



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

Appeal Number: OA/03367/2013

THE IMMIGRATION ACTS

Heard at Glasgow

on 1 April and 10 September 2014

**Determination
promulgated**

On 11 September 2014

Before

**UPPER TRIBUNAL JUDGE MACLEMAN
UPPER TRIBUNAL JUDGE DAWSON**

Between

AMINO NUR MAOW

Appellant

and

ENTRY CLEARANCE OFFICER, NAIROBI

Respondent

For the Appellant: Mr A Devlin, Advocate, instructed by Mr Neil Barnes,
Solicitor

For the Respondent: Mrs M O'Brien, Senior Home Office Presenting Officer

No anonymity order requested or made

DETERMINATION AND REASONS

- 1) The appellant identifies herself as a citizen of Somalia with the date of birth of 1 January 1949. In October 2012 she sought to enter the UK as the wife of Osman Mohamed Ahmed, who has been recognised as a refugee in the UK.
- 2) The Entry Clearance Officer refused the application by notice dated 10 December 2012. The marriage was said to have taken place in 1976 in Somalia, but there was no marriage certificate, witness statements or photographs to show pre-flight relationship. The appellant claimed to be 63 years old but her appearance in the photograph provided on her application

form and in the photograph taken at the time of her application was that of someone considerably younger. Although a person of her name was specified as her sponsor's spouse when he was interviewed shortly after arrival in the UK, the Entry Clearance Officer was not satisfied that the applicant was the same person. There was no evidence of contact since the sponsor left Somalia in 2008 and no evidence that she was currently in Ethiopia with the applicant as claimed. There was no explanation of why the appellant remained in Ethiopia for at least 6 months rather than applying to join the sponsor. There was no evidence of attempts by the sponsor to locate his spouse.

- 3) The appellant filed notice of appeal to the First-tier Tribunal.
- 4) In a review dated 13 May 2013 an Entry Clearance Manager found no reason to reverse the decision.
- 5) First-tier Tribunal Judge Mozolowski dismissed the appellant's appeal by determination promulgated on 18 November 2013. The appellant's appeal to the Upper Tribunal against that determination firstly came before Judge Macleman on 1 April 2014.
- 6) Paragraph 24 of the determination expresses doubts as to how a third party, a Mr Ibrahim, could have obtained the sponsor's telephone number and been unable to track him down as the husband of the sponsor, they not being known to each other. The grounds of appeal criticise this aspect for failure to give the sponsor the opportunity to respond, and as speculative and perverse. Mr Devlin submitted that this was not an issue previously raised or which ought to have been anticipated. It was identified in the course of submissions that relevant matters were raised in cross-examination, but the sponsor had not been able to take matters much further. Any further information would have had to come from Mr Ibrahim, who had not been a witness. Mr Devlin's final point on this was that the judge's findings amounted to guesswork rather than logical deduction.
- 7) Paragraph 25 of the determination is adverse to the appellant on the basis of the sponsor's lack of effort or of credible explanation for his failure to try to trace his wife through the Somali community or the Red Cross. Mr Devlin submitted that the fact that the appellant had his refugee claim accepted by the respondent should have been given some weight in his favour. He accepted that the judge's point referring ahead to matters derived from cross-examination at paragraph 27 did form some rational basis for doubting the evidence. Nevertheless, he said that the substance of paragraph 25, namely that it was not credible that the sponsor would not have done more to contact his wife, contained no good reason for rejecting his evidence.
- 8) The next criticism was that paragraph 26, which finds the timescale of the appellant making an application to be incredible, makes no sense. It

contains no reason as to why the timing of the application is at all adverse to the claim.

- 9) At paragraph 30 a letter showing financial transfers by sponsor to appellant is found unreliable because supporting records and schedules of dates and amounts are not also produced. Mr Devlin submitted that there was no reason why the appellant should have been expected to provide any more evidence on this point that she did, or why the underlying records of all transactions should have been produced. Even if more was sensibly to be required, the appellant and sponsor should have been given that opportunity by the judge as a matter of procedural fairness. Paragraph 30 contained no good reason why the letter from the financial agency was not to be taken at face value.
- 10) Finally, Mr Devlin submitted that the only paragraph of the determination which contained any sensible reasoning was paragraph 27. He accepted that the judge was entitled to found upon repeated hesitancy in answering a reasonable question, and upon a discrepancy between the appellant and sponsor over the sponsor's whereabouts from 2008 to 2012. However, Mr Devlin argued that these points were far from sufficient in themselves to support the adverse conclusion, and these matters should be further analysed in reaching a new decision.
- 11) The submissions for the appellant are not rehearsed here in full detail, because Mrs O'Brien conceded that there was sufficient substance in the various criticisms to render the determination unsafe. By agreement of parties, it was to be set aside.
- 12) The appellant had not sought to provide any further evidence. However, parties were also agreed that in order to make full submissions upon the appropriate fresh decision which should be made by the Upper Tribunal it would be necessary to have a transcript of the cross-examination of the sponsor in the First-tier Tribunal.
- 13) Parties undertook to produce an agreed transcript of the examination of the appellant between themselves. In terms of a decision and directions prepared by Judge Macleman, dated 7 April 2014, parties were to file that transcript with the Upper Tribunal no later than Tuesday 29 April 2014.
- 14) There was then some administrative confusion and delay on the part of the Upper Tribunal. On 14 August 2014, notice was issued of further hearing on 10 September 2014. The decision and directions were not sent out until 8 September 2014. However, both parties were aware at the hearing on 1 April 2014 of what was expected.
- 15) The case thus came before Judges Macleman and Dawson on 10 September 2014.

- 16) Parties did not seek further time to provide a transcript, and agreed that the decision should be remade on the basis of the evidence available. Mrs O'Brien accepted that the case turned on the identity of the appellant and the person the appellant named as his wife in 2008. She told us (rightly and fairly, in our view) that she was not relying on the point of the appellant's youthful appearance.
- 17) The copy photograph on file provided by the respondent (attached to the copy of the application) does not significantly support the point that the appellant could not be of the age claimed. It is far from obvious that it is of "someone considerably younger".
- 18) The sponsor's date of birth is 1 May 1945. The appellant produces photographs of the appellant and sponsor together. They do not give us the impression of two persons from very different age groups. The information given by the sponsor in 2008 is consistent with that given by the appellant in 2012.
- 19) Apart from appearance, the other reasons given by the ECO are much weaker. They are little more than suspicion based upon lack of documentation, the extent of contact, and delay. None of those aspects are particularly unusual or surprising in a case like this. They are responded to in the evidence which was placed before the First-tier Tribunal, which we have been given no reason to doubt. We find that, more likely than not, the appellant is the person the sponsor named in 2008. The ECO's other reasons then fall away.
- 20) The determination of the First-tier Tribunal is set aside, and the following decision is substituted: the appeal, as originally brought to the First-tier Tribunal, is **allowed**.



10 September 2014
Judge of the Upper Tribunal