



IAC-AH-DN-V1

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

Appeal Number: OA/12966/2014

**THE IMMIGRATION ACTS**

**Heard at Bradford  
On 21<sup>st</sup> March 2016**

**Decision & Reasons  
Promulgated  
On 13<sup>th</sup> April 2016**

**Before**

**UPPER TRIBUNAL DEPUTY JUDGE ROBERTS**

**Between**

**MRS MANAL MOHAMMED ALI AHMED ALMOBARK  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT  
(ON BEHALF OF THE ENTRY CLEARANCE OFFICER - NAIROBI)**

Respondent

**Representation:**

For the Appellant: Mr S Saleem

For the Respondent: Mr M Diwnycz, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant a citizen of Sudan born 27<sup>th</sup> July 1992 appeals with permission against the decision of a First-tier Tribunal (Judge Hindson) which in a decision promulgated on 16<sup>th</sup> July 2015, dismissed her appeal against the Entry Clearance Officer's refusal to grant her entry clearance,

under the family reunion rules, as the spouse of Abdel Wahab Ahmed Arbab (the Sponsor).

## **Background**

2. The Sponsor, who now has refugee status, entered the UK in 2011. He left the Sudan in 2008 travelling to the UK via Libya, Greece, Austria and France. He arrived here in 2011 and was granted limited leave to remain as a refugee, until May 2017.
3. In December 2012, following the grant of the Sponsor's limited leave as a refugee, the Appellant made an application for entry as his spouse under the Family Reunion Rules (the first application). In order to qualify under the Family Reunion provisions the Appellant had to demonstrate that she and the sponsor entered into a valid marriage before he left the Sudan. That application was refused under the provisions of Rule 320, because the Entry Clearance Officer (the ECO) was satisfied that the Appellant had produced to him, a false marriage certificate. This certificate was purportedly issued by the imam who conducted the marriage ceremony between the Appellant and her Sponsor. It was claimed that the marriage took place in July 2007 before the Sponsor left the Sudan.
4. When refusing the first application, the ECO had before him a Document Verification Report showing that the document submitted as the marriage certificate was a forgery. That evidence was never challenged at the time. It is correct to say that the Appellant did start the process of appealing the first refusal, but then withdrew her appeal. Therefore the Entry Clearance Officer's record that a forged document was presented remains.
5. The Appellant applied once again for entry clearance. This application, which is the subject of this appeal, was made in August 2014 and was refused on 18<sup>th</sup> September 2014 (the second application). The ECO refused the second application because he was not satisfied that the provisions of paragraph 352A of the Immigration Rules were met. In particular he was not satisfied on two counts;
  - that the marriage did not take place after the person granted asylum left the country of his former habitual residence in order to seek asylum; and
  - each of the parties intends to live permanently with the other as his or her spouse ... and the marriage is subsisting.

## **The First-tier Tribunal Hearing**

6. When the matter came before the FtT the judge had before him various pieces of documentary evidence. These included:
  - A copy of the Sponsor's asylum screening interview where it is recorded that he said he was married to the Appellant and that the marriage took place in July 2007. That document is dated 2011.

- Photograph produced by the Appellant to the ECO on the second application which it is said shows her and the sponsor at their wedding ceremony.
  - Copy of a marriage registration certificate issued in September 2014.
7. In addition several itemised telephone bills going back to 2012 were presented together with money transfer orders going back to 2013.
  8. The judge also recorded that he took evidence from the sponsor's brother who said he was involved in the marriage arrangements made in 2007, and a friend who made a statement that he attended the wedding ceremony in 2007.
  9. The Sponsor gave oral evidence before the FtT judge who records the Sponsor's witness statement at [13] of his decision. The Sponsor's evidence contained four paragraphs outlining evidence concerning the core of this matter, that is to say whether he and the Appellant entered into a marriage before he fled the Sudan. The supporting documents from his brother and a friend both claim that the Appellant and Sponsor were married in July 2007.

### **Error of Law?**

10. I find I am satisfied that the decision of the FtT must be set aside for legal error. Nowhere in this decision do I see any findings or analysis of the Sponsor's brother's evidence, nor of the friend who witnessed the ceremony. Likewise I see no finding of the weight or otherwise to be attached to the photograph produced. The judge has focused on the Document Verification Report which was part of the first refusal. Whilst I accept that the existence or otherwise of a fraudulent marriage certificate is a difficult obstacle for the Appellant to overcome, nevertheless she is entitled to have the evidence she produced, evaluated and considered. This does not mean that this evidence will necessarily result in a favourable decision for the Appellant, but the impression given in this decision is that evidence has simply not been considered. This gives the impression that the Appellant has not been afforded the opportunity to have her case fairly put.
11. The above observations also concern the production of a wedding photograph. The ECO had serious doubts that this photograph was a genuine contemporary record of an event which took place in 2007. He remarked that the Appellant looked older than the 14/15 years of age that she was in 2007. A finding needs to be made on that matter. One further observation concerns the production of evidence of phone calls and money transfer orders. It is important to focus on what the Tribunal has to decide in this appeal, which is whether the parties were validly married in 2007. Whilst the evidence of phone calls and money transfers may lend some weight to that issue the core question is not whether the parties are married now but whether they were so in 2007.

12. In these circumstances I consider that there is no alternative but to remit this matter to the First-tier Tribunal for a fresh hearing. Full findings of fact need be made on the evidence before it. For the sake of clarity I direct that no findings are preserved from the hearing before the FtT on 25<sup>th</sup> June 2015. The matter should be heard before a judge other than Judge Hindson.

**Notice of Decision**

The decision of the First-tier Tribunal promulgated on 16<sup>th</sup> July 2015 is hereby set aside for legal error. The matter is now remitted to the First-tier Tribunal (not Judge Hindson) for a full re-hearing before that tribunal.

No anonymity direction is made.

Signed

Date

Upper Tribunal Deputy Judge Roberts