



IAC-FH-CK-V1

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

Appeal Number: OA/03436/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 23 September 2015**

**Decision & Reasons Promulgated
On 24 September 2015**

Before

UPPER TRIBUNAL JUDGE BLUM

Between

**KHADIJA ADAM
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Ms B Zamba-Jinadu, instructed by UK Law

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

Procedural Background

1. This is re-made appeal following the identification of a material error of law in the determination of Judge of the First-tier Tribunal Lobo, promulgated on 23rd December 2014, in which he allowed the Appellant's appeal against the Respondent's refusal of entry clearance as the spouse of a refugee. The single issue before the First-tier Tribunal, as it is before me, is whether the Appellant was married to the sponsor and in a genuine and subsisting relationship with him before he

left Eritrea and successfully sought asylum in the United Kingdom. The First-tier Tribunal's decision was set aside for want of sufficient reasoning. The Judge failed to give adequate reasons in support of his factual findings and there was no explanation as to why the Judge accepted the evidence of the witnesses. A copy of the 'error of law' decision is annexed to this decision.

Appellant's background

2. The appellant was born on 17th January 1985 and is a national of Eritrea. She applied to enter the United Kingdom under paragraph 352A of the Immigration Rules. This rule establishes the requirements for entry clearance for somebody who is a spouse of a person recognised as a refugee.
3. In a decision dated 31 January 2014 the Respondent refused the application. The Respondent noted the Appellant's claim to have married her sponsor on 1st July 2003 in Eritrea, and that a marriage certificate had been produced in support. The Respondent was however of the view that this was a very poor quality document and was not verifiable. The Respondent noted the absence of any other evidence of the marriage, or of the time that the Appellant and her sponsor claimed they had lived together. There was, for example, no witness statement relating to the attendance of anyone who witnessed the wedding, and no photographs of the wedding. There was said to be insufficient evidence to show a pre-flight relationship. The Respondent did acknowledge that someone with the Appellant's name was identified as the sponsor's spouse in his asylum interview shortly after his arrival in the United Kingdom, but the Respondent believed this statement could not be considered in isolation and maintained that it could simply have been a statement of future intent on the part of the sponsor.
4. There was additionally said to be an absence of any other evidence of contact or intervening devotion since the sponsor left Eritrea in 2011. Given these factors the Respondent was not satisfied that the relationship was genuine or subsisting or that the marriage had occurred at a time before the sponsor arrived in the United Kingdom.

Documentation provided

5. The Respondent's bundle contained, *inter alia*,
 - (i) the Notice of Decision and the Entry Clearance Manager's Review (ECM);
 - (ii) copies of a covering letter accompanying the application and the entry clearance application completed by or on behalf of the Appellant;
 - (iii) copies of the sponsor's (Mohamed Ahmed Mohamed Nor Farag) screening and asylum interviews;

- (iv) the Notice of Appeal and the Grounds of Appeal.
6. The Appellant relied on the same bundle of documents that was before the First-tier Tribunal. This included, *inter alia*,
- (i) statements from the sponsor, his brother (Hussien Mohammednur Farag) and Suleman Ali Idris;
 - (ii) a copy of the marriage certificate purporting to relate to the Appellant and the sponsor, and a certified translation;
 - (iii) three post-decision money remittance slips relating to funds sent by the sponsor to the Appellant;
 - (iv) copies of international telephone cards;
 - (v) a skeleton argument;
 - (vi) background material relating to the position of imagery of individuals in Islam.
7. To the extent that I am entitled to do so under section 85A of the Nationality, Immigration and Asylum Act 2002 I have taken account of these documents so far as they relate to the factual matrix in existence at the date of the Respondent's decision.

The hearing

8. I maintained a detailed record of the proceedings. I have taken full account of the evidence before me, both documentary and oral. The following is a summary of the evidence given and submissions made at the hearing. The sponsor, his brother and Mr Idris all gave their evidence via their Tigre interpreter.
9. The sponsor adopted his statement of 31 October 2014. In it he explained why he left Eritrea and why he fear he would be persecuted if returned. He indicated that, in his screening interview, he gave his wife's name and the date of their marriage (01 July 2003). He had been married to his wife for almost 11 years. In order to avoid regime security checks on their correspondence the Appellant moved to Sudan. He disputed the allegation in the Notice of Decision that his reference to being married could have merely been a statement of 'future intent'. The sponsor referred to further evidence from the Eritrea Sharia High Court relating to the marriage certificate, and the statement from his brother, who was a recognised refugee and who, it was claimed, had attended the wedding. He also referred to the phone cards and money remittance slips as evidence of his contact with the Appellant.
10. The sponsor adopted his statement. There was no examination-in-chief. In cross-examination the sponsor was asked about how often he was allowed to return home from his army duties at the border in Eritrea. He said he was allowed to return every one to two years, for between 5 and 15 days at a time. When he got married he had been allowed to return for around 30 days. He was therefore only able to see his wife every one

to two years. He could not recall exactly how many times he was able to see the Appellant but it was between 4 and 6 times before he finally fled Eritrea. While he was in the army he maintained contact with his wife by giving letters to individuals who were going on leave who would then hand the letters to his family. There were no celebrations as such when he returned on leave but the family were very happy. Once he fled Eritrea in 2011 the sponsor was scared to contact his wife or family directly so he contacted her through his sisters who were in Sudan. He was scared to contact his wife and family directly because the Eritrean authorities were arresting the parents and wives of individuals who left the country illegally. His sisters physically travelled from Sudan into Eritrea to convey any message.

11. In response to questions from me the sponsor explained that there were no photographs of the wedding because of his father's religious wishes. His father believed it was not right to take photographs or pictures of people in Islam. In re-cross-examination the sponsor explained that, according to his father's wishes, there could be no pictures at all, not just of the wedding.
12. The sponsor's brother adopted his statement dated 31 October 2014. In it he confirmed that he arrived in the United Kingdom in April 2010 and claimed asylum. His asylum claim was accepted on 17 May 2010 and he was granted leave to remain for 5 years. He confirmed that, at the date of the marriage (01 July 2003), he was on leave from National Military Service. This leave was secured taking into account the sponsor's marriage. Culturally, the brother took responsibility in facilitating and organising the marriage ceremony with other fellow, elderly religious Eritreans, in accordance with local and religious customs. He was one of those who attended the marriage ceremony.
13. There was no examination-in-chief. In cross-examination the brother claimed he obtained leave for between 10 and 12 days at the time of the wedding. As the sponsor's brother he had responsibilities for organising the wedding. As per custom the sponsor would sit in his place and the brother would act as facilitator by welcoming guests and providing food and drinks. The religious person was the one who organised the actual marriage certificate. When asked why there were no photographs of the wedding the brother explained that their father was very strict in religious matters and this was a decision taken by him. They all lived as a family under their father's authority and he never allowed photographs to be taken. The brother confirmed he was married and that his wife recently joined him in the United Kingdom.
14. Suleman Ali Idris adopted his statement. In it he confirmed that he was an Eritrea national who arrived in the United Kingdom in July 2014 and claimed asylum. He was granted asylum in October 2014 and had limited leave to remain until 2019. He had been invited to and attended the Appellant's marriage ceremony. The sponsor had always been a friend and neighbour and it was customary for Mr Idris to be part of the

ceremony. The ceremony was a cultural and religious one and everyone was happy to be part of it.

15. There was no examination-in-chief. In cross-examination Mr Idris confirmed that he was granted 15 days leave from the army to attend the ceremony. He and the sponsor and the sponsor's brother were neighbours and had grown up together. He was married and his wife currently resided in Eritrea.
16. In submissions Mr Walker recalled the basis of the original refusal of entry clearance. He noted that we now had two witness statements supporting to claimed marriage. He additionally, and very fairly, noted that, on the sponsor's account, he would only have had direct contact with his wife for the few times he was granted leave between 2003 and 2011, when he fled the country. He noted that the issue concerning the absence of photographs had now been addressed. He noted the absence of much pre-flight cohabitation between the Appellant and sponsor but indicated that such opportunity would be limited given the nature of the sponsor's military service.
17. Ms Zamba-Jinadu elide on the skeleton argument contained in the Appellant's bundle. She referred me to the marriage certificate and noted the absence of any suggestion that it was forged or unreliable. The sponsor's claim that he only managed to see the Appellant 5 or 6 times since their marriage was consistent with the background material. She invited me to allow the appeal.
18. Having carefully considered and evaluated all the evidence, and in light of the helpful submissions from both representatives, I indicated that I would allow the appeal.

The law

19. The Appellant applied for entry clearance under paragraph 352A of the immigration rules (HC 395). She was refused on the basis that she did not meet the requirements of paragraph 352A(i) and (iv). These require that;
 - (i) the applicant is married to or the civil partner of a person who is currently a refugee granted status as such under the immigration rules in the United Kingdom ; and
 - (ii) each of the parties intends to live permanently with the other as his or her spouse civil partner and the marriage is subsisting.
20. The burden of proof rests on the Appellant to prove that, on the balance of probabilities, she meets the requirements of the immigration rules. As this is an entry clearance application the date for consideration of the evidence is the date of the decision.

Finding of fact and application of the law

21. The Respondent was not satisfied the Appellant and the sponsor were legally married. The Respondent supported this conclusion by reference to the poor quality of the marriage certificate and the fact that its authenticity could not be verified. The Respondent failed to particularise the ways in which the marriage certificate was of 'poor quality'. No issue was raised with the content of the marriage certificate, or its lay-out or syntax, or with any other particular aspect of the document. At the hearing Mr Walker, on behalf of the Respondent, did not challenge the reliability of the document. The marriage certificate is consistent with the evidence, both oral and documentary, given by the sponsor and his witnesses. It is consistent with his answers in his screening and asylum interview in respect of the name of his wife and the date of their marriage. Given that the Appellant and her sponsor were married in 2003 the document would, quite naturally, attract some wear and tear as a result of its age. In the absence of any particularisation as to the nature of the 'poor quality' of the marriage certificate, and having holistic regard to my other credibility findings detailed below, I find the document to be reliable.
22. I note, with reference to the sponsor's asylum interview, that, at 12a, he stated he was married, and at 14 and 15, gave the Appellant's names, and at 17 stated she was "aged 18 in 2003". In the main body of the interview he confirmed that he was still married (question 39) and that he had no children but that his family looked after his sister's children's family (question 41). This is consistent with 1.32 of the Appellant's application form. The above points demonstrate consistency between the sponsor's account given in 2012 and the Appellant's evidence given in 2014. I regard the Respondent's assertion that the evidence given by the sponsor in his asylum interview relating to his marriage as being merely 'a statement of future intent' to be highly unlikely given the detail provided by the sponsor, and to be inconsistent with the totality of the evidence before me, including the marriage certificate, the explanation for the absence of photographs of the marriage ceremony and the evidence from the sponsor's brother and Mr Idris.
23. The Respondent took issue with the absence of any photographs of the wedding ceremony. Both the sponsor and his brother explained that their father did not allow the taking of photographs as he regarded this to be an affront to his strict religious beliefs. The Appellant has produced some background materials, unchallenged by Mr Walker, indicating that the recording of images is abhorrent to some branches of Islam. I would, even in the absence of such evidence, have taken judicial notice of the fact that that the depiction of images of individuals, such as photographs, but also in paintings, is considered religiously inappropriate by some branches of Islam. I find this an inherently plausible explanation for the absence of any photographs of the wedding.
24. The Respondent held against the Appellant the absence of any witness statements from individuals who attended the wedding. I have carefully

considered the statements from the sponsor's brother and Mr Idris. Their evidence was tested in cross-examination. Mr Walker did not challenge the credibility of either witness. Their oral evidence was given in an open and forthright manner. Their evidence was relatively detailed and was consistent with the documentary evidence before me and the background evidence relating to the depiction of images in Islam. There was no perceptible attempt at embellishment by any of the witnesses. I find that I can attach weight to the evidence given by the sponsor and to his two witnesses in respect of their attendance at the wedding ceremony.

25. There was some evidence of intervening devotion in the form of money remittance slips and phone cards that the sponsor claimed he used to contact the Appellant. Given that the sponsor was required to serve in the Eritrean army, a fact that has been recognised as giving rise to a genuine claim for asylum, it is not surprising that there is relatively scant evidence of his relationship with the Appellant during the near 11 years of their marriage. They would only have been able to spend a very few days together given that he was only granted leave once every one to two years. In these circumstances I do not hold the absence of such evidence against the Appellant.
26. Having regard to the totality of the evidence before me, and for the reasons that I have already given, I am satisfied that the Appellant and the sponsor were validly married in 2003 and that, at the date of the decision, their relationship was still genuine and subsisting.

Notice of Decision

The determination of the First-tier Tribunal contained a material error of law. I have remade the decision allowing the appeal.

No anonymity direction is made.



24 September 2015

Signed
Upper Tribunal Judge Blum

Date