



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: OA/20186/2013

**THE IMMIGRATION ACTS**

Heard at Manchester  
On 8<sup>th</sup> May 2015

Decision & Reasons Promulgated  
On 4<sup>th</sup> June 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE LEVER

Between

MS HIWET TESFAGHIRGIS YEMANE  
(ANONYMITY NOT RETAINED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr Marcus

For the Respondent: Miss Johnstone

**DECISION AND REASONS**

**Introduction**

1. The Appellant born on 18<sup>th</sup> July 1985 is a citizen of Eritrea. The Appellant who was present was represented by Mr Marcus of Counsel. The Respondent was represented by Miss Johnstone, a Presenting Officer.

**Substantive Issues under Appeal**

2. The Appellant had made application on 19<sup>th</sup> June 2013 to come to the UK to join her Sponsor husband, Mr Tsegay. The Sponsor in the UK had been granted refugee status on 27<sup>th</sup> January 2012 for a five year period. The Respondent had refused the Appellant's application under paragraphs 352A and 320(7A) of the Immigration Rules. The basis of that refusal was that a document verification report showed that

the marriage certificate provided was not genuine. The Appellant had appealed that decision and her appeal was heard by First-tier Tribunal Judge Pacey sitting at Birmingham on 31<sup>st</sup> July 2014. The judge had allowed the Appellant's appeal under the Immigration Rules.

3. The Respondent had made application to appeal that decision on the basis of an error of law made by the judge. Permission to appeal was granted by Upper Tribunal Judge Martin on 27<sup>th</sup> August 2014 on the basis it was arguable the judge should have taken account of a letter from the Eritrean Church particularly given that it predated the decision and was before the Entry Clearance Officer. Directions were issued for the Upper Tribunal firstly to decide whether an error of law had been made in this case.
4. The matter came before me in accordance with those directions in Manchester on 7<sup>th</sup> January 2015. Having heard submissions on the matter of an error of law I found a material error of law had been made by the judge for reasons provided in the decision promulgated on 19<sup>th</sup> January 2015. In accordance with directions issued on the same date the matter came back to the Upper Tribunal for that appeal to be remade.

### **The Proceedings - Introduction**

5. I firstly explained to the Sponsor who was present the nature of the proceedings and the way they would be conducted. I next checked the documents available to me in this case.
6. The Respondent's bundle consists of:
  - Refusal of entry clearance letter.
  - Those documents listed at pages 1 to 170 on the index sheet to the bundle.
  - Document verification report.
  - Emails.
7. The Appellant's documents consists of:
  - Those documents listed at pages 1 to 22 on the index sheet to the main bundle.
  - Further translation of letter 28<sup>th</sup> August 2013.

### **Evidence**

8. The Sponsor was called to give evidence. He confirmed his witness statements of 19<sup>th</sup> June 2014 and 24<sup>th</sup> April 2015 were true and correct.
9. In cross-examination he confirmed that his marriage certificate was sent to the Home Office which he had got from his wife. He said that she had brought it along with

her. He said that she had brought it from Sudan to Uganda but someone had brought it for her from Eritrea to Sudan. He said that was towards the end of January 2013. He did not know who had brought it to the Sudan but it was brought because they needed it.

10. It was put to him that the Appellant's application stated that she was still in Eritrea until March 2013. He said that was not correct she had left Eritrea in January 2013 and he knew that because they had regular contact.
11. He said until 2012 he had sent her money through some people. She had stayed in Sudan for a short time. He said it was a friend who had brought the certificate to Sudan and she had requested that and there was a businessman who travelled back and forth. Her mother had got the certificate from his home and she had given it to the businessman.
12. In matters I raised by way of clarification he confirmed that his wife had left Eritrea in 2013 the purpose being to join him in the UK. She had not left earlier as he had not had status in the UK before that time. He agreed that when she left Eritrea he knew it was important that they could demonstrate they were married. She had not taken anything with her such as the marriage certificate because she could have been searched. He agreed that she could have put the marriage certificate in the post to him in the UK.
13. In re-examination he said that the businessman crossed the border legally so he was less likely to be searched.
14. In cross-examination the Respondent relied upon the original decision and the document verification report. There were submissions relating to the most recent translation.
15. Finally I heard submissions on behalf of the Appellant who reminded me of the higher standard burden of proof on the Respondent when allegations of deception were put forward. It was submitted the marriage certificate and the current translation demonstrated that it was genuine and in any event there was clear evidence of a longstanding relationship in this case.
16. At the conclusion of the hearing I reserved my decision to consider the documents and evidence submitted. I now present that decision with my reasons.

### **Decision and Reasons**

17. The Respondent had refused the application on the basis that the Appellant had produced a false document to support her assertion that they had been married and had thereby acted dishonestly. Refusal had been under paragraph 320(7A) of the Immigration Rules. The Respondent had discharged the burden of proof in that regard by the production of the letter from the Eritrean Church which stated that the Appellant and Sponsor had not been married as claimed by claims made both by the Appellant and her Sponsor. There was sufficient evidence produced by the

Respondent to have discharged the burden of proof which passes to the Respondent when such allegations are made.

18. I have in remaking this decision, which is focussed on that single issue, looked carefully at all the documents including the most recently produced documents and have had regard to the oral evidence of the Sponsor.
19. The documents reveal a consistency in terms of where it is said the Appellant and Sponsor married. In her pre-flight family reunion application the Appellant had stated that they had married at Keren on 15<sup>th</sup> May 2005 and thereafter lived with the Sponsor's parents in Keren until the Sponsor left Eritrea.
20. The marriage certificate produced by the Sponsor contains a number of details and includes the name of the church, sub-zone Keren, and bears the name Keren in the name block on the bottom right of the certificate.
21. The entry clearance administration at Nairobi decided to check this document when the Appellant applied for entry clearance. It is a logical assumption that they would check with the church at Keren given that no other church had been suggested at any stage in any document or by anyone. Indeed the email from Nairobi dated 31<sup>st</sup> July 2013, produced by the Respondent, states "I have managed to contact the sub-zone office in Keren". That is consistent with what would be expected. The email further relates concerns regarding the voracity of the marriage certificate raised by those in the sub-zone office in Keren and relayed to Nairobi. The email concludes "I have asked them to check their record and let me know the result".
22. That check then prompted the letter from the Eritrean Orthodox Church to the British Embassy in Asmara dated 28<sup>th</sup> August 2013. It is that letter that forms the basis of debate. That letter states that the Appellant and Sponsor were never married in the Saint Medhanie Alen Church. A translation of that letter produced by the Appellant and dated 6<sup>th</sup> April 2015 provides a different but significant translation by stating "did not tie the knot at the Medhanie Alen Church in Elaberied." The Appellant's case is the Asmara authorities and/or Eritrean Church checked the wrong church hence inevitably there would be no record.
23. There are a number of features regarding that claim put forward by the Appellant as follows:
  - (a) As indicated above the place of marriage (Keren) has remained consistent and there is no obvious reason therefore why anyone would seek to check at a different church.
  - (b) It has to be assumed that a church with the identical name exists in the town of Elaberied. Whilst that may be possible or not unlikely there is no evidence produced to that effect.

- (c) The email that prompted the check refers to contact being made with sub-zone Keren and concerns raised from the church in that sub-zone as noted in the email.
  - (d) The letter dated 28<sup>th</sup> August 2013 noting the lack of marriage is consistent with those concerns.
  - (e) The translation of the letter from the Eritrean Church is certified by a named individual and the presumption being such an individual is an Eritrean, and certified as being a true translation.
  - (f) Furthermore the translation of the document was done by the same person who generated the email enquiry and accordingly it is an inference that can be made that if the town Elaberied appeared in the letter it may have alerted him, given he had spoken to and was concerned with a different church namely the church in Keren.
  - (g) The translation produced on the Appellant's behalf was produced by a translation company in London and the name of the translator, nationality etc. is not given namely a signature which is indecipherable and the stamp of the company.
24. I do not find when looking at that evidence in the round that reliance can necessarily be placed on that translation provided by the Appellant's representatives.
25. There are some further points in this case. Firstly the letter from the Eritrean Church was available from 5<sup>th</sup> August 2014 when it was produced at the First-tier Tribunal hearing. There has been significant time therefore for the Sponsor to have spotted the name Elaberied on the original letter. I do not place too much weight on this point given the Sponsor appears to have been unrepresented until recently.
26. There is a further question mark over the provenance of the certificate however. The Sponsor in oral evidence claimed that someone had brought the certificate from Eritrea to Sudan in January 2013. He did not know who had brought it.
27. However it is clear from the Appellant's application form that she did not leave Eritrea until 3<sup>rd</sup> March 2015. It was submitted I should place little weight upon this matter. However the Sponsor in oral evidence was quite adamant that the Appellant had left Eritrea in January claiming that he was in regular contact with her. The Appellant herself within her application form was very specific concerning dates when she had lived both within Eritrea and elsewhere. The dates given were not approximations and she provided specific dates when she had moved from living with the Sponsor's family to her own family and thereafter specific dates that she had moved from Eritrea to Sudan and then from Sudan to Uganda. There is therefore on the face of it an irreconcilable inconsistency in dates given in this case.
28. It is further said the Appellant got a businessman to take the document from Eritrea to Sudan as it was too risky for her to take it over the border. The danger or

porousness of the border between Eritrea and Sudan is not a matter upon which I have evidence but I find little obvious heightened risk to a person's safety by carrying a marriage certificate rather than not. Indeed entrusting it to another individual would not be without risk. Further according to the Appellant's application form she was only in Sudan between 4<sup>th</sup> and 18<sup>th</sup> March 2015, a narrow window to entrust such a document to another to carry.

29. It is further the case according to the Sponsor that he and the Appellant were in regular contact with each other and she left Eritrea when she did with the specific purpose of coming to the UK to join up with the Sponsor who by that stage had got status in the UK. He accepted he was aware the marriage certificate was important for proof of her application to come to the UK and conceded there was nothing preventing the Appellant putting the certificate in the post to him in the UK. Indeed there is a letter dated 19<sup>th</sup> May 2013 from solicitors suggesting that they have checked documents supplied by the Sponsor and enclosing the application form and appendix. It is not entirely clear whether those documents checked would have included a photocopy of the marriage certificate or not.
30. I have further noted that the Appellant remained in Eritrea following the Sponsor leaving in 2007 until she left in March 2013. That is a significant period of time where according to her application form she lived for a period with his parents and thereafter remained living with her parents until she crossed into Sudan on 4<sup>th</sup> March 2013. This Tribunal is not unfamiliar with cases from Eritrea and indeed the country guidance cases relating to Eritrea which have been recently updated. The thrust of evidence that emanates from those country guidance cases is that the vast majority of Eritreans, male and female, within the Appellant's age bracket are subject to military service. At the date of her marriage the Appellant would have been 19 or 20 years of age and already potentially subject to military service from the age of 18. There is no evidence provided to suggest that the Appellant would for whatever reason be exempt from military service and potentially liable to call up at any time. I further note that when the Appellant did leave Eritrea she rapidly found herself in Uganda where she claimed asylum and her asylum temporary status is a document within the bundle. Given all that we read from country guidance cases, and assuming that they reflect accurately circumstances within Eritrea it seems unusual to say the least that the Appellant remained in Eritrea for a period of six years following the Sponsor leaving that country without experiencing any problems or difficulties from the authorities, being called up for military service or being affected by the fact that the Sponsor himself had fled the country. Furthermore it does not appear to have been a concern of the Appellant that she may suffer difficulties or call up and only left Eritrea at the point where she knew the Sponsor had status in the UK. The relatively swift time in which she was able to move from Eritrea and obtain temporary refugee status in Uganda demonstrates that was a course of action potentially open to her many years earlier and potentially to have left at the same time as the Sponsor. Those circumstances do not sit happily with the evidence and expert views which have been carefully analysed for the production of Eritrean country guidance cases.

31. I do not have evidence as to the Sponsor's circumstances between leaving Eritrea and coming to the UK so it is difficult to say what if anything would have prevented the Appellant from accompanying the Sponsor either all the way to the UK or at least to Uganda where she has been able to claim refugee status and remain some time. However that chronology sits unhappily with country guidance cases and sits uncomfortably with the concept of a recently married couple presumably doing all that they could to remain together rather than separated.
32. Having examined all of the evidence in the round I am satisfied that the marriage certificate produced was not a genuine document and that the letter from the church stating that no marriage had taken place is an accurate reflection of circumstances.
33. I have in the consideration of the evidence looked at the money transfers and the mobile telephone records produced by the Sponsor. The money transfers all begin after the Appellant would have arrived in Uganda and none predate that period. In terms of phone records once again the records produced all are dated from the time when the Appellant is in Uganda and whilst there are clearly a number of telephone calls to the mobile number she provided on her application form there are also a substantial number of telephone calls made by the Sponsor to entirely different numbers within Uganda and at the same locations as the phone calls made to the Appellant. There is no evidence to support the Sponsor's claim that he was in regular contact with the Appellant during that extensive period of time between him leaving Eritrea in 2007 and the Appellant arriving in Uganda in March/April 2013. The photographs produced by the Sponsor are undated but with his own annotation of March 2013 in Uganda. There is accordingly no objective documentary evidence in those formats to demonstrate a connection between the Appellant and Sponsor pre-March 2013 for what is claimed to have been an eight year period during which they were married.
34. In summary therefore I do not find evidence or accept that the Appellant and Sponsor were married in 2005 as claimed and that the marriage certificate produced therefore was a false document and the Entry Clearance Officer was entitled to refuse this application under paragraph 320(7A) of the Immigration Rules.

**Notice of Decision**

35. I dismiss this appeal under the Immigration Rules.
36. Anonymity not retained.

Signed

Date

Deputy Upper Tribunal Judge Lever

**TO THE RESPONDENT**  
**FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date

Deputy Upper Tribunal Judge Lever