



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

Appeal Number: OA/13698/2013

THE IMMIGRATION ACTS

Heard at Field House

On 11th July 2014

Determination

Promulgated

On 16th July 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE ZUCKER

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ALI MOHAMED FARAH

Respondent

Representation:

For the Appellant: Miss J Isherwood, Senior Home Office Presenting Officer

For the Respondent: Mr S Jaisri, Counsel, instructed by Freemans Solicitors

DETERMINATION AND REASONS

1. Mr Farah is a citizen of Somalia whose date of birth is recorded as 20th February 1970. He made application for entry clearance as the spouse of a refugee but on 31st October 2012 the application was refused. The relevant Rule of the Immigration Rules is paragraph 352A. For reasons

which are not entirely clear, although the Appellant appealed, the appeal was not heard by Judge Stokes sitting at Taylor House London until 24th March 2014. The Secretary of State was not satisfied that the marriage certificate relied upon was genuine and indeed inferred from that that the Appellant and Sponsor were not married. Upon a consideration of the evidence, Judge Stokes having regard to paragraph 320(7A) relied upon the Secretary of State, came to the view that whilst it had been established that the document was not genuine, nevertheless came to the view that there had not been dishonesty on the part of the Appellant and having regard to the totality of the evidence then available went on to allow the appeal.

2. Not content with that decision by notice dated 8th May 2014 the Secretary of State made application for permission to appeal to the Upper Tribunal. The essential point taken by the Secretary of State was that it was, she submitted, perverse of the judge to find on the one hand that the certificate was not genuine and then to find that there had not been dishonesty. A further point was that the judge applied too high a standard of proof, it was said, for at paragraph 32 of the determination, having considered some authorities which are now somewhat out of date, he said, "I do not find that the Respondent has shown *to the higher standard of proof required*, that the Appellant's identity cannot be established by his passport despite alleging that ...". The passport in fact bore the name of a person named by the Sponsor when first interviewed as long ago as December 2010 in circumstances in which the Sponsor was recognised eventually as a refugee and where the judge found that the evidence given at that time in relation to her relationship to the Appellant was not in issue.
3. On 23rd May 2014 Judge Frankish granted permission noting that it was arguable that the Respondent has "achieved" [sic] the higher standard of proof in alleging forgery. Thus the matter comes before me.
4. There is common ground that there is no higher standard of proof in these proceedings. Where the civil standard is to be applied then it is on the balance of probabilities and the authority for that proposition now somewhat trite is the House of Lords case of **Re: B [2008] UKHL 35**.
5. The question for me is whether that error, recognised on both sides in this appeal, is material. In my judgement it is not and even if it were so that I had to remake the determination, applying the proper standard on the facts as found by the judge based upon the evidence that was before him, I would come to the same view. That is because there is a very careful analysis by the judge of the evidence. He noted that the Sponsor had given detailed answers in her asylum interview regarding her husband, the Appellant, and he noted that her credibility was not challenged at that time. He noted further that the Ugandan authorities had accepted that the Appellant's passport as genuine.

6. The judge at paragraph 33 noted that once there was an opportunity for the Sponsor and Appellant to reunite they did so almost immediately and I refer here to paragraph 33 of the determination. The judge also found the evidence regarding the marriage was consistent internally, having considered the Appellant's application. Further, applying the correct standard of proof, the judge at paragraph 33 said: "It seems unlikely that, in the circumstances which have been accepted as to when and why the Appellant and the Sponsor left their home in Mogadishu, the original certificate would have been taken by either of them."
7. Now the Secretary of State submits that there is an element of perversity in this case. She submits that having found that the document itself was not genuine it was perverse to find that it had not been proved that there had been dishonesty but indeed that was the very issue in the Court of Appeal decision in **AA (Nigeria) v Secretary of State for the Home Department [2010] EWCA Civ 773** to which the judge at paragraph 31 properly directed himself.
8. The judge found that there was no dishonesty on the part of the Appellant and also found that it had not been established that there was dishonesty on the part of any agent acting for the Appellant, simply that the system had fallen down. In my judgement that was a finding that was open to the judge. It is a finding of fact. For the Secretary of State to succeed in this appeal she would have to demonstrate that the finding was either perverse or irrational. As I have already said, there clearly was an error of law in this case but, as I have also already said, it was not material, and even if it were I would remake the decision on the basis of the available evidence such that the outcome would be the same.
9. In the circumstances the appeal to the Upper Tribunal is dismissed.

Signed

Date

Deputy Upper Tribunal Judge Zucker