



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Numbers: HU/14653/2017  
HU/14657/2017  
HU/14658/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 21 January 2019**

**Decision & Reasons Promulgated  
On 15 February 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ESHUN**

**Between**

**FATMA [C] (FIRST APPELLANT)  
[H C] (SECOND APPELLANT)  
[M C] (THIRD APPELLANT)  
(ANONYMITY DIRECTION NOT MADE)**

Appellants

**and**

**ENTRY CLEARANCE OFFICER**

Respondent

**Representation:**

For the Appellants: Ms R Popal, Counsel

For the Respondent: Ms J Isherwood, Home Office Presenting Officer

**DECISION ON ERROR OF LAW**

1. The appellants have been granted permission to appeal the decision of First-tier Tribunal Judge Beg who, in a decision and reasons promulgated on 23 October 2018, dismissed the appellants' appeals against the Entry Clearance Officer's decision to refuse their application for entry clearance to settle in the UK with their sponsor, Mr Turan [C]. Turan [C] is the

husband of the first appellant and the father of the second and third appellants. The appellants are citizens of Turkey.

2. On 25 October 2017 the ECO refused them entry clearance to the UK for settlement. The ECO stated that the appellants did not meet the eligibility requirements under the Rules because the first appellant was previously married to her UK sponsor and later divorced. Her UK sponsor subsequently married a British citizen to obtain indefinite leave to remain and has now divorced his partner and recommenced his relationship with her. The ECO stated that this has caused him to doubt that the relationship with the sponsor is genuine and subsisting or that the couple intend to live together permanently in the UK. The ECO accepted that the financial requirements and the English language requirements under the Rules were met.
3. The judge recorded that at the hearing before her there was no representation on behalf of the respondent. At paragraph 3 of her decision she said evidence was given by the sponsor, Mr Turan [C]. He relied upon his witness statement. She then recorded the submissions made by Ms Popal on behalf of the appellants.
4. Ms Popal submitted to me that the hearing before the judge took seven minutes. The case was on a float list. She got the sponsor to adopt his statement as his evidence-in-chief and then tendered him for cross-examination but because there was no HOPO, there was no cross-examination of the sponsor. She then made submissions and handed over a copy of the skeleton argument to the judge. She asked the judge if there was anything further she could help her with and the judge said nothing further. That was the end of the hearing, which had started at two minutes past three and concluded by ten minutes past three.
5. I heard submissions from Ms Popal and Ms Isherwood. Following consideration of the submissions, I find that the judge made serious errors of law in her decision.
6. At paragraph 7 she considered the sponsor's evidence as contained in paragraph 7 of his witness statement about his meeting and relationship with [DA], who became his second wife. In the final sentence at paragraph 7 the judge said "It is common ground that in 2006 and 2007 the sponsor had a limited command, if any, of English". I accept Ms Popal's submission that it was not clear how the judge reached this conclusion. The ECO had not made this assertion in his refusal letter. Ms Isherwood accepted that the judge's finding that there was "common ground" was an error of law.
7. I also find that the judge made an error of law at paragraph 8 when she stated that the sponsor married Ms [A] in order to gain entry to the United Kingdom in 2008. I accept Ms Popal's submission that it was not open to the judge to make this finding because it was not a matter that was raised by the ECO and therefore was not in dispute between the parties. In any event, the burden of proof was on the ECO to find that his marriage to Ms [A] was a sham. The only issue raised by the ECO was whether the

relationship between the first appellant and the sponsor was genuine. I find that the judge's finding that the sponsor married Ms [A] in order to gain entry to the UK was a material error, which on its own, materially undermined the judge's decision.

8. I further find that the judge's findings at paragraphs 6, 7, 10, 11 and 12 were made without reasons. Those findings were in relation to how the appellant met [DA] whilst he was in Turkey on an online chat in 2006 in the same year as his son [H] was born and how their relationship developed after they met physically in Istanbul in 2007. The sponsor's evidence was that his marriage to Ms [A] lasted for about five years; they divorced on 17 December 2013. The judge's finding that this was a sham marriage was not accompanied by any reasons.
9. It appears on the one hand that the judge was saying that the sponsor's relationship with Ms [A] was a sham and at the same time saying that the sponsor's relationship with the first appellant was not genuine. If she was saying that the divorce from the first appellant was contrived in order for the sponsor to gain entry to the UK to marry Ms [A], then her findings were based on suspicion rather than the evidence.
10. Ms Isherwood argued that in reaching her decision the judge at paragraph 8 considered that there were no photographs or other credible corroborative evidence to support the sponsor's claim that his relationship with Ms [A] was a genuine relationship and there was lack of detail as to how his first marriage broke down. I find that the lack of photographs of the sponsor's relationship with Ms [A] and his marriage to Ms [A] formed part of the judge's finding that the marriage to Ms [A] was a sham marriage. This was not an issue that was before the judge. It was an issue raised by the judge herself in the absence of a HOPO and without consultation with the appellants' Counsel. I find that the judge materially erred in law in raising an issue which was not raised by the ECO and reversing the standard of proof in making her findings.
11. Ms Isherwood also said that the judge found at paragraph 11 that although there was some evidence of financial support by the sponsor for the appellant, the printout confirmations from Lloyds Bank were not all dated. I find that this argument is irrelevant in the light of the judge's recording at the end of paragraph 1 that the Entry Clearance Officer accepted that the financial requirements under the Rules were met.
12. I find that the judge's errors are material such that her decision cannot stand.
13. The judge's decision is set aside in order to be remade.
14. The appellants' appeal is remitted to Taylor House for rehearing by a judge other than First-tier Tribunal Judge Beg.

No anonymity direction is made.

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Signed

Date: 13 February 2019

Deputy Upper Tribunal Judge Eshun