On 25th January 2019 the Secretary of State responded to the Grounds of Appeal under Rule 24.

9. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by his instructed legal representative Mr Moran. Mr Moran is extremely familiar with this matter. He appeared before the First-tier Tribunal and he is the author of the Grounds of Appeal. The Secretary of State appears by her Home Office Presenting Officer Mr Tufan.

**Submission/Discussion**

10. Mr Moran sets out in considerable detail his Grounds of Appeal orally. He goes through them again and he has produced to me the booklet entitled in English "family booklet" which he submits was produced and handed to the First-tier Tribunal Judge and he refers to the photocopy within the Appellant's bundle at pages 48 to 57 including a translation. He submits that the judge needed to take this document into account and failed to do so. He acknowledges that it is not necessary for a judge to recite all evidence that is before him or her when giving a decision but in this instant case he refers me to paragraph 10 where the judge sets out in considerable detail the documentation that was before him. He points out that where such detail is provided it is, he would submit, an error not to have made reference to the family booklet particularly bearing in mind its importance.

11. Thereafter he takes me to paragraph 14 of the decision and the conclusion drawn by the judge that the Appellant had not shown she entered into a valid marriage on 5th May 2015. He explains to me that the procedure in Syria for marriage consists of two stages, firstly there being a contract made at the court which is acknowledged by the Ministry of Justice and thereafter it is registered by way of a civil registrar so consequently to find that an Appellant is not validly married based on half the documents that is before the judge was he submits an error and that there has been a failure to look at the document which affects credibility. He further submits that there is no basis for having reached the conclusion that the judge did reach and that there is an error in that the judge has failed to engage with the evidence. He points out that Judge O'Ryan has gone into

some considerable detail in considering the relevant objective evidence that is produced with regard to the making of proxy marriages.

12. He addresses the other issues in some small amount of detail but relies predominantly on the error that is caused and the clouding that must inevitably take place of the judge's reasoning as a result of the failure to consider the family booklet.

13. I am considerably assisted in this matter by the assistance thereinafter given by Mr Tufan who points out that he acknowledges that the judge has clearly failed to give consideration to the family document and that this is a document of such importance in its materiality that it could have affected the decision and therefore would, he acknowledges, be material. In such circumstances he does not seek also to challenge the other basis upon which errors of law are put forward and he endorses the views effectively expressed by Upper Tribunal Judge O'Ryan in granting permission.

## The Law

14. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

15. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

## Findings on Error of Law

16. I agree with the submissions made in this case by Mr Moran and endorsed by Mr Tufan. A very considerable amount turns on the validity of the Appellant's marriage and reliance is substantially placed on the family booklet the original of which is in the possession of the Sponsor and/or his

legal representatives and it is accepted, and has not been challenged, was presented to the First-tier Tribunal and is produced today before me. There are other arguments put forward in particular the fact that the judge, it is contended and I agree, may well not have taken into account Home Office policy and that the judge has failed to give full and proper consideration to the habitual residence question and as to where such habitual residence takes place.

17. For all these reasons the decision is unsafe. It is necessary for the matter to be reheard afresh with none of the findings of fact to stand. The Sponsor, who is present, would require an interpreter. He will be required to give evidence. Mr Moran expresses to me a concern firstly that his client is fee paying and secondly of the delay that can take place particularly in what would be a family reunion case to this appeal being heard. I note these factors and I bear them in mind in giving directions.

**Decision/Directions**

1. The decision of the First-tier Tribunal Judge contains material errors of law and is set aside with none of the findings of fact to stand.

2. The following directions shall apply:-

   (1) That the matter be remitted to the First-tier Tribunal sitting at Taylor House to be heard on the first available date 21 days hence with an ELH of two hours.

   (2) That none of the findings of fact are to stand.

   (3) That the appeal is to be heard before any Judge of the First-tier Tribunal other than Immigration Judge Watson.

   (4) That a specific direction is given to the Designated Immigration Judge at Taylor House to give consideration in the circumstances of this matter to expediting the re-hearing of this appeal. It is recorded that the Upper Tribunal has notified the Appellant's representative that we are not influential in the re-listing of matters before the First-tier Tribunal but that we can give indicative direction if we consider that a case should be expedited.

   (5) That there be leave to either party to file and serve a bundle of such further subjective and/or objective evidence upon which they seek to rely within fourteen days of receipt of these Directions.

   (6) That the court believes that the correct language of interpreter for the restored hearing is Arabic (Middle Eastern) and unless directed to the contrary an interpreter in this language do attend the restored hearing. In the event that the Appellant's representatives require an interpreter in a different language they must notify the Tribunal within seven days of the receipt of these Directions.

No anonymity direction is made.

Signed Date 17th February 2019

Deputy Upper Tribunal Judge D N Harris

**TO THE RESPONDENT**
**FEE AWARD**

No application is made for a fee award and none is made.

Signed Date 17th February 2019

Deputy Upper Tribunal Judge D N Harris