



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

OA/14202/2013

Appeal Number

THE IMMIGRATION ACTS

Heard at Sheldon Court  
On 2<sup>nd</sup> July 2014  
Prepared 2<sup>nd</sup> July 2014

Determination Promulgated  
On 3<sup>rd</sup> July 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

FADUMO MAHDI AHMED  
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr J Dhangi (Counsel, instructed by UK Immigration Lawyers)  
For the Respondent: Mr N Smart (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant applied for entry to the UK as the spouse of the Sponsor, a Somalian national with ILR. The application was refused as the ECO was not satisfied that the divorce certificate relied on was a genuine document and on other grounds too. The Appellant appealed to the First-tier Tribunal, the appeal was heard by Judge Hawden-Beale on the 13<sup>th</sup> of March 2014 in Birmingham.
2. The appeal was dismissed in a determination promulgated on the 21<sup>st</sup> of March 2014. In relation to the divorce certificate that had been submitted the approach taken was set out in paragraph 14 of the determination under section 108 of the Nationality, Immigration and Asylum Act 2002. The Judge decided that it was not in the public interest to reveal what checks had confirmed that the document was not genuine, she also stated that she appreciated the difficult position that this placed the Appellant and Sponsor in their inability to rebut what was said about the document.
3. The findings in respect of the divorce are set out in paragraphs 21 to 23 of the determination. In paragraph 23 the Judge indicated that having granted the application under section 108 the

contents of the report could not be revealed and that without the document verification report there would still have been significant concerns about its reliability.

4. The Appellant sought permission to appeal to the Upper Tribunal. In summary the Appellant complained that in considering the application under section 108 the Judge had not followed the guidance set out in OA (Alleged forgery; section 108 procedure) Nigeria [2007] UKAIT 00096. OA had not been cited and the determination did not disclose any knowledge of its existence although it was not an error not to cite cases by name. The determination did not show that the Judge had adopted the correct procedure and referred to paragraph 31 of OA and the need for the Judge to explain the general principle of all evidence being presented openly and the departure that section 108 represents. Having invited submissions and then considered the application in the absence of the representatives a separate record of the section 108 application should be kept. It was also asserted that there was no reference to the standard of proof in assessing forgery.
5. Permission was granted by First-tier Tribunal Judge Bird on the 15<sup>th</sup> of May 2014. In the determination Judge Bird stated that in paragraph 14 the Judge had not explained why revealing the checks would not be in the public interest, it was arguable that the proper procedure had not been followed.
6. I read the papers before the hearing in the Upper Tribunal and then heard submissions from Mr Smart in the absence of the Appellant and his representatives. That part of the hearing consisted of my informing Mr Smart that having read the document verification report I could see why the Judge found that the report could not be disclosed and why very little could be said about the reasons why as that would reveal information contrary to the public interest. This was repeated to Mr Dhangi in open court.
7. In making his submissions Mr Dhangi accepted that failing to cite a case by name would not be an error in itself but there were concerns that the Judge was not aware of OA and had not applied the proper procedure. There was no reference to the importance of general principle of all parties being informed of the evidence or the importance of departing from that. The Record of Proceedings did not show the procedure adopted and no recognition of the shift in the burden of proof or the standard required.
8. While paragraph 14 does not set out in detail the approach that the Judge took it does show that the Judge had regard to the nature of section 108 and the difficulties that the Appellant would have in meeting the case raised by the ECO. It is not correct to state that the Judge did not give attention to or reasons for finding that the nature of the report should not be disclosed, that was addressed in the final sentence. The burden of proof shifting to the ECO and the standard of proof, requiring cogent evidence are not explicitly stated but the Judge approached the case on the basis of the evidence presented by the ECO which indicates a shifting on the burden on this issue and the difficulties faced by the Appellant. Read as a whole the determination does not reveal an error of law.
9. Having considered the contents of the document verification report myself I am satisfied that even if more explicit recognition of the terms of OA and the burden and standard of proof had been set out there would have been no difference in the result. The nature of the report is such that the reasons why the certificate was rejected could not be revealed, that would alert those making such documents to matters of concern and reveal the nature of the examination undertaken. The Judge could have done no more than state what she did in paragraph 14.

10. The contents of the report arise with the ECO taking this issue on. The evidence it contains is more than sufficient to discharge the burden of proof that rested on the ECO and would satisfy a higher standard than the cogent evidence required to discharge the civil standard. I appreciate that this leave the Appellant and Sponsor in a difficult position but under section 108 the result is fully justified.

## CONCLUSIONS

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

### Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I make no order.

### Fee Award

In dismissing this appeal I make no fee award.

Signed:

Deputy Judge of the Upper Tribunal (IAC)

Dated: 2<sup>nd</sup> July 2014