



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

Appeal Number: OA/03920/2012

THE IMMIGRATION ACTS

**Heard at Belfast Laganaside
On 3 July 2013**

**Determination
Promulgated
On 15 July 2013**

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

SEYNAB BARRE HAJI

Appellant

and

ENTRY CLEARANCE OFFICER-NAIROBI

Respondent

Representation:

For the Appellant: Ms M. O'Brien, Senior Home Office Presenting Officer

For the Respondent: Mr S. McTaggart, Counsel instructed by R P Crawford & Co Solicitors

DETERMINATION AND REASONS

1. The appellant is a citizen of Somalia, now living in Kenya. Her application for entry clearance as the spouse of a refugee under paragraph 352A of HC 395 (as amended) was refused by the Entry

Clearance Officer (“ECO”) in a decision dated 24 January 2012. Her appeal against that decision was dismissed by First-tier Tribunal Judge S.G. Gillespie after a hearing on 7 November 2012. Permission to appeal against his decision having been granted, the appeal came before me.

2. The ECO refused the application for the following main reasons. In support of the claim that the appellant married the sponsor in 1971 she had produced a copy of a marriage certificate said to have been issued in 1971. However, no original had been provided. She had not provided witness statements or photographs of the wedding. Although someone with the appellant's name was identified in the sponsor's asylum interview shortly after his arrival in the UK, no date of birth or age was given and the appellant had not produced satisfactory evidence of her identity or that she is the person that the appellant named. Her physical appearance on the photograph attached to the visa application and on the biometrics photograph appears to be of someone much younger than her claimed age of 66 years.
3. Although she claimed to be in contact with the sponsor by telephone and that he provides financial support, the money transfer receipts show that they originated in London but the sponsor has an address in Belfast. The receipts are unsigned and there is no evidence that she had ever received those funds.
4. The First-tier judge made the following findings. He concluded that the person appearing in the photographs was the same person and is the appellant. However, he found that the original document (the marriage certificate) was “patently” a document produced long after 1971. “[T]he font of the insertions, in what is a template document, is unlikely to date to 1971 and does indeed suggest a document produced on a computer.” He did not accept the evidence of an expert, Dr Anita Adam, that the document has a genuine age, concluding that “It has every appearance of having been treated to give it a time soiled effect.” He also decided that although it was “possible” that the appellant and the sponsor married in 1971, the production of a document of very dubious authenticity, albeit to prove a genuine event, undermines the integrity required of the appellant. She had not established on a balance of probabilities that she was married to the sponsor on the date claimed.
5. At the hearing before me Ms O'Brien said that she could not seek to defend the decision of the First-tier Tribunal, notwithstanding the ‘rule 24’ reply opposing the appeal. She suggested that on his findings the judge could have gone on to allow the appeal. It was accepted on behalf of the respondent that there was an error of law in the decision of the First-tier Tribunal, as set out in the grounds, such that the decision should be set aside.
6. The grounds of appeal to the Upper Tribunal, in summary, were that the judge was not entitled to reject the evidence of the marriage certificate

on the basis of his observations as to its appearance, for example that it had been treated to given it a "time soiled effect". It is also asserted that the judge had not taken into account evidence of continuing contact between the parties in terms of the sending of money and the telephone contact. The sponsor had also given the appellant's details in his asylum claim and that he had attempted to get a visa to visit her in Kenya, but could not because of his health.

7. Before me Ms O'Brien suggested that there were some positive findings made by the First-tier judge, and if one were to take out of account the marriage certificate, the evidence on a balance of probabilities points to the appellant having met the requirements of the Rule that were in issue. Even if a bogus document had been produced, that did not mean that the marriage did not take place.
8. In the circumstances, I announced that I was satisfied that there was an error of law in the decision of the First-tier Tribunal such that the decision is to be set aside. Ms O'Brien conceded that she had no submissions to make to contradict the position advanced on behalf of the appellant to the effect that the appeal should be allowed.
9. In re-making the decision I decided to allow the appeal. In the circumstances, my reasons can be stated briefly. Judge Gillespie found at [34] that the person in all the photographs is the appellant. Those photographs included that on the visa application form. The expert report from Dr Adam concluded that the passport dated 1983 was genuine. It too bears the appellant's photograph.
10. In the sponsor's screening interview that took place on 15 June 2011 he gave the same name as that of the appellant as his wife, also stating when they married. Although the ECO stated in the notice of decision that the appellant had not given the appellant's date of birth in his asylum interview (that took place on 24 June 2011), that is not correct. At question 18 (B5 of the bundle as then marked) a date of birth of 10 October 1945 is given. This is the same date of birth as that of the appellant.
11. The appellant has produced money transfer receipts. Although they emanate from a money transfer agency or business in London, they have on them an address in Belfast, said to be the sponsor's address. The money transfer receipts are pre and post decision (and the latter can be taken into account as evidence of the circumstances obtaining at the date of decision). There are two letters from the money transfer business, Dahabshill, stating that the sponsor (giving Belfast addresses for him) has been transferring money to a person with the appellant's name.
12. Ms O'Brien conceded that even without the evidence of the marriage certificate there was sufficient evidence to establish that the appellant meets the requirements of the Rules. She pointed out that it has not

been suggested on behalf of the respondent that the document is fraudulent.

13. I am satisfied that the appellant has established on a balance of probabilities that she is married to the sponsor and that they were married in 1971 as claimed. There was consistent evidence on the matter between them, the sponsor named the appellant in his asylum interviews and gave her date of birth and the date of the marriage. There is evidence that he has sent money to the appellant, with his address on the money transfer receipts. So far as the marriage certificate is concerned, as I pointed out to the parties, on the original produced to me, there was faintly written in type the word "duplicated". This may explain any concerns that there may be over the age of the document. However, I do not consider that I need to make a finding on that issue, or indeed in relation to the reliability of that document, it having been conceded on behalf of the respondent that even without it the appellant has established on a balance of probabilities that she and the sponsor are married.
14. I am satisfied therefore, both that the appellant and the sponsor married in 1971 and that they intend to live permanently with each other as spouses. None of the other requirements of the Rules are said to be in issue.

Decision

15. The decision of the First-tier Tribunal involved the making of an error on a point of law. The decision of the First-tier Tribunal is set aside and the appeal is allowed under the Immigration Rules.

Upper Tribunal Judge Kopieczek

3/07/13