



**Upper Tribunal
(Immigration and Asylum Chamber)**
OA/23155/2012

Appeal Number:

THE IMMIGRATION ACTS

Heard at: Birmingham
Promulgated:
On: 4 September 2014

Decision
On 4 September 2014

Before

Upper Tribunal Judge Pitt

Between

Bisrat Tekle Beraki

and

Entry Clearance Officer - Cairo

Appellant

Respondent

Representation:

For the Appellant: Mr Howard of Fountain Solicitors
For the Respondent: Mr Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the appellant against the determination promulgated on 23 October 2013 of First-tier Tribunal Telford which refused the appeal against the respondent's decision of 15 October 2012 to refuse entry clearance as a pre-flight spouse of a refugee.
2. The First-tier Tribunal found that the appellant had not shown that she married the sponsor in January 2004 as claimed, at a time before the sponsor left Eritrea.
3. It was conceded for the respondent that the First-tier Tribunal failed to make any reference to the information contained in the first section of the sponsor's asylum interview which was conducted on 27 November 2008. The sponsor stated there that he was married to Bisrat Tekle, that she was born in 1988 and that they married on 1 January 2004.
4. It was further conceded for the respondent that it could not be said that the outcome of the decision would have been the same had this material evidence been taken into account by the First-tier Tribunal, notwithstanding the other points taken against the appellant in the determination.
5. It was my view that an error of law arose from the failure to address this highly material evidence, confirmation of the appellant's identity and the marriage taking place in 2004 being provided some 4 years prior to the entry clearance application as part of an asylum claim in which the sponsor was found partly credible and granted status at first instance as a result of the Secretary of State for the Home Department's view of his credibility.
6. I found this to be an error on a point of law such that the decision of the First-tier Tribunal had to be set aside and the appeal remade, specifically with regard to the question of whether the appellant and sponsor married on 1 January 2004.
7. I proceeded to re-make the appeal. It was my view that the sponsor's reference to the appellant, her date of birth and the date of the marriage in his asylum interview in 2008 was compelling when considered with the evidence of the appellant and sponsor as to their marriage having taken place in 2004. How could and why would the sponsor have provided those details if they were not true 4 years prior to the entry clearance application being made at a time when he could not know whether he would be granted asylum?
8. Further, the respondent did not question in the refusal letter that the couple were in a genuine relationship as of 2012 or that the appellant

was at that time pregnant with the sponsor's child. Their having a genuine relationship at that time and having decided to have a child together was, to my mind, consistent with their claim to have known each other before the sponsor left Eritrea and to have married in 2004.

9. I have considered the difficulties with the sponsor's evidence before the First-tier Tribunal as to the nature of the marriage certificate and the endorsement on it from the Vehicular Deployment Unit. I had nothing before me as to how marriages at that time were documented in Eritrea, however, and did not find this to be a point at all sufficient to outweigh the weight of the sponsor having properly referred to his wife and the date of their marriage in the asylum interview in 2008 and the consistent evidence of the couple to the same effect.
10. I found the same as regards the sponsor's statement at question 48 of his asylum interview that he was only released from detention at some point in January 2004, raising the question of how he could have married on 1 January 2004. It is something that weighs against the couple having married on 1 January 2004 but is not sufficient to outweigh the evidence suggesting that they did.
11. It also appeared to me that the sponsor answered the second set of questions about having family in Eritrea in the asylum interview correctly. Having already identified his wife, he mentioned only his immediate birth family and I found nothing exceptional in that.
12. It was also my view that the approach of the First-tier Tribunal to the weight to be placed on photographs and assessing how someone had aged was correct and that nothing could turn on the appearance of the couple in the photographs provided in support of the application.
13. I therefore found that it had been shown on the balance of probabilities that the appellant and sponsor married on 1 January 2004 and that the appellant had met the requirements of paragraph 352A of the Immigration Rules. I therefore allowed the appeal under the Immigration Rules.

DECISION

14. The decision of the First-tier Tribunal discloses an error on a point of law and is set aside.
15. I remake the appeal, allowing it under paragraph 352A of the

Immigration Rules.

16. I direct that entry clearance be issued.

Signed: 
Upper Tribunal Judge Pitt

Date:

Fee Award

I make a full fee award where the appellant has won her appeal under the Immigration Rules.

Signed: 
Upper Tribunal Judge Pitt

Date: