



IAC-AH-LEM-V1

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

Appeal Number: OA/01326/2014

THE IMMIGRATION ACTS

**Heard at Centre City Tower, Decision & Reasons Promulgated
Birmingham
On 20 January 2016** **On 11 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

**MRS SABA ESTIFANOS MESFUN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER - NAIROBI

Respondent

Representation:

For the Appellant: Mr A Reza, Solicitor, Sultan Lloyds Solicitors

For the Respondent: Mr I Richards, Senior Presenting Officer

DECISION AND REASONS

1. The appellant appeals to the Upper Tribunal from the decision of the First-tier Tribunal (First-tier Tribunal Judge Birk sitting at Birmingham on 5th September 2014) dismissing her appeal against the decision of an Entry Clearance Officer to refuse her entry clearance as the spouse of a refugee. The First-tier Tribunal did not make an anonymity direction, and I do not consider that the appellant requires to be accorded anonymity for these proceedings in the Upper Tribunal.

2. The background to this case is that the appellant is a national of Eritrea, whose date of birth is 12 August 1986. She applied at the Nairobi post for entry clearance as the spouse of an Eritrean refugee who named Saba Estifanos Mesfun as his pre-flight spouse when claiming asylum.
3. On 21 November 2013 an Entry Clearance Officer in Nairobi (post reference Nairobi\438959) refused the application as he was not satisfied that she and her sponsor had married before the sponsor departed his country of habitual residence. One of the reasons given by the Entry Clearance Officer was that the appellant had not provided satisfactory evidence that she was Saba Estifanos Mesfun. As evidence of her identity, she had provided a photocopy of a National Intelligence and Security Service document. But applicants are required to provide original documents as copies could easily be tampered with. The document issued on 14 June 2013 was simply a record of what the authorities in the camp in Ethiopia had been told, and she had not shown what evidence she had produced to obtain the certificate or if any checks were conducted to verify the information. He was not satisfied based on the evidence provided that the appellant was Saba Estifanos Mesfun.

The Hearing Before, and the Decision of, the First-tier Tribunal

4. At the hearing before Judge Birk, both parties were legally represented. The judge received oral evidence from the sponsor and a supporting witness Mrs Semret Goitom.
5. In her closing submissions on behalf of the appellant, the representative accepted that a document verification report would have been of assistance to her client. She submitted that her client was the same person who was mentioned in the sponsor's asylum claim. She had left the country illegally and so there were no documents. The sponsor had little contact while she was in Eritrea, but he had supported her since she had been in Ethiopia.
6. The Presenting Officer submitted that original documents could have been provided earlier, and so there was no opportunity to have them assessed. It could be seen there was a gap between the stamp and the photograph. There could be no satisfaction that the appellant and the lady that the sponsor married was the same person. The Presenting Officer asked the judge to place no weight on the statement or evidence of the supporting witness, as it was questionable whether she was being truthful or credible.
7. The judge set out his findings at paragraphs [10] to [15] of his decision. At paragraph [12] he held there was no reasonable explanation for the sponsor as to why if the appellant had the original, she did not show it to the Entry Clearance Officer when she made her application but only provided a photocopy. It had now been provided at the hearing, but this meant that the Entry Clearance Officer had not been able to verify its contents with the agency that issued it and to confirm the checks and information that would have been provided by the appellant to satisfy

them sufficiently for them to issue her with the document. He noted that the document had not been verified by a member state, but by a refugee organisation. There was no evidence from the organisation as to the process by which they verified a person's identity, and whether this concurred with what the sponsor had said.

8. The judge accepted that the sponsor had been in contact with the appellant in Ethiopia, but found that this did not confirm her identity.

The Application for Permission to Appeal to the Upper Tribunal

9. The appellant applied for permission to appeal to the Upper Tribunal, taking issue with the reasoning of the judge in paragraph [12]. The judge had failed to take any account of submissions made on behalf of the appellant that perhaps the reason why the appellant chose not to part with the original when submitting her application was the length of time that she would have to manage without the same. Also, the Entry Clearance Officer did not require the original to carry out enquiries with the issuing body if he was not satisfied with the veracity of the document. Finally, the judge had failed to make her own findings about the veracity of the original documents produced to her at the hearing, despite submissions from both representatives that she should do so.

The Grant of Permission to Appeal

10. On 21 April 2015 First-tier Tribunal Judge Simpson granted permission to appeal for the following reasons:

“Given that the appellant had to leave Eritrea illegally it is arguable that she would thus be unable to provide satisfactory ID documentation. In any event, the original documentation has now been provided and there is no reason why a DVR could not have been obtained, even if it required an adjournment. Moreover, the decision is silent as to the judge's view of the submissions made on the appellant's behalf.”

The Rule 24 Response

11. On 1 May 2015 Ian Jarvis of the Specialist Appeals Team settled a Rule 24 response opposing the appeal. The appellant could not make out a meritorious challenge by referring to submissions made by a representative who was plainly wildly speculating, caused by the clear fact that the appellant had woefully failed to provide any evidence about crucial elements of her case relating to her identity.

The Hearing in the Upper Tribunal

12. At the hearing before me to determine whether an error of law was made out, Mr Reza, who did not appear below, drew my attention to an original letter issued by the National Intelligence and Security Service Administration for Refugee - Returnee Affairs which was in the bundle of documents prepared for the Upper Tribunal. This original document was

dated December 2013, whereas the photocopy relied on for the purposes of the application was dated 14/06/13.

13. The appellant had gone in person to make her application. He submitted that the Entry Clearance Officer could have asked her to submit an original, not a photocopy. Alternatively, she should have been interviewed by the Entry Clearance Officer about her asserted identity. Furthermore, he could not see the logic of the Entry Clearance Officer not verifying the photocopy by contacting the organisation which purportedly issued it. The supporting witness was a childhood friend of the appellant, and the judge did not give adequate reasons for rejecting her corroborative evidence.
14. Mr Richards submitted that it was clearly open to the appellant to have submitted an original document earlier, and it was open to the judge to place little weight on a document which had been produced at the last minute. Also, it was open to the appellant to seek an adjournment of the appeal to have the document verified. The judge identified difficulties with the evidence of Mrs Goitom, and overall the judge had given adequate reasons for dismissing the appeal.
15. In reply, Mr Reza submitted if that the Entry Clearance Officer was in doubt about the appellant's identity, the burden rested with the Entry Clearance Officer to verify the photocopied ID document which she had provided. Alternatively, the Presenting Officer should have applied for an adjournment in order to obtain a document verification report in respect of the original ID document provided at the hearing.

Discussion

16. No evidence has been brought forward by way of appeal to show that the Record of Proceedings inherent in the judge's decision is materially inaccurate. So it is not satisfactorily demonstrated that the judge failed to engage with a submission that the explanation for the non-production of the original was that the appellant could not function without it. In any event, this explanation is undermined by the position that was taken in the grounds of appeal to the First-tier Tribunal. There it was said that the appellant had provided a copy of the letter of 14 June 2013 as she had no other document to confirm either her identity or her status in Ethiopia. It was then said that she would provide her original letter in support of her appeal. If she could provide her original letter in support of her appeal, she could function in Ethiopia without original ID.
17. The procedural difficulty is that the appellant did not provide an original ID document either with her application or with her grounds of appeal. So when the matter was assessed by an Entry Clearance Manager on 19 March 2014, he justifiably maintained the refusal decision on the ground that no new evidence had been presented to address the grounds of refusal.

18. The burden rests with the appellant to prove her identity. If she had provided an original with her application, it could reasonably be contended that the evidential burden would have shifted to the Entry Clearance Officer to commission a document verification report to verify its authenticity and reliability. But as the appellant had only provided a poor photocopy, it was reasonable for the Entry Clearance Officer to refuse the application on that ground. As submitted by the Presenting Officer before the First-tier Tribunal, there is a clear gap between the edge of the photograph and the rest of the purported authentication stamp. Indeed, not only is there a gap, but the part of the stamp which appears in the bottom left hand corner of the photograph appears darker than the remaining part of the stamp which is outside the photograph. In short, it was entirely reasonable for the Entry Clearance Officer not to be satisfied that he was looking at an authentically issued document.
19. I accept Mr Reza's submission that the features which I have discussed above are probably a product of the photocopying process, as indicated by an inspection of the original ID document which he showed me. But the Entry Clearance Officer and the Entry Clearance Manager did not have an original ID document to compare against the photocopied ID document.
20. As an original ID document was not produced until the hearing, it was not procedurally unfair for the judge to give it little weight because of its late production which meant that the Entry Clearance Officer had not had an opportunity to make local enquiries to check its authenticity and reliability. In her submissions to the judge below, the appellant's representative recognised that if the appellant had obtained a document verification report, this would have assisted the appellant's case. It cannot now be reasonably contended that the Presenting Officer should have sought an adjournment to obtain a DVR, rather than the appellant. Since the appellant, who was legally represented, was content to proceed on the evidence as it stood and there was no request for an adjournment, it cannot be said that the appellant has been the victim of procedural unfairness.
21. The judge addressed the evidence of Mrs Goitom in some detail at paragraph [5], and returned to the topic at paragraph [11]. These passages disclose adequate reasons for not finding Mrs Goitom to be a reliable witness.

Notice of Decision

The decision of the First-tier Tribunal did not contain an error of law, and the decision stands. This appeal to the Upper Tribunal is dismissed.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Monson