Bushra Abdul Bakki Al – Saedy v Sayed Mohammed Musawi

FD08D03287

High Court of Justice Family Division

29 October 2010

2010 EWHC 3293 (Fam)

2010 WL 5652834

Before: Mr Justice Bodey

Friday, 29th October 2010.

Representation

Mr Squire appeared on behalf of the Applicant.

Mr Brazil appeared on behalf of the Respondent.

Approved Judgment

Friday, 29th October 2010.
Mr Justice Bodey:

A. Introduction.

1 In these defended divorce proceedings Bushra Abdul Bakki al-Saedy *('the Petitioner')* seeks a decree of divorce against the individual she maintains is her husband, Sayed Mohammed Musawi *('the Respondent').* She says that the marriage took place on 29th March 1996 at the Zainablya School of Theology in Damascus, otherwise known as Hawza Zainabeya Damascus. I say at once that the precise spelling of this theological establishment varies from place to place in the papers, as do various other names with which I am concerned, but nothing turns on these variations of spelling. The Respondent denies that any such ceremony took place in Damascus on 29th March 1996. To the contrary, he maintains that both parties were present on that day in the Petitioner's flat, 102 Devoncourt Buildings, Sussex Gardens, London W2, as part of a small family gathering. He says that on that occasion in London the parties entered into a Religious Agreement, being an agreement which he maintains suffices in Shia Islamic law to permit the parties to live in intimacy without committing *zinah* (sin). The Petitioner's case is that there is no such concept as a Religious Agreement in Islam and that only some form of marriage suffices to permit a couple to live intimately.

2 If the Petitioner fails on her primary case, that the parties were married in Damascus on 29th March 1996, then her secondary submission is that the 'presumption of marriage' should be applied and a valid marriage presumed, given the parties' alleged long cohabitation coupled with their having obtained a reputation of being husband and wife. The Respondent denies that any such presumption can apply in the circumstances of this case or if it does, he says he has rebutted it. In any event, he denies there was any sufficient cohabitation between the parties. He maintains that the Petitioner essentially retained her own home at all material times.

3 The Petitioner has been represented by Mr Squire, who has put her case with skill and vigour. The Respondent has been represented by Mr Brazil. I have heard 16 witnesses including the parties, and have read a substantial volume of documentation. It was clear on reading the papers that this is not a case where there is any room for error as regards the factual dispute, and that someone is not telling the truth. Therefore before the case got underway I asked both counsel to

take a little time with the parties, each of whom must know where the truth lies. I did not want this case to go forward without a further period of reflection, if the decision would be one which the unsuccessful party would perhaps bitterly regret. I was told after a short break that both parties wished to continue to achieve the decision of the court on the issues between them.

B. Brief background.

4 The parties met in London in or about the Autumn of 1995. Both are Iraqi by birth. Both fled the former regime, coincidentally in the same year (1980). By that time the Respondent was married to his first wife Nada, having married her in 1977. He has eight children by her, five boys and three girls, whose dates of birth range from 1978 to 1990, such that the eldest of his children is now 31 and the youngest 20. On leaving Iraq, the Respondent and Nada, together with their gradually increasing family, lived initially in India. He is an Islamic scholar of repute and whilst in India was, he says, the " *main representative of the World Shia Head, establishing many educational and humanitarian projects and foundations."* In 1991 the Respondent left India and sought political asylum in this country, achieving permanent leave to remain here. Thereafter Nada and the children joined him here. That pertained until 1994 when Nada and the eight children moved to Syria, so that the children could study the Arabic language. It was the intention that they would all return to the UK thereafter, but in fact Nada died in Syria on 27th August 1998. That date comes from her death certificate. Her marital status is there quoted as " *married"* and the Respondent is recorded as being her husband. Shortly before her death, the Respondent had applied for UK naturalisation, which he was granted on 24th July 2000 when he became a UK citizen. He expresses himself now – as is plainly the case – as being domiciled here and he has made his home in London since 1991.

5 As regards the Petitioner, she married a Mr A in Iraq in 1981. By him she has three daughters; Zainab, born in 1982, Rayhana, born in 1983, and Jumana, born in 1989. According to the asylum application documents completed by the Petitioner when she came to this country in 1990, her father was an Iraqi judge. She herself studied chemistry between 1985 and 1987 and I believe I heard her say when she called something out at one point from behind counsel, that she has a Degree in Chemistry. She appears from her asylum application documents to have led a peripatetic life in the Middle East between 1980 and 1990, ending with separation from her husband in or about 1990. At around that time she sought and obtained asylum here. Much later on, in February 2001, she applied for UK naturalisation. This was granted in 2002 and she became a UK citizen. Like the Respondent, it is quite clear that she is domiciled here and has been so at all material times for the purposes of this case.

6 The Respondent has two other children whom I must mention. They are Hassan, who was born on 21st January 1995, who is 15, and Mustafa, who was born on 4th August 1996 and who is 14. The mother of these two boys is Khadije Hammoud. The Respondent says that he and she entered into a Religious Agreement in Beirut on 30th March 1994, at or shortly before the time when Nada and his eight eldest children went to Syria as already noted. The Petitioner's case is that the Respondent's so-called Religious Agreement with Khadije was in fact an Islamic marriage, as the wording of the certificate appears on its face to indicate. Be that as it may, the Respondent says that on 12th March 1996 he terminated the Religious Agreement (as he would have it) with Khadije Hammoud at a time when she was wanting to return to Beirut with Hassan. That she did, giving birth to Mustafa there a few months later. In March 2000 Khadije died.

7 I have mentioned that the parties met in or about September 1995. On the best evidence available – which is poor, but just adequate – it appears that the Petitioner was divorced from Mr A in Iraq on 18th February 1995. There was a stage in the case when Mr Brazil, counsel for the Respondent, appeared to be of a mind to challenge that claimed divorce which, if he had done so successfully, would have meant that the parties would not have been able legally to marry on 29th March 1996. However, Mr Brazil did not in the event seek to put the Respondent's case in that way and I am content to assume that the Petitioner was free to marry the Respondent at the material time in 1996.

8 Following the asserted marriage on 29th March 1996 in Damascus (on the Petitioner's case) or else following the small gathering on that same day in London (when on the Respondent's case, the parties entered into a Religious Agreement) there is a dispute as to whether and to what extent they ever lived together. There seems no doubt that at that point in time the Petitioner had

her own flat at 102 Devoncourt Buildings, Sussex Gardens, London, W2. She says they lived together there for a few months before moving in July 1996 into the Respondent's home, which he rents from one of his sisters, at 19 Chelmsford Square, Willesden NW10. He had first moved into that house in 1992, three years before he met the Petitioner, and it remains his home today. It is also the London office of an Islamic charitable organisation of which the Respondent describes himself as the head. I shall call it the World Islamic League, although that is not its real name. The Petitioner maintains that from about July 1996 until 1998, she lived with the Respondent at 19 Chelmsford Square and that then, from 1998 to 2000, they moved to Syria for two years to care for his children (Nada having died in 1998) although returning from time to time to the UK due to the Respondent's commitments here. The Respondent says the Petitioner did indeed go to Syria for about two years, but that he himself remained based here. He has however also said that he " *flitted backwards and forwards"* between the UK and Syria, sometimes with the children. These two versions of events relied on by him are not easy to reconcile.

9 At all events, the Petitioner's case is that in and after 2000, once the family had reassembled in the UK (i.e. with the Respondent's children returning from Syria at or about that date) they then all settled down at 19 Chelmsford Square. The Respondent denies this, saying essentially that the Petitioner always had her own accommodation where she lived and which represented her home. At some point the Petitioner says that her three daughters also moved into 19 Chelmsford Square until it became obvious that the house was insufficiently large for so many people. Thereupon she found other accommodation for them. I will return later in Part F to give such findings as I can on this issue as to the extent to which the parties lived together.

10 As I have said, both parties gave evidence before me and were of course cross-examined. I had a good opportunity to try to form some sort of impression of them both and as to the probable dynamic between them, even though only in the artificial atmosphere of the witness box. The Petitioner used an interpreter for parts of her evidence, although I think really needed one relatively infrequently. She came over as a determined lady, adamant in her evidence and not very willing or able to accept when a good point was being made against her. She tended on occasion to give an answer to the question which she would have liked to have been asked, without always facing up to the thrust of the question actually asked. On several occasions she spoke over counsel in order to express her point of view, or to be sure to say what she wanted to say. At times there was an impression that what she said owed more to a reinvention of things than to strict fact. She was proactive in promoting her cause, visiting witnesses with whose evidence she did not agree, and in one case (Mr al-Kaleedar) speaking to him by telephone the evening before he gave his evidence. That said, the Petitioner is a conscientious Shia Muslim and would not, I think, have contemplated an intimate relationship with a man unless satisfied in her own mind that it was permissible and would not represent a sin.

11 The Respondent came over as a very self-confident religious scholar, unfazed by and almost contemptuous of the views of others about Islam, where those views conflicted with his own. He had a didactic and authoritative way of putting himself across, perhaps verging on the authoritarian away from the court context, coming over as quite sure of his ground however strong the apparent obstacles. Like the Petitioner, he was not ready to accept in cross-examination points made against him where others might have been more able or willing to do so. I sensed that the Respondent spoke with real pride when he was asked in some detail in cross-examination about the charitable works which he and others do within the Islamic organisation which he heads up (which is alleged by the Petitioner to be largely a product of his imagination). Even when faced with questions about how he finances his expenditures in life, he was with one exception unyielding in explaining how he gets by without (on his case) any obvious financial resources. The Petitioner claims that he is worth many millions of pounds. The Respondent too came over as a very religious man, who would I think have complied with Islamic law in interpersonal matters, at least subject to his own construction of it. I can well envisage that he would have been authoritative and persuasive in putting over to the Petitioner his expressed belief in the existence of Religious Agreements in Islamic religious law, with their alleged function of permitting intimacy and the birth of children.

C. The Petitioner's case as to the alleged marriage ceremony.

12 Remarkably, there is no truly independent evidence on the profound issue of fact about where

the parties were on 29th March 1996. There are no passports, travel documents, hotel bookings or anything of that type – all have apparently disappeared with the passing of the years. There are some photographs, but they give no independent clue as to when or where they were taken. There is an alleged marriage certificate but it is riddled with disputes. It is said by the Petitioner to be genuine, but said by the Respondent to have been contrived by the Petitioner to support her false case that there was a marriage. Whilst there are some witnesses, almost none of them are independent of the parties. The majority are family members and therefore vulnerable to the reciprocal allegations of partiality which have predictably been levelled against them. Most of the documents touching on credibility tend to suggest contradictory inferences.

13 In support of her case, the Petitioner relies on the alleged marriage certificate just mentioned. It is headed up " *Zainabi Academic Area"* and refers to a contract of marriage having been made on 29th March 1996 between the parties. It purports to contain the signatures of each of the Petitioner and the Respondent and also the signatures of two witnesses Muhamed Tawfeeq Alawi and Adnan al-Kaleedar. The latter two individuals are the Petitioner's brothers-in-law, being married to two of her sisters. Additionally there is the name but not the signature of the Respondent's father Abdul Sarhid al-Musawi, who was at that time an Islamic scholar living in Canada. There is also a written name but no signature of a Mr Muhamad Husain Bahr Aluloom as being *"the person making the contract for the husband."* As I say, the Petitioner claims this is a genuine document completed on 29th March 1996 and signed by those four individuals (the Petitioner, the Respondent, Mr Alawi and Mr al-Kaleedar) in the presence of the other two individuals named on it (Mr Abdul al-Musawi and Mr Aluloom).

14 The Respondent says to the contrary that he signed the document in about 1999. He wanted to placate the Petitioner's elderly mother, who was unhappy about the couple living together merely (as the Respondent says) under a Religious Agreement. He says that at the time he signed the document it had no other signatures on it and that only later did the Petitioner herself and her two brothers-in-law sign it. If the Petitioner is right about this document it certifies a marriage; if the Respondent is right, it does no such thing and is being used to perpetrate a deception. The starting point is clearly the four individuals, leaving aside the parties themselves, whose names appear on the disputed certificate.

(i) First, as regards the Respondent's father, he died in 2003 and so could not be called as a witness by either party.

(ii) Second, as regards Mr Aluloom, he has been called to give live evidence by the Respondent. He is an Iraqi Ambassador and is married to one of the Respondent's sisters. He is adamant that he was not at any wedding ceremony in Damascus on 29th March 1996 and that he had nothing to do with the marriage certificate. He says he neither signed it nor put his name on it in any way. He was cross-examined on the basis that he was present and is willing to lie for the Respondent being allegedly a trustee of the Respondent's charity, both of which assertions he denied. He also denied the suggestion, to use the words of Mr Squire, that he is involved in " *dishonest dealings with the Respondent using the charity as a vehicle for moving money around the world."* He, Mr Aluloom, accepted that the Respondent is his brother-in-law and friend, but strongly denied the suggestion that he had simply come to court to lie for him.

(iii) The third witness to the alleged marriage ceremony is Muhamed Tawfeeq Alawi. In the first place, the Petitioner produced a letter from him dated 15th August 2008 stating shortly: " *I confirm I did indeed witness the marriage ceremony of Bushra al-Sayedi* [the Petitioner] *with Mr Musawi* [the Respondent]. *I confirm that I signed the Syrian marriage certificate as a witness to the marriage dated 29* th *March 1996."* The Respondent's solicitors objected to such a letter being merely exhibited to the Petitioner's affidavit. However, no statement or affidavit was thereafter ever filed by the Petitioner from Mr Alawi. When it was put to her by Mr Brazil that he, Mr Alawi, could have left Iraqi without difficulty to come here to give evidence at this hearing, she answered that he works for the Iraqi government, has 50 bodyguards and to quote her " … *it is hard for him to leave Iraq."* Mr Alawi's wife Naim, a sister of the Petitioner, did give evidence – not about any ceremony in Damascus but about a family party which the Petitioner says took place about a week later back in 102 Devoncourt Buildings. During the course of her evidence Mrs Alawi was asked by Mr Brazil

about her husband's ability to travel. Mrs Alawi told me that he is an MP in Iraq, but that he *"comes and goes very regularly between Iraq and London."* She said that he can " *go back and forwards all right but the flights are not direct."* Her evidence was inconsistent with the Petitioner's on this point and in my judgment preferable to it. In the result, no evidence was ever put forward by the Petitioner from Mr Alawi whether by statement or live evidence to support his having been at the alleged marriage ceremony, or his having signed the alleged marriage certificate.

(iv) The fourth individual said to have signed the alleged marriage certificate in 1996 is Mr Adnan al-Kaleedar, a dentist who practises in London. The Petitioner had also relied on a brief letter from him exhibited to her first affidavit. It is dated 15th August 2008, the same date as that of Mr Alawi's letter, and its text is word for word the same as Mr Alawi's letter cited above. Again, faced with the Respondent's solicitors' refusal to accept an exhibited letter of this type, the Petitioner did not make any arrangements for Dr al-Kaleedar to give a statement. However, Mr Squire did seek leave to issue a Subpoena which did bring Dr al-Kaleedar to court. Asked whether he had been present in Damascus for the wedding in March 1996, he said that he did not exactly recall. Asked what ceremony he was referring in his short letter above, he described it as *"the party in London."* He continued: " *…there was a religious marriage in London. I remember the ceremony in London, but I cannot confirm or deny that I was in Syria for the ceremony"* – or words to that effect. He told me that the Petitioner has never asked him to make a statement or to come to court. Asked whether he has ever been to Hawsa Zainabeya in Damascus, he said that he has been once and that it was for " *…ordinary worship, a meeting or a lecture."*

In fact the evening before Dr al-Kaleedar attended to answer the Subpoena, he had had two telephone conversations about this case. One was a call from the Respondent's solicitor Alison Green, who rang him at his home in London to ask him whether he had been present at the alleged ceremony in Damascus in 1996. Alison Green says in a statement dated 21st September 2010: " *I asked him if he was a witness to a marriage taking place between the Respondent and the Petitioner. He said yes " … initially in London." He said he was like a father to Mrs Sayedi [the Petitioner]. He said he had been a witness to her divorce from her first husband. He said 10,000 people knew that she was Mr Musawi's wife* [i.e. the Respondent's wife]. *I asked where the marriage took place and he said in London. I asked him if he had been to Syria for the marriage between the parties and he said he later went to Syria when Mrs Sayedi wanted the marriage registered there. He went on to say that Mr Musawi's father had conducted the ceremony in London … I asked if he signed the marriage certificate. He said that he went to Syria to sign it when Mrs Sayedi was registering the marriage there."* During the cross-examination of Dr al-Kaleedar by Mr Brazil on these points, Mr al-Kaleedar spoke about having a discussion with the Petitioner *"about five or six years ago"* about registering the alleged marriage. That would mean in about 2004.

The second telephone conversation which Dr al-Kaleedar had the evening before he came to court to give evidence was with the Petitioner herself. He told me that she telephoned and was trying to refresh his memory, saying words to the effect 'Do you remember that this or that happened?' to which he had replied that he would tell the court all that he could remember. He told me that she was saying in particular that he had been ' *there'* (inferentially, at the marriage ceremony).

It is obvious that being married to the Petitioner's sister and himself believing strongly, as he did, that the parties are indeed husband and wife, Dr al-Kaleedar was under considerable pressure to support the Petitioner's case about the Damascus ceremony. Nevertheless, to his credit, he did not actually give any evidence of his having been at any ceremony there on 29th March 1996. In fact, his answer about only being once in Hawsa Zainabeya *"for ordinary worship, a meeting or lecture"* implies that he was not there for the marriage of someone – the Petitioner – whom he regarded as a daughter; or else he would probably have remembered it. As Mr Brazil said, it would be surprising if Dr al-Kaleedar could remember a party in London but not a wedding ceremony in Damascus about one week

previously, as per the Petitioner's case.

Further, Dr al-Kaleedar's answers over the phone to Miss Green (above) speak for themselves, not only (a) as to the apparent absence in his mind of there having been any ceremony in Damascus, but also (b) as to the fact that his signing of the certificate was not back in 1996 but rather at some time later, perhaps in about 2004, when the Petitioner wanted to have the alleged marriage certificate registered in Syria. If this is right then it significantly undermines the Petitioner's case as to the date of the signing of the certificate.

15 One other witness whom the Petitioner called on the question of the marriage ceremony was her sister Yusra al-Safar who lives in the USA. Mrs al-Safar gave a statement: *"I was present at the marriage ceremony of the parties on 29* th *March 1996 with my husband."* She says that the ceremony was at Hawsa Zainabeya in Damascus. There are however a number of curiosities about this witness:

(i) First, Mrs al-Safar did not give a statement until 1st February 2010. This is notwithstanding that, on the face of it, her evidence is crucial to the Petitioner's case and that the final hearing of this divorce was originally listed in March 2009, when everyone turned up but it was not reached for lack of court time.

(ii) Second, Mrs al-Safar was not called until well after the close of the Petitioner's case. In these days of video links – we had two in this case – and relatively cheap flights, it is unclear to me and has not been explained why Mrs al-Safar was called only at or after the 11th hour.

(iii) Third, and most important, when Mrs al-Safar was cross-examined, she told me that the signature on her statement is not her's. She said that she had electronically scanned the statement with her signature on it and then emailed it from America to England, but that the signature on the version in the court bundle is not her signature. This in itself is unexplained and pretty inexplicable, but the point does not stop there. Mr Brazil then put to Mrs al-Safar a letter purportedly from her and purportedly bearing her signature, dated 1st October 2008, upon which the Petitioner had relied by exhibiting it to her first affidavit. Mrs al-Safar completely disowned this document, denying that either the contents or the signature were her's. She told me that she had never been informed that any such letter purporting to come from her was going to be relied on by the Petitioner in support of her (the Petitioner's) case.

(iv) Mr Brazil also put to Mrs al-Safar in cross-examination a UK driving licence purportedly in her name bearing a signature purporting to be hers. She denied it was her signature or her driving licence. It is unclear who applied for or obtained that driving licence or why.

(v) One other document put to Mrs al-Safar in cross-examination was an electricity bill for 2003 referable to 19 Chelmsford Square. She was asked how it came to be in her name and whether anyone had been using her identity for any reason. She sought to explain the electricity bill by saying that she had been accustomed to stay with the Petitioner and the Respondent at Chelmsford Square for up to a month a year since 1998 and that, to repay their kindness, she had paid the electricity bill. She told me she had changed the electricity account into her name for that purpose, i.e. for one month, so that she could pay the bill. I found that difficult to understand or accept.

16 Arrangements were made for the Petitioner to go back into the witness box to have an opportunity to explain how it came about that the letter of 1st October 2008 (purporting to be from Mrs al-Safar, but disowned by her) had come to be exhibited to her (the Petitioner's) statement. The Petitioner denied any knowledge of how this could have happened. She denied preparing the letter or signing it. She also denied having applied for or having signed the driving licence in

Mrs al-Safar's name which Mrs al-Safar says is not her licence. The inference is strong that the Petitioner either prepared the letter of 1st October 2008 purportedly from Mrs al-Safar herself and signed it in Mrs al-Safar's name, or else that she arranged for someone else to do so. At the very lowest she almost certainly must have been aware that this letter upon which she placed reliance, and which she must have arranged to be supplied to her solicitors, was not genuinely a letter from Mrs al-Safar. This may – I cannot say – explain the Petitioner's reluctance to call Mrs al-Safar until after the close of her case. By then it had perhaps become obvious that adverse inferences were likely to be drawn from her failure to call such an important witness to support her on the key issue. I do not, however, draw an inference that the Petitioner was the person responsible for obtaining and signing the false driving licence in the name of Mrs al-Safar, since that might have been done by someone else. Likewise I do not propose to draw an inference that the Petitioner was responsible for obtaining an electricity account for 19 Chelmsford Square in Mrs al-Safar's name (thus putting Mrs al-Safar into the difficulty of having to explain it away, with the surprising explanation already mentioned). Again, this might have been done by someone else and there is a danger of injustice to the Petitioner if I were to make a finding against her in that respect.

17 As well as Mrs al-Safar, who did eventually give evidence before me, the Petitioner caused a statement to be filed from one Khiled Said. He gives a relatively detailed narrative of his purported attendance at the Hawsa al-Zainabeya in Damascus in March 1996 stating in terms that a marriage ceremony was conducted by the Respondent's father and that both Mr al-Kaleedar and Mr Alawi were present. He also says that the marriage certificate was signed by the Petitioner and Respondent, Mr al-Kaleedar and Mr Alawi. Mr Said gives his address in his statement dated 20th January 2010 (long after the intended final hearing) as being in London. Here was strong supporting evidence for the Petitioner, corroborating the fact of the marriage ceremony as she maintains it occurred. However in the event Mr Said was not called. On the morning of Wednesday, 22nd September 2010 Mr Squire was obliged to rise to his feet to tell me that (whilst he had been hoping to call Mr Said) he, Mr Said, was “unavailable at the last minute.” Without more, and with no explanation such as illness, an urgent trip abroad or something, it is difficult to resist an inference that Mr Said was unwilling to be put to the test as to the contents of his statement.

18 One other curious incident in the presentation of the Petitioner's case needs to be mentioned. I have already referred to Dr al-Kaleedar, who gave evidence on Subpoena. In fact although he had not given a statement, his wife had. She is Mrs Khillod al-Saidi, one of the Petitioner's sisters. In a statement purportedly by her, dated 17th November 2008, she stated that she had witnessed the marriage party of the Petitioner and the Respondent and had visited them many times in their house at 19 Chelmsford Square. When however Mr Squire called Mrs al-Saidi to give live evidence and asked her in chief to confirm her signature at the end of that statement, she told me that it was not her signature. She said that she had never seen the statement before. It is submitted by Mr Brazil that this signature on the statement purporting to come from Mrs Khillod al-Saidi was in fact the work of the Petitioner. He also suggests that there is a similarity between (a) the purported signature of Mrs al-Saidi on that statement and (b) the purported signatures of Mrs al-Safar, both on the letter purportedly written by Mrs al-Safar and on the driving licence in Mrs al-Safar's name. The Petitioner denied that she had been responsible for any of these signatures. I consider that this is an area where handwriting expertise would be required before any finding could or should be made. I do not therefore find that the Petitioner herself performed these respective signatures. However there is again strong inference that the Petitioner was responsible for the purported statement by Mrs al-Saidi going into the bundle and its being used in support of her (the Petitioner's) case, until Mrs al-Saidi expressly disowned it in the witness box.

D. The Respondent's case as to the alleged marriage ceremony.

19 Turning to the Respondent's case as regards the issue of the disputed marriage in Damascus, I have already mentioned his witness Muhamad Husain Bahr Aluloom. As I have said, Mr Aluloom adamantly denied both being in Damascus on 29th March 1996 and placing his name on the alleged marriage certificate. In fact Mr Aluloom goes further, because in a supplemental statement he says that he was *“present at the flat of the Petitioner in the building known as Devoncourt, Sussex Gardens, London W2 on 29* th *March 1996 at approximately 8 pm.”* He maintains that other individuals there present were his wife (the Respondent's sister), the

Respondent's parents, the Respondent, Mr Alawi, Mr al-Kaleedar, the Petitioner, the Petitioner's mother, three of the Petitioner's sisters, and a Mr el Amin. There on the face of it at any rate, is strong support for the Respondent's case, albeit that Mr Aluloom readily accepts being a close friend of the Respondent's. Apart from the Respondent's own evidence, that evidence of Mr Aluloom is, I think, the only witness evidence positively supporting the Respondent's case on the issue of where the parties were on 29th March 1996.

20 There are however two further pieces of evidence quite different in nature upon which the Respondent relies. The first arises from the Petitioner's UK naturalisation application form dated 7th February 2001. There she was required to state over a number of years the dates when she had been out of the UK. Although various absences from this country are set out sequentially from 17th December 1995 to 20th January 2001 with dates and destinations, what is conspicuous by its absence is any reference to the Petitioner having been absent from the UK in Syria or anywhere else on or about 29th March 1996. The Petitioner's explanation was that one of her daughters must have completed the list for her since she does not type and that there are other absences from the UK omitted too. As she, the Petitioner, did not check the list through, she would not have been aware that it was deficient. Whilst the form may well have been typed up for her, and I do take her point that there are a number of patent errors in it, nevertheless this was a highly important document for her, crucial to her no doubt coveted citizenship in this country; and I do not find her suggestion of a complete failure by her to check the document through to be very likely.

21 The second piece of evidence which, if the Respondent is to be believed about it, supports his version of events about 29th March 1996 comprises two cheque stubs which are said by him to have been written by him in London at precisely the material time. The first stub on an NWB account dated 28th March 1996 is in the sum of £33, the counterfoil being completed 'Pizza.' The Respondent says that that refers to a pizza supper for which he paid in London that evening. The second is a cheque stub on a Midland Bank account dated 29th March 1996 in the sum of £900. The writing on the stub is in Arabic but I understand it to mean 'jewellery.' The Respondent says it was or included in particular a tie pin which he bought in London as a gift for one of his sisters.

22 During the course of the hearing I asked to see the original cheque books, which were located just before the end of the hearing. The stub on the Midland Bank account is the stub of the first cheque in the book from which about half a dozen cheques have been used. Most of the counterfoils are completed in Arabic, but one or two in English. The next unused cheque shows the printed digits '19 … ' along the line where one completes the date of the cheque, showing that the cheque book is a genuinely old one, produced before the year 2000. The stubs commence on 29th March 1996 with the cheque for £900 for jewellery and proceed sequentially ending on 20th September 1997.

23 The stub on the NWB account purporting to be for £33 for a pizza on 28th March 1996 is the seventh stub in the cheque book. The used cheques before that purport to start on 8th November 1995 and then move on in date sequence through to 28th March 1996 itself. They then continue sequentially, the next stub being purportedly for £50 to the Royal Mail for a Post Office Box dated 3rd June 1996. The completed cheque stubs continue in that cheque book down to 16th August 1998 with a transfer of £500 to Midland Bank account. Most of the cheques are written in Arabic, but some are in English. The cheque book is finished, except for one remaining unused cheque. Again the printed digits '19 … ' can be seen along the line where that cheque would be dated when written out.

24 There are really only two possibilities in respect of these two cheque books. Either they are genuine, as they appear on their face to be; or else they have effectively been skilfully forged – by that, I mean that the Respondent has been able to locate two genuine old cheque books and has concocted sham stubs, amongst which he has included stubs for 28th and 29th March 1996 to make it look as though those two cheques in £ sterling come genuinely within a sequence of used cheques. This point is more particularly so in respect of the NWB account, where there are stubs either side of the one saying 'Pizza.' If the stubs in these two cheque books have been falsely contrived by the Respondent for the purpose of this hearing, then not only does it mean they do nothing to support his case but it would also seriously compromise his credibility. It might well mean that he is bolstering a false case knowing the Petitioner's case to be correct. If, on the other hand, the cheque stubs are genuine, then they represent good evidence that the Respondent was in England on 28th and 29th March 1996, as he would hardly have been making purchases in Damascus in £ sterling.

25 In seeking to determine the truth about this important cheque stub evidence, I need to factor-in considerations about the Respondent's general credibility. He has been attacked on numerous fronts in cross-examination and as part of the presentation of the Petitioner's case. I have all the many areas of challenge in mind, but will deal only with those eight which seem to me to be the most significant.

Respondent's general credibility.

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(i) First, it has been suggested to the Respondent and to his witness Mr Aluloom that he (the Respondent) is effectively a 'conman' using his Islamic religious charity to dodge tax and to launder money around the world for his own financial benefit. When the Respondent was asked in cross-examination about the size of the charity and the extent of its activities, he spoke in expansive terms to the effect that it has representatives and office buildings in many countries worldwide, which countries he named; that it has assets or projects worth millions of pounds and millions of dollars; that it runs some 1300 schools for children in India alone; orphanages in many countries; and has projects worldwide concerning education, medical and humanitarian matters, drinking water, religious awareness, human rights, and freedom from oppression. He described it as the leading Shia Muslim organisation. As a result, and because he says he is recognised for his asserted interest in getting away from extremism and terrorism, he told me that he has been visited at home by several retired Heads of State (some of whom he named) and other prominent individuals. The Petitioner's case is that this is all the stuff of fantasy. It is said that in reality the charity concerned is just the Respondent himself, who is allegedly able to use the donations at least in part for his own ends. This is how the Petitioner maintains he supports himself; whereas he describes himself to the contrary as " *a humble servant of the community"* saying that his expenditures of life come either from sponsorship or from family members. I revert to this issue at paragraph 56 below.

(ii) The second respect in which the Respondent is attacked as to his credibility concerns his claims for Housing Benefit in 1997 and for Family Credit for six of his children in 1999; also for his having included his eight children by Nada on his application form for naturalisation as a British citizen dated 11th May 1998. It is said on behalf of the Petitioner that the Respondent was actually in Syria at the end of the 1990s and so should not have made those benefit claims in this country. I have to say I found the Respondent's evidence inconsistent in this area. In para. 31 of the statement of 9th January 2009 he spoke of Khadije Hammood's illness leading to the family arranging in 1999 for the two children Hassan and Mustafa " *to be sent to Syria to live with me and my other children."* That seemed to imply that as at the end of 1998/beginning of 1999 he was living with his eight children in Syria. However, in para. 32 of the same statement the Respondent denied the Petitioner's assertion that the couple had moved to Syria for two years from 1998 to 2000 to care for his children, and continued: " *I was based in London during this period and I visited Syria two or three times a year in order to see the children that I had with Nada. They were being educated there in Arabic. When I went to visit I would either rent somewhere to live or would stay in a home which belonged to the Religious Institute for Scholars which I visited. I never lived there* [Syria] *at any time for a permanent period of two years."* In his oral evidence the Respondent clarified that he accepted that the Petitioner herself had been in Syria from about 1998 to 2000, but not him. That much seemed tolerably clear. But when cross-examined by Mr Squire about the May 1999 Family Credit claim for six of his children, the Respondent said that in fact both he and they had been 'going backwards and forwards' between Syria and the UK, spending about 50% of the time in each country. He told me that in about 1999 they (the children) were living in both countries and receiving education in both countries. They would be in Syria for maybe weeks or perhaps months at a time, before returning to England. They would then be in England for perhaps months or weeks at a time, before going back to Syria. They had their mother Nada in Syria but their friends in London, the Respondent said, where they had been brought up till 1994. Mr Squire pressed the Respondent in cross-examination as to how these tickets for the children were being paid for, since the Respondent says he has no personal funds. I accept Mr Squire's submission that the Respondent appeared discomforted by the question, answering after a

delay that it was " *managed somehow"* and that the family used to pay. I did not find this area of the Respondent's evidence convincing. His case described bringing seven children backwards and forwards almost monthly between Syria and the United Kingdom, with education going on for them in both countries. Whilst not impossible, it would not seem very practical. Having said that, whilst the thrust of the cross-examination of the Respondent was that he was 'fiddling' both the benefit system and the naturalisation system as regards his children, there is no evidence before me as to the rules and regulations in respect of these matters and it is not an area in respect of which I could reliably take judicial notice of what those rules and regulations say. So I can and do make no findings to the effect that the Respondent acted improperly in these respects.

(iii) The third main area of attack on the Respondent's credibility also arose out of his naturalisation form in May 1998. He there gave the name of Nada as his wife. That was accurate as she did not die until August 1998; but he gave her " *present address"* as 19 Chelmsford Square, London NW10. When it was put to him that this was false, as she had been in Syria since 1994, the Respondent said that she used to visit England on occasions and had not completely given up Chelmsford Square as being her home address. Again I consider Mr Squire raised a valid criticism of the Respondent in this respect and that the giving of 19 Chelmsford Square as Nada's then address was stretching the truth to a very considerable degree.

(iv) Fourth, Mr Squire relies on what is described as an Islamic marriage certificate dated 30th March 1994 purporting to record that *"a lawful permanent marriage"* was performed between the Respondent and Khadije Hammood on that day. The Respondent does not accept that this was a marriage and has always described his relationship with Miss Hammood, the mother of Hassan and Mustafa, as being based on a Religious Agreement. His explanation to me for this certificate was that Miss Hammood needed it to produce to the Lebanese Embassy, she being Lebanese, to get a passport extension. In my view, the Respondent is in a "Catch-22" situation on this. Either his relationship with Miss Hammood was one of marriage, in which case he is inaccurate in referring to it now as having been merely a Religious Agreement permitting (he maintains) cohabitation; or else he was misleading the Lebanese Embassy into thinking that Miss Hammood was genuinely his wife when in fact she was not. Further, the certificate gives the Respondent's nationality as ' *Lebanon' (sic)* something in respect of which Mr Squire sought an explanation in cross-examination. The Respondent says that at the time – 1994 – he had applied for Lebanese citizenship under a scheme then being run by the Lebanese government and had understood it would be granted, although it turned out that it was not. Whilst again I cannot say that this is positively not what occurred, and there has been no opportunity for the Respondent to bring any evidence on the point, I did not find it a very convincing explanation. Having said that, it is also quite difficult to see what the Respondent would have hoped to gain by giving his nationality as Lebanese, as distinct from Iraqi.

(v) Fifth, Mr Squire attacked the Respondent on the basis that when, about 12 years ago, he received Housing Benefit it was paid into an account in the name of his sister Ikram Hussain (the house being in her name) over which account he had control. It was put to the Respondent that it was a scam for him to receive Housing Benefit and pay it effectively to himself. Both the Respondent and Mrs Hussain, who gave evidence by video link from the United Arab Emirates, strongly denied that this was the case, or that there was any wrongdoing involved. They both explained how when things needed to be done on the house, Ikram Hussain would agree to the Respondent using money from the account. Without the full panoply of Discovery followed by informed cross-examination it is effectively impossible for Mr Squire to gainsay the explanations about Chelmsford Square put forward by the Respondent, supported as it is with reasonable consistency by Mrs Hussain.

(vi) Sixth, Mr Squire took the Respondent in cross-examination to certain cheques which he, the Respondent, had written out on bank accounts managed by him in favour of the Petitioner's sister Mrs Yusra al-Safar, whom I have already mentioned. Some of these were largish – for example, £12,000 and £5,000 – over a few days. The Respondent's

explanation is that this was done at the Petitioner's request when she (the Petitioner) gave him cash for his Islamic charity. He would then repay the Petitioner by giving a cheque to her sister (the two of them being, he says, in some sort of business partnership) of a similar amount. None of this made much sense to me, particularly when the Petitioner seems to have been on benefits for much of the material time. But like the last point, it is not one on which I can attempt any conclusions without proper preparation supported by Discovery.

(vii) Seventh, Mr Squire attacks the Respondent in respect of the Respondent's own case as to how he says he came to sign the alleged marriage certificate between himself and the Petitioner allegedly dated 29th March 1996. If it was done simply to placate the Petitioner's mother, as above, then (as per Mr Squire's cross-examination) it must have been done to mislead the Petitioner's mother. The Respondent would not accept this, saying simply that the Petitioner's mother was demanding a formal paper. I am with Mr Squire on this point. If the Respondent's case about the marriage and the marriage certificate is correct, then it must follow that he was misleading the Petitioner's mother. This is because she was being led to believe that there had been a marriage when – if the Respondent is right – there had not.

(viii) The eighth of the Petitioner's main attacks on the Respondent's credibility arises from his adamant use of the expression “Religious Agreement” to explain how it was that he and the Petitioner, both conscientious Muslims, were able to live together. Not only did they live together, but the Petitioner goes further and produces contemporaneous documents that she went for fertility treatment in the hope that they would have a child or children. She says that there is no way that she would have done this under her religion if they had not been married. The Respondent denied this suggestion of fertility treatment, although one of the documents relied on by the Petitioner seems to imply that the Respondent was present at a consultation with her fertility consultant. He also denied having done any semen tests except, when he was cross-examined, he accepted a test which took place at some point in Syria. The Petitioner however is able to rely on a report from St Mary's Hospital, Paddington, dated 23rd October 1997, that: ‘ *The results of the semen analysis and ‘swim up’ test for the* [Petitioner's] *husband was essentially normal.’* So there seems no doubt that the Respondent did participate in tests to see why the Petitioner was not becoming pregnant. As I say, she relies on that as evidence that she and the Respondent must have been married (although it would not in fact conflict with the Respondent's case about there having been a Religious Agreement because, as he maintains, intimacy and procreation are permissible thereunder).

27 There has been considerable evidence on this issue, namely, as to whether the concept of a Religious Agreement falling short of an Islamic religious marriage exists or not in Islamic religious thinking. The Petitioner's case is that it does not, and that the Respondent well knows that it does not. Hence she says he is putting forward a deliberately false case and that this should tell against him generally on credibility. She is supported by Mr Edge, who is well known in this Division as an expert in matters of Islamic law. He says there is in his view no distinction between a Religious Agreement and a religious marriage. If the necessary words of ‘offer’ and ‘acceptance’ are used so as to constitute a religious marriage in Islamic religious thinking, then (with or without witnesses) Shia Islamic law would hold it to be a marriage.

28 The Petitioner is also supported on this issue by Sheikh Abas of the Hawsa Zainabeya Damascus. Although called by the Respondent on the question of the disputed marriage certificate, he was cross-examined (perfectly properly) by Mr Squire on the issue as to whether Islam recognises the concept of Religious Agreements permitting sexual intimacy. He, Sheikh Abas, gave his opinion that nothing less than some form of marriage suffices in this respect, although it does have to be noted that this was not an issue upon which he was given any warning that he would be asked questions and so he had not had any opportunity to reflect or research the point.

29 The Petitioner is further able to point to various places in documents where the Respondent has referred to her (at least in translation) as his *“wife”* – for example in the late 1990s when he confirmed that “ *my wife”* had as her personal money an investment in a villa project owned by

his charity near Damascus, along with the sum of some £88,000 odd; and a further representation that *"my wife"* had lent him £7,000 in 2003. She can further rely on two letters which the Respondent wrote to her following the breakdown of the relationship in October 2006, namely, a letter written on 1st March 2007 and another on 1st April 2008. The first of these referred to the Petitioner repeatedly in translation as his " *wife"* and himself as *"your husband".* He refers to Chelmsford Square as " *the matrimonial home"* and complains about the Petitioner always being away at her daughter's saying: " *How can a marriage continue when the woman is distracted from it by her life and her daughters?"* In the second of those two letters, the Respondent wrote: " *…your empty promises caused me to enter into a permanent contract according to Islamic Shia law … as I was officially and legally married at the time, it was not anticipated there would be any legal marriage between us in any court … all there was between us was a permanent contract according to our Islamic religion."* The Respondent also spoke of his having " *taken in"* the Petitioner's daughters when they came to Britain and of his having treated them " *like my own daughters."*

30 There is one other document upon which the Petitioner can rely on this issue about the existence or not of the concept of a Religious Agreement in Islamic religious law. It is the transcript of a lecture which the Respondent gave in Holland about three years ago. In answer to a question from the Muslim audience, as to why Muslims have an obligation to get married, the Respondent is quoted in translation as having replied: *"…the question is about the system of the relationship between man and woman and why Islam encourages marriages and forbids any relationship between two sexes who are not framed in the frame of marriage (inaudible) or temporary marriage."* (The word "inaudible" is in the transcript of the lecture itself). He went on to say that ' *Allah, the Most Merciful, the Most Wise, who created male and female, knows that male and female will not achieve the peace of mind and the settlement and the tranquillity and happiness but* [i.e. except] *when there is a legitimised discipline (sic) relationship between them in the frame of marriage. Any type of marriage. Any relationship out of that is a sin."* And so on in similar terms.

31 The Respondent's answer to these various points is that in his view as a senior Islamic scholar the concept of a Religious Agreement undoubtedly does exist and does permit an intimate relationship between responsible consenting men and unmarried women falling short of marriage. He is able to pray in aid three aspects of the evidence in support of his case.

> (i) First, he relies on the evidence of Ayatollah Ali H al-Hakim, a religious scholar and lecturer at the University of Advanced Islamic Studies in England since 1998. The Ayatollah deals with religious inquiries based on his specialist knowledge and personal experience of more than 20 years. He says: *"It is accepted amongst Shia Muslim scholars that the Islamic legislator has approved various forms of sexual relationship between man and woman … where no actual proper marriage is present while the outcome as well as the sexual relationship is tacitly approved."* The Ayatollah was unshaken in cross-examination, disagreeing with other Muslim scholars who complain about 'sexual decadence' when it occurs within a responsible man/woman relationship. Mr Squire submitted that the Ayatollah was in reality merely 'absolving' Muslim couples after the event who had in fact entered such a relationship and that he was doing so by presuming a valid Islamic marriage to have taken place at some point in the past. That was not however my understanding of the totality of the Ayatollah's evidence, as he was also saying that consenting adults can agree to a Religious Agreement prospectively. He referred to it as *mutta'at* (translated apparently as 'practice' or 'custom') under the umbrella of which he told me in terms that a sexual relationship is not regarded as a sin. He said that this interpretation is not always to be found in books or on websites, nor is it a black and white area. It involves a combination of religious study, interpretation and personal belief. The Ayatollah gave evidence in person, spoke of his own practical experiences in the community in this country and in Scandinavia, and was – as it seemed to me – an impressive witness.
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> (ii) The second piece of evidence upon which the Respondent can rely about Religious Agreements is that which comes off his own website. Challenged by Mr Squire to show any reference on his, the Respondent's, website to a Religious Agreement, the Respondent produced answers to questions addressed to him by Muslims in April 2002 and July 2004. The first question addressed to him was " *Is it allowed in our faith that I have a* Religious Agreement *with a lady without legal marriage?"* To this the Respondent replied *"Yes, it is*

allowed for any Muslim to have a Religious Agreement without a legal marriage. Religious Agreement has nothing to do with people marriage and its legalities. Under Religious Agreement *both you and the lady will be fulfilling your religious duties and keeping yourselves away from sin."* In the second question, a married Muslim asked the Respondent: "I have a Religious Agreement *with another lady from whom I have a child. Is it must on me to inform my wife about my Religious Agreement?"* To this the Respondent answered "Religious Agreement *between you and that lady does not need permission or informing your wife. You also do not need to inform your wife about your child from the* Religious Agreement." It will be seen from the dates, 2002 and 2004, that these references by the Respondent to the concept of a Religious Agreement preceded by a couple of years the breakdown of the parties' relationship in October 2006 and were not on the face of it contrived for the purpose of the issue which has arisen at this hearing.

(iii) The third aspect of evidence upon which the Respondent can rely comes paradoxically from the Petitioner herself. Just as the Respondent has referred to the Petitioner (as has been translated) as his *"wife"* so the Petitioner has filled in various forms failing to refer to herself as being married. There are several examples, but the most remarkable perhaps is her application for UK naturalisation dated 7th February 2001. There inexplicably she left blank the " *Married"* box and ticked the *"Legally separate"* box. She explained this by saying she was there referring to Mr A (from whom she was in fact divorced not merely separated). At Box 12 of the application form, there is " *If you are married to a British citizen give the following information: date and place of marriage."* One would have expected to see that the Petitioner would have put down " *29th March 1996 in Damascus",* but in fact she left that box blank. She did so notwithstanding that her naturalisation application would inevitably have been the stronger if it were known by the UK authorities that she was married to the Respondent, himself by then a British citizen. Her explanation in cross-examination for having left the " *Married"* box blank was that a Law Centre solicitor who was helping her complete the form advised her to do so. Any such advice would seem so counter-intuitive that I find it unlikely to have been given. Then there is the form dated 14th October 2002 for Invalid Care Allowance in respect of the Petitioner's alleged caring for Hassan, who had long-term poor health. There she again failed to tick the *"Married"* box and ticked the " *Separated"* box instead. Her explanation was that she did so because she felt that Mr A is responsible for her daughters. But this was nothing to the point, as the form in question related to Hassan and not to her daughters at all. Last there was a Department of Work and Pensions form which the Petitioner completed in English in her own handwriting on 15th April 2003, again regarding Carer's Allowance. There she was asked the question " *Do you have a partner? By partner we mean a person you are married to or a person you live with as if you are married to them."* In answer to this question, the Petitioner ticked the box " *No."* In addition, incidentally, to the question " *Where do you normally live?"* she filled in the answer ' *92b Ashmore Road, London W9'* In fact, as I have said, her case now is that she was living at 19 Chelmsford Square.

32 In my view, it is inappropriate for me to try to determine an issue as to Islamic religious law (i.e. whether the concept of a Religious Agreement exists falling short of marriage) when it is not directly in issue in this case. The point arises only as to credibility, being one possible explanation for how it was that the parties felt able and willing to enter into an intimate relationship. What I can say I have concluded on the totality of the evidence, and despite the Respondent's references in translation to himself as "husband" and to the Petitioner as "wife", is that in his subjective opinion there does exist a status of Religious Agreement which falls short of marriage. I find the two website extracts from 2002 and 2004 good support for this conclusion, even though I accept that they are difficult to reconcile with the Dutch lecture (although I repeat that one potentially important part of the Respondent's answer was described as " *inaudible"*). This must not be misunderstood as a finding that there *was* here a Religious Agreement. I am making no finding as to that one way or the other, because it is more appropriately a matter for the parties' religious law to resolve. I am merely (to repeat myself) making a finding that in my judgment the Respondent does subjectively believe that such a status or arrangement validly exists in Islamic religious law. Hence I do not consider that he has been running a false case or misleading the court on this point, as alleged.

33 This segment (Part D) and the previous segment (Part C) have been included to lay the evidential groundwork on the issue of whether there was a marriage in Damascus on 29th March 1996. I will state my conclusion on that issue in Part G, when I have dealt with some other necessary matters.

E. The Syrian proceedings and three particular witnesses.

34 In about 2009 the Petitioner decided to make application to the Syrian court for confirmation as to the validity of the marriage certificate regarding the alleged marriage in Syria on 29th March 1996. Relying on information from the Petitioner, the Syrian court proceeded to hear the case on the basis that the whereabouts of the Respondent were unknown. In fact that court had been misled since, although the Petitioner tried to explain to me in cross-examination how the Respondent had been served in Damascus through his family (including by nailing process to a door) the simple fact was – as the Petitioner well knew – that the Respondent was living at 19 Chelmsford Square, London. The inference is unavoidable that she wished the proceedings in Syria to go forward to her advantage without the Respondent being aware of them or participating in them. That is in fact exactly what occurred. On 27th October 2008 the Syrian court made a ruling that a marriage had taken place in Damascus on 29th March 1996. It did so on the basis of the Petitioner's calling two witnesses, neither of whom was one of those mentioned on the alleged marriage certificate. Neither of the witnesses had been present at the alleged ceremony, but said that they had (in one case) turned up afterwards and (in the other case) heard all about it. Curiously, the decision of the Syrian court was that the marriage had taken place at Husayneya Qamar Bani Hashim, which is not in fact where the Petitioner says it occurred. It is a smaller religious establishment a few blocks away, where (she told me) certificates of marriage are prepared and sold. Realistically, Mr Squire did not seek to place any reliance on the Syrian court order of 27th October 2008. It is difficult to see how it could be recognised here in circumstances where, unbeknown to the Syrian court, the Petitioner was keeping back her knowledge of where the Respondent could properly be served with process. Further, I am satisfied that the Petitioner actively avoided disclosing the existence of the Syrian proceedings within these proceedings until after the Syrian order had been made on 27th October 2008. The Syrian proceedings are informative in that they give a small glimpse of the Petitioner's credibility and reliability.

35 As part of placing the status of the marriage before the Syrian court, the Petitioner wished to have a copy of the alleged marriage certificate certified by an official person in Damascus. It is her case that in March 2008 a certain Sheikh Awad Ali Sharifi stamped such a copy and put his name to it. Sheikh Awad had already made a statement for the Respondent describing the original marriage certificate relied upon by the Petitioner as a fake. When the Petitioner's claim that Sheikh Awad had stamped and put his name to the copy certificate was checked on behalf of the Respondent, Sheikh Awad denied signing or stamping the document in 2008 and declared that copy of it to be forged. He did so in another statement prepared on behalf of the Respondent. The Petitioner has asserted that Sheikh Awad's signatures on those statements put in evidence by the Respondent are forged. In the result, the Petitioner reported Sheikh Awad to the Syrian police for denying the alleged certification of a document, which she says is a crime in Syria. She told me in her evidence that as a consequence he was arrested by them and imprisoned, during which time (she says) he withdrew the evidence which he gives in his statements in these proceedings on behalf of the Respondent. When the arrangements were made for a video link to Damascus to take place during this hearing, Sheikh Awad was one of the witnesses intended to give evidence and be cross-examined. However, when it came to his turn, he declined to participate after all and accordingly Mr Brazil was unable to call him on behalf of the Respondent. I was told by Mr Brazil that he had communicated the fact that he was afraid of getting into further trouble with the police. The Petitioner on the other hand would say that he was unable to face up to questioning on his statements, because he knew they were untrue. I find these issues surrounding Sheikh Awad to be simply unjustitiable. Each of them (the Petitioner and Sheikh Awad) is accusing the other of forgery; yet for reasons which may be valid (reasonable fear of further imprisonment) I have not been able to evaluate one side of the equation. There is no handwriting evidence to assist me. Although Sheikh Awad's evidence does also go to substance, it goes at least as much to credibility with the cross-allegations of forgery and so forth. What I propose to do is to ignore it. This is unusual but pragmatic and in my view the fairest thing to do in the circumstances. So I find that his evidence favours neither party, being so mutually inconsistent as to cancel itself out.

36 I turn to Sheikh Abbas Mohammed Hussain, who was called by video link by the Respondent. He had originally given a letter to the Petitioner dated 7th June 2009 certifying that the alleged marriage of the parties was true and registered with Hawsa Zainabeya on 29th March 1996. Later, however, on 7th October 2009 Sheikh Abbas issued a correcting letter stating that the previous letter was invalid because the marriage had not been concluded at Hawsa Zainabeya. Finally, Sheikh Abbas filed a statement for the Respondent explaining why he had written the June 2009 letter and stating " *I confirm that no marriage took place in Hawsa Zainabeya between the Petitioner and anyone else on 29th March 1996. We do not know this lady and she was never married at our Institute."* As I say, Sheikh Abbas did give evidence by video link and stood resolutely by his final statement, explaining that the first letter had been written because the Petitioner had come to him crying and pleading for a certification of the marriage certificate, and that he had felt sorry for her. He was, in my view, reluctant to admit why his second letter had been written and he fenced around the questions from Mr Squire on that point. It turned out that inquiries had been made of him on behalf of the Respondent about how he had come to write the first letter. He remained adamant that there is no record of any marriage between the Petitioner and the Respondent in the files of Hawsa Zainabeya. Here again I am faced with a witness who has given entirely inconsistent and contradictory evidence. In truth I have no way of ascertaining in this instance, via the inadequate means of a stuttering video link, where the truth really lies. Again therefore what I propose to do is disregard Sheikh Abbas' evidence altogether. I shall regard it as favouring neither party, being again so inconsistent with itself as effectively to cancel itself out.

37 The third of these three witnesses mentioned in the above heading is Mr Aziz, an Iraqi lawyer, who became a sort of broker trying to bring the parties to some accommodation. He told me that the Petitioner had demanded £2 million to drop these proceedings, something which the Petitioner herself denies. He had recorded an exchange between himself and the Petitioner which was transcribed at the very end of the case. It contains his telling the Petitioner, in the context of his trying to get her to be (from his perspective) more reasonable in negotiations, that the Respondent was not denying that the parties were married but was saying that they were now divorced. Neither Mr Aziz nor the Respondent was cross-examined on this point, given the late stage at which the transcript became available, by when the case was already over-running its time estimate. I have to recall that the Petitioner's own case is that Mr Aziz is not being truthful about the £2 million and I do not think I can or should be confident that what he said to her as regards his instructions from the Respondent was necessarily precisely what the Respondent had said to him or asked him to convey. I propose, as with the last two witnesses, to take the unusual but pragmatic line of again disregarding the evidence of Mr Aziz in its entirety. I shall not regard it as being helpful to or unhelpful to either party. To do otherwise would be to risk creating injustice.

F. The extent to which the parties lived together.

38 Before stating my findings about the issue of where the parties were on 29th March 1996 I propose to digress a little more and revert to deal with the vexed question of the extent to which they did or did not live together. It may of course have an impact on whether or not they were married. The Respondent's case is that they did not cohabit in any meaningful way at all and that the Petitioner always had her own home. The Petitioner's case is that she cohabited with the Respondent at all material times and in particular at 19 Chelmsford Square. The only exception, according to her, is that when he was abroad working for his Islamic charity, she would go to stay with her daughters. Often she said she would take Hassan and Mustafa too, which the Respondent does not accept she did.

39 Here again the factual dispute is profound, with little truly independent help to resolve it. The Petitioner produces many documents on which 19 Chelmsford Square is stated as her address. To this the Respondent replies that there was nothing to stop her giving people that address. Conversely, he is able to rely upon a substantial body of evidence in which a variety of London addresses other than 19 Chelmsford Square are stated by the Petitioner as being her address. There is before me a clip of benefit correspondence which demonstrates that from 2002–2004 the Petitioner was purportedly living at 92b Ashmore Road W9 (which I have already mentioned) and that from 2005–2007 she was purportedly living at 38 Nutbourne Street W10. In her application form for Invalid Care Allowance in 2002, as already noted, she gave her current address as 92b Ashmore Road. The Department of Work and Pensions' database from October

1997 to May 2005 gives a variety of addresses for the Petitioner, including the two just mentioned; but it at no point mentions 19 Chelmsford Square, except for four or five days between 20th May 2004 and 25th May 2004. The Petitioner's explanation for this curiosity was to say words to the effect *"Maybe one of my daughters was ill at the time and I took her to 19 Chelmsford Square just for the four days."* It is difficult to see why, if she herself was living full-time at 19 Chelmsford Square, she would have expressed herself in just that way, or would have informed the DWP of that address in terms of it being her residence for only four specific and identified days.

40 The point does not stop there. At Box 11 of the Petitioner's application for UK naturalisation dated 7th February 2001 she had to give her addresses over a number of years. There the representative of the Law Centre, who she told me helped her fill in the document, put down the following: *"102 Devoncourt from July 1994-Feburary 1997; 19 Chelmsford Square NW10 from February 1997-October 1997* [seven months]; *19 Coniston Court, Kendall Street, London W2 from October 1997 till October 2000; Room 204 Belsize Park Hotel, Belsize Park NW3 from 25th October 2000 to the present* [being February 2001]." That information plainly came from the Petitioner and in no way reconciles with permanent accommodation at 19 Chelmsford Square. If in reality these addresses stated to the benefits authorities by the Petitioner were actually the addresses of her daughters, as she told me (and were not in truth the addresses of herself) then Box 11 does not reconcile with the Petitioner's telling me clearly in her evidence that her daughters lived at 19 Chelmsford Square from 1997–2001. It is difficult, if not impossible, to see any single and wholly consistent explanation for the various things the Petitioner has said in respect of the addresses where she and her daughters were reportedly living during the periods of time in question. The Respondent himself accepts that she did live with her daughters at 19 Chelmsford Square for a period of time when she was homeless. He puts it at 1999. The Petitioner's list just abstracted refers to seven months at Chelmsford Square in 1997, so apart from the year being different there is some possible correlation there between what the Respondent says and what the Petitioner was telling the UK Immigration authorities: but I really find it impossible to say.

41 The Petitioner maintains that she cared for and largely brought up Hassan and Mustafa, the Respondent's two children by Khadije. The Respondent accepts that she did have quite a lot to do with them, particularly when he was abroad, although he does not agree (with one exception) that she had them living with her at the addresses which she has stated on the various official forms. He says they were cared for essentially by him, or in his absence mainly by his older children, at 19 Chelmsford Square. It is right to say that a paediatrician speaks in a medical report about Hassan dated 30th April 2007 of the " *obvious loving relationship"* between the Petitioner and Hassan and that he refers to the " *excellent and dedicated care"* which Hassan received from her when he was very ill. There are also references in a 2008 CAFCASS report (which came into being when the parties argued bitterly about residence and contact in respect of Hassan and Mustafa) to the Petitioner being described as Hassan's primary carer. I put these various considerations into the balance as supporting the Petitioner's case, although it has equally to be said that they are not wholly inconsistent with the Respondent's case either.

42 The Petitioner has called some witnesses to suggest that when they visited her it was at 19 Chelmsford Square, for example, Mrs al-Sekfi and Mrs Allawi. However, their evidence was comprised essentially of snapshots, in circumstances where the Respondent does not deny that the Petitioner would have been at 19 Chelmsford Square on many occasions when her friends would have visited. He told me that, as his partner under what he says was a Religious Agreement, the Petitioner was obviously an important person in his life. The Petitioner's daughter Jumana gave evidence of living at 19 Chelmsford Square and nowhere else from 1996–2002, but in cross-examination she had to accept that she had been to Syria for two years with the Petitioner (she said with the Respondent too) during that period. The only other place, apart from Chelmsford Square, she purported to remember living between 1996 and 2002 was when she went for short holidays for a week or two with her father in Syria. That evidence conflicts profoundly with the Petitioner's own evidence as to the other addresses away from 19 Chelmsford Square where she says her daughters lived as between 1994 and 2001, as abstracted above from the Petitioner's naturalisation form dated 7th February 2001.

43 Further, there is a witness who spoke on this particular issue and who is not a family member on either side. He is Altaf Nathani who was called by the Respondent. He seemed relatively independent, although he has worked in the past as a volunteer for the Respondent's charity and

he told me he still does so occasionally. From July 1997 to September 1998 (14 months) and from March 1999 to March 2000 (12 months) he lived in a sort of annex built on to the side of 19 Chelmsford Square, the address of which was 19a. He attended for cross-examination on his written statement that the Petitioner was " *…not staying or regularly living at the property and was only an occasional visitor."* Asked to amplify this in evidence, Mr Nathani explained that his accommodation looked out over the common driveway between 19 and 19a. He said he used to see the Petitioner come and go by car. That was the only way he saw her arrive or leave. He told me that her car " *sometimes stayed for a couple of hours, sometimes for a couple of days or a few days."* Mr Nathani was, incidentally, cross-examined by Mr Squire about the Respondent's charity and spoke in terms of its being on a very much smaller scale than the Respondent had represented to me in his evidence, for example, as running only 10–12 schools in India, at least when he, Mr Nathani, was fully involved in about 2000.

44 The conclusion which I have reached about the parties' cohabitation is that the truth probably lies between the two now polarised positions. It is impossible to be precise as the evidence is too much in conflict, but the evidence of Mr Nathani, which I accept, undermines the Petitioner's case to have been in permanent residence at 19 Chelmsford Square at the times about which he was speaking, although I do accept that for some parts of that time she was probably either living in Syria or coming and going between there and the UK. The Petitioner herself told me in cross-examination that even when the Respondent was in England she used to go every day to her daughters' home, indicating just how difficult it is to reconstruct at this distance in time who is right about where the Petitioner laid her head and considered as her home. I do not doubt that when the Respondent was abroad the Petitioner would stay with her daughters, but in my judgment, bearing in mind my overall conclusions as to credibility in the totality of this Judgment, she did so much more than that as well. I consider that she lived for periods of time from time to time at 19 Chelmsford Square, but liked very much to be with her daughters and would also stay with them for longish periods even when the Respondent was in England.

G. Conclusion as to the main issue – was there a marriage in Damascus on 29th March 1996?

45 Having now surveyed a substantial body of written and oral evidence from the parties and their many witnesses – most of it profoundly conflicting – I now state my findings on the main issue. I remind myself that parties and witnesses may lie for a variety of reasons and that a lie does not necessarily mean that the case which they are supporting is wrong or false. For example, a person may foolishly seek to bolster a genuine case by a piece of false evidence in which he or she is then caught out.

46 As regards the Respondent's evidence, as I said during the hearing, I cannot make findings about the allegedly dishonest running of his charity when the point arose merely as one of credibility and was not flagged up in the Petitioner's statements as an issue. The Respondent had not been on sufficient notice of the allegations of fraud made against him as to enable him to meet the points. Nor had there been the sort of intense focused preparation including Discovery which such issues require if they are to be justly resolved. The accounts of the Respondent's charity filed with the Charity Commissioners were not placed before me, but some reference was made to them by Mr Squire in cross-examination and they apparently show an income in excess of £1 million in one year about three or four years ago. That would seem to support its being a substantial organisation and not merely as was put to the Respondent that he is a " *conman running a dodgy enterprise from one room in North London."* Both the Respondent and Mr Nathani said that much of the income of the charity is sent direct to foreign projects, in which case (for all I know) it may be capable of administration from a modest office in suburbia. In short, the point about the nature of the Respondent's charity is one of those things about which, as sometimes happens, one simply has to suspend belief and disbelief given how it has arisen during this hearing. It does not help me one way or the other in reaching a conclusion as to the Respondent's likely credibility generally.

47 Other than that, I have already indicated the areas where I found the Respondent's evidence less than satisfactory. What I propose to do as a consequence is to treat his evidence with caution. For the reasons also appearing above and which I now briefly repeat, I shall treat the Petitioner's evidence in the same manner. I have already expressed the view she was at the very least aware of both the purported (but disowned) statement of Mrs Khillod al-Saidi and the

purported (but disowned) letter from Mrs al-Safar dated 1st October 2008, being used to support her case. Both Mrs al-Safar and Mrs Khillod al-Saidi respectively denied all knowledge of those documents. False reliance on them clearly compromises the Petitioner's general reliability and credibility. I remind myself that Mrs al-Safar was only called well after the close of the Petitioner's case; also that both Mr Alawi (one of the all-important alleged signatories to the marriage certificate) and Mr Khillad Said could have attended court, absent explanation to the contrary, to give evidence of their alleged presence at the alleged ceremony; but they did not do so. I have already noted that Mr al-Kaleedar, the other alleged signatory to the marriage certificate, spoke of a visit to Hawsa Zainabeya but specifically not in terms of its having been to attend a marriage ceremony. He also spoke credibly in terms of signing the certificate much more recently than 1996, which does not support the Petitioner's case.

48 I recall that when the Petitioner filled in her UK naturalisation application from in 2001 she (a) failed to cause herself to be recorded as having been out of the UK on around 29th March 1996 (when on her case she was, because she was in Syria getting married), and (b) failed to have herself put down as being married to a British citizen (when on her case she was so married). I also recall the Petitioner's less than frank or fair conduct regarding the Syrian proceedings, referred to at para 44 above. Further, on a careful review of all the evidence and of the parties' respective levels of credibility, I have come to the view that the cheque stubs produced by the Respondent were not fraudulently constructed by him, in the way the Petitioner alleges. They therefore support his case that he was in London at the disputed time. Nor do I see any particular reason to reject Mr Aluloom's evidence of his having been in attendance at a small gathering at 102 Devonshire Buildings on 29th March 1996 given that he gave evidence in a timely manner (making his first statement on 9th January 2009) was consistent throughout and was unshaken in cross-examination.

49 Taking all relevant matters into account, I have reached the conclusion on the balance of probabilities that there was no ceremony in Damascus on 29th March 1996. Exercising all due caution I prefer the Respondent's evidence to the Petitioner's that what in fact took place on that day was a small gathering in the Petitioner's flat in 102 Devoncourt Buildings, W2. Insofar as there is some evidence called on the Petitioner's behalf of a bigger party in London, that is not in itself inconsistent with there having been a small gathering (in London, not in Damascus) some time before that.

H. The Petitioner's secondary argument: the presumption of marriage.

50 Mr Squire's submission is that the Petitioner and Respondent's cohabitation with a general reputation of their being “husband and wife” gives rise to a presumption that there was at some point somewhere a valid marriage and that such presumption pertains unless and until it is rebutted by strong evidence to the contrary. The existence of this common law presumption goes way back into the 19th Century. It covers both where there is a known ceremony (but which may have been in some way defective) and where there is no known ceremony, yet the parties conducted themselves as though there had been. Perhaps the paradigm case is where the members of a longstanding relationship, generally held out and accepted as husband and wife, have both died leaving (say) a legitimacy or inheritance issue, and where no-one can locate any hard evidence of their ever having actually married.

51 The conditions for the presumption are clearly set out in Section 5 of Rayden and have been considered and analysed in various authorities over the years, with varying degrees of sophistication. For these purposes, it suffices to refer to paragraph 21 of the Judgment of Evans LJ in *Chief Adjudication Officer v Bath 2000 1FLR 8* where, having considered various authorities, he said

> “… in my judgment, these authorities show that the common law presumed from the fact of extended cohabitation as man and wife that the parties had each agreed to cohabit on that basis, and the presumption was extended to include an inference that the statutory requirements first introduced by Lord Hardwicke's Marriage Act 1753 had been duly complied with; but in each case the presumption was capable of being rebutted by clear and convincing evidence”.

That extract presumes that the parties had also acquired the reputation of being “husband and

wife", as set out in the excerpts from Halsbury's Laws cited in the preceding paragraph of Evans L.J.'s Judgment.

52 Since it was accepted by Mr Brazil on instructions in his final submissions (although the evidence went into no detail on this) that there had in fact been an "offer" and "acceptance" at the small family gathering now held to have taken place in London on 29th March 1996, Mr Squire puts the Petitioner's case as follows:

> (i) that such a 'ceremony' in London had, he accepts, no effect as a marriage in English law (although, in Mr Edge's opinion, it would have sufficed to create a marriage in Islamic law);
>
> (ii) that there was here long cohabitation, with the parties having the reputation of being husband and wife;
>
> (iii) that I should therefore apply the presumption of marriage; and
>
> (iv) that it is then for the Respondent to rebut it, which Mr Squire submits the Respondent has not done.

When I asked Mr Squire what exactly the Respondent would have to prove to rebut the presumption, as it would mean proving a negative, he was only able to refer me to the case of Bath (above) itself, submitting that it is Court of Appeal authority on similar facts and therefore binding on me.

53 It is thus necessary to consider the facts in Bath . There, a young Sikh couple had gone through a marriage ceremony in 1956 in a Sikh temple in England and had had two children. They had lived together for 38 years as husband and wife, until the husband died in 1994. He had paid his tax and Social Security contributions on the basis that he was a married man. Following the husband's death, the applicant 'widow' was initially refused a Widow's State Pension on the basis that the ceremony had not been performed in accordance with the Marriage Act 1949 , there being no evidence that the temple had been registered under that Act at the material time. On appeal by the 'widow', the Commissioner held that the common law presumption of marriage applied to 'validate' the ceremony. Against that decision the benefits agency (as it was in effect) appealed to the Court of Appeal. The Court of Appeal took a dim view of the attitude taken by the benefits agency, Evans LJ saying in paragraph 7: *"… rarely can it have been necessary for Counsel [for the benefits agency] to seek to justify such an unattractive case".* Applying the presumption of marriage, the Court dismissed the appeal, expressing the hope that the Applicant would be paid her widow's pension without further delay. It is important to note three particular features of Bath .

> (i) First, as per paragraph 11 of the Judgment, the "the single submission" relied on by Leading Counsel for the benefits agency was that the Sikh Temple was not at the material time registered for the purpose of marriage ceremonies under the Marriage Act 1949 . This was something of which late husband and the Applicant 'widow' had been unaware, believing they had followed the correct procedures to satisfy English law. Evans LJ said *"… there can be no suggestion in the present case that either of the couple was aware of any defect. On the contrary they were aged 16 and 19, they had recently come to this country and the ceremony was conducted by a senior churchman at the temple in the presence of their family and friends".*
>
> That distinguishes Bath from this case, where the Petitioner and Respondent could not reasonably have thought that any such ceremony at the family gathering in London satisfied the requirements of English law, merely being an expression of 'offer' and 'acceptance' without witnesses in a private flat. Whether, as per Mr Edge's opinion, it would (or whether it would not) satisfy Islamic law as creating an Islamic marriage, is not the point. It is obvious that the Petitioner is unable to put forward any positive case of her own about the London gathering (because she denies it took place); and, had he been asked, the Respondent would surely not have said he had thought he was entering into an English marriage, first

because he so obviously was not doing so and second because he would thereby be acknowledging bigamy, Nada being still alive in 1996.

(ii) Second, it is significant that, in paragraph 32 of his Judgment in Bath , Evans LJ said: *"… when there is positive evidence that the statutory requirements were not complied with, then the presumption cannot be relied on to establish that they were".* In my judgment that applies precisely here, where the London gathering contained multiple failures to comply with the Marriage Act 1949 . It is true that Walker LJ did refer in Bath to 'manifold non-compliance', and still the marriage there was held to be 'validated' by the presumption. However it is the fact, as already noted, that the appeal there was argued on the single ground of one quite technical defect, the lack of registration of the temple, of which defect the aspiring husband and wife were unaware.

(iii) Third, Evans LJ considered it would be a remarkable consequence *"…if a marriage could be presumed from long cohabitation when there was no ceremony, but not when a bona fida ceremony failed to comply with all the requirements of the Act, perhaps for some trivial reason".* Thus the Court was regarding the ceremony in Bath as a 'bona fide ceremony', that is to say not one defective on its face (as here) and was thinking in terms of defects 'perhaps for some trivial reason'. That further differentiates Bath from this case, where in my judgment the gathering concerned never set out to be nor purported to be a 'bona fida ceremony' at all, in the sense of complying with the requirements of English law, and where the defects were not trivial.

54 It is also necessary to consider in this context the decision of Hughes J as he then was in *AM v AM (Divorce: Jurisdiction: Validity of marriage) 2001 2FLR 6* , a case in which Bath was cited and considered. There the parties went through a ceremony of marriage in 1980 by which it was common ground that they intended to create a marriage binding on them personally. It was performed in a flat in London by an Islamic Mufti. The couple lived thereafter as husband and wife, holding themselves out as such for twenty years and bringing up two children. Hughes J held that the 1980 ceremony had not created a valid marriage, because it had not purported to be of the kind contemplated by the Marriage Act 1949 . He described the ceremony as *"…consciously an Islamic one, rather than such as is contemplated by the Marriage Acts".* It followed that the ceremony was *"… neither a valid marriage in English law, nor one in respect of which jurisdiction existed to granted degree of nullity".* In other words, the marriage was neither valid nor void. It was a 'non-marriage'. The fact that the presumption of marriage was there held to apply on the facts is a different and discrete point, which I mention again briefly at paragraph 71 below.

55 I considered AM v AM itself and other authorities (particularly *R v Bham 1966 1QB 159* , *Geris v Yagoub 1997 1FLR 854* and *Gandhi v Patal 2002 1FLR 603)* in some detail in *Hudson v Leigh 2009 2FLR1129*). I came to the conclusion that there is such a concept in English law as a 'non-marriage', saying: *"… I would find it unrealistic and illogical to conclude that there is no such concept as a ceremony or event which, whilst having marriage-like characteristic, fails in law to effect a marriage".* In such cases, there is no marriage in English law, whether valid or void.

56 So the position here, if the presumption arises on the facts (i.e. long cohabitation plus reputation) is that there was a ceremony or event, the London gathering, which can be specifically identified and has been so identified by the Respondent, which could explain the parties' living together in intimacy and acquiring a reputation of being husband and wife. It is a ceremony or event which the Respondent can show was not such as to satisfy the necessary formalities of an English marriage. More than that, it so failed to set out to satisfy those formalities as not to have achieved the status of marriage at all in English law and it would not therefore need nor be susceptible to a declaration of nullity to 'dispose' of it.

57 According to the dicta of Evans LJ at paragraph 32 of Bath (see paragraph 65 above) that is an end of it because, where the statutory requirements are shown or admitted not to have been complied with, *"…the presumption cannot be relied on to establish that they were".* But even if a Petitioner might still exceptionally be able to rely on the presumption of marriage, it would in my judgment need to be on the basis that she were able to point to some evidential foundation for

the possibility that some other marriage ceremony or event must or may have occurred at some time, of which she was and is unaware. Logically she would be unaware of it: otherwise she would be giving evidence of it and relying on it as creating the parties' married status, rather than relying on a mere presumption. I agree with the three-Judge Family Court of Australia in Lister v Lister 2007 36 Fam. LR 438 , where the court said: *"… in our view, the application of the presumption [of marriage] must be consonant with the evidence in the case, not sit, as it does here, in an evidentiary vacuum ".*

58 One possible way for a Petitioner to lay such an evidential basis for the presumption to be applied even in the face of an identified ceremony held not to amount to a marriage, would be that she had signed a form of proxy making it possible that the Respondent could have entered into a marriage with her at some other time without her knowledge. That is what had happened in AM v AM itself, creating an evidential basis for Hughes J to apply the presumption of marriage, although having held the 1980 ceremony to be invalid. However, no such evidential base exists here. All I have before me evidentially is an alleged ceremony in Damascus, which I have ruled against on the facts, and a ceremony of sorts in England which did not constitute a marriage in English law. Those 'ceremonies' suffice prima facie to rebut the presumption of marriage (because they were not marriages) and the Petitioner is left with nothing else evidentially on which to base any realistic reliance on the presumption. Were it otherwise, it would be tantamount to elevating a presumption born of common-sense into the status of a rule of substance, whereby long cohabitation plus a reputation of marriage would establish marriage, even when all the identified evidence showed that no valid or even void marriage ever took place.

59 Applying these considerations to this case, my conclusions are these. I find that the Petitioner and Respondent did have a reputation in the Islamic community of being husband and wife. Several witnesses spoke in those terms and the Respondent himself came close to accepting that people would have thought this to be the case. I do not consider that there was here cohabitation of a sufficiently lengthy and committed nature to give rise to the presumption of marriage. I find in any event that a Respondent succeeds in rebutting the presumption of marriage (assuming no evidential basis for the possibility of there having been some covert ceremony, or something of that sort) if he or she can identify the only known ceremony or event which might have constituted a marriage and can show that it did not have that effect in English law. That is precisely the case here.

60 For the above reasons and in spite of Mr Squire's spirited and engaging argument, I am satisfied that Bath is distinguishable from this case and does not get the Petitioner home on the presumption of marriage aspect of her case. It follows that she has failed on both limbs of her case and that her petition must therefore be dismissed.