Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: OA/13407/2013**

THE IMMIGRATION ACTS

Heard at Birmingham	**Sent to parties on:**
On 26 April 2016	**On 17 May 2016**

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

MR SAID ABDI SULEIMAN

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE ENTRY CLEARANCE OFFICER (NAIROBI)

Respondent

Representation:

For the Appellant: No appearance
For the Respondent: Mr Mills (Home Office Presenting Officer)

DECISION AND REASONS

1. This is the appellant's appeal to the Upper Tribunal, brought with permission, against a decision of the First-tier Tribunal (Judge Roopnarine-Davies hereinafter "the judge") promulgated on 10 October 2014, dismissing his appeal against the respondent's decision of 8 May 2013 refusing to grant him entry clearance to come to the UK, for the purposes of settlement, as the spouse of a refugee.

2. By way of background, the appellant is a national of Somalia, albeit resident in Ethiopia, who was born on 10 January 1979. His sponsor, Mrs Sudi Sharif Ahmad is also a national of Somalia. She arrived in the UK in June 2006 and was granted asylum without the need to appeal. It is claimed that the appellant and sponsor are married to each other and were married to each other prior to the sponsor fleeing Somalia. The appellant applied for entry clearance to join her in the UK, seeking to rely upon paragraph 352A of the Immigration Rules.

3. The entry clearance officer, in fact, refused the application both under paragraph 320 and paragraph 352A of the Immigration Rules. As to paragraph 320, he took the view that the appellant had failed to produce documentation satisfactorily establishing his identity and nationality. As to paragraph 352A, he took the view that it had not been shown that the two had contracted a valid marriage or that they were part of the same family unit at the time of the sponsor's departure from Somalia or that they intended to live together in the UK. On review, though, an entry clearance manager conceded the identity point but the other concerns (the 352A points) remained.

4. The appellant's appeal was heard on 29 September 2014. Of course, being out of the county, he was unable to attend. However, his sponsor did attend and she gave oral evidence to the judge. Both parties were represented. The judge did not accept the sponsor as being a credible witness and thought there were substantial shortcomings in the evidence offered by and on behalf of the appellant which undermined the claim that the two had been married to each other prior to the sponsor's departure from Somalia in 2006. Indeed, the judge was not persuaded that there was any form of genuine romantic relationship of a subsisting nature between the two at all. Accordingly, it was concluded that the requirements of paragraph 352A of the Immigration Rules were not met. By way of explanation as to all of that, the judge said this:

> " 5. It is claimed that the sponsor and the appellant were childhood friends and neighbours in Mogadishu where they lived all their lives and went to the same school. In his VAF the appellant stated that he and the sponsor were distant relatives. This was not confirmed or articulated by the sponsor. The name of the school attended by the sponsor in her witness statement for the hearing (Muse Galal) is different from that given in her screening interview in 2006 (Hamaar Jadeed). It is claimed that the couple fell in love after her previous husband died and the sponsor wanted someone to help her raise her family and the couple married in a "traditional" marriage in Mogadishu in February 2006. No date in February is given for the marriage or evidence for example from the sheikhs or religious men who officiated at the ceremony. A maternal uncle was also present. The sponsor stated that she could not afford to take photographs of the wedding because she came from a poor family, not, e.g. the circumstances of the marriage. She was given a piece of paper as proof of the marriage but had left this behind in Mogadishu having fled from the city in March 2006. I did not find the claim to ring true because it is an important document not easily left behind. She was anxious at her screening interview to give the appellant's name as that of her husband, his date of birth as "1979" and marriage as February 2006. In my view she knew it was an important part of her claim and if genuinely married she would not have forgotten to take it with her.
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> 6. Miss Thirumaney submitted that the sponsor was an honest witness as demonstrated by her ability to give the name of the appellant and his date of birth at the time of her asylum claim. The sponsor struck me as an intelligent and educated person. Having considered the evidence as a whole I find that she would have been alert to the possibility at that time that she could claim at a later date for a husband. Her exit from Somalia and entry to the UK had the hallmarks of a well-planned operation.
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> 7. The alacrity at which the sponsor was able to leave Somalia and arrive in the UK undermined her repeated claims of poverty and the impression she sought to give that she left the city in a hurry and the decision to do so was made only on the day she left. She left Mogadishu on

12 March 2006, arrived in Kenya on 14 March 2006 and in the UK on 25 June 2006. She could not afford to visit the appellant in Ethiopia because she is a single mother with 2 children. This is plausible in part but, her journey to the UK was arranged and paid for by an uncle who lives in Saudi Arabia, she is not without means. She was able to stay with a family in Kenya for 3 months on her arrival there from Somalia. They arranged for her and the children to stay with a woman from Somalia on their arrival in the UK. She is in receipt of help from the State and has worked as a cleaner but claimed that she is unable to get a similar job in Leicester where she lives at present, which did not ring true. It emerged during the hearing that she has been sending money to her mother who was living in Mogadishu but who went to Kismayo at the same time that the sponsor left Somalia and who continues to live there. In cross-examination she stated that she has kept in touch with her mother since she left Somalia. It beggars belief that her mother and the appellant (with or without the help of the Somali diaspora) were not able to keep in touch or make contact with each other since 2006 if the sponsor's claim that she married him before she left Somalia is genuine which I find not to be the case.

8. The circumstances in which the sponsor and the appellant are claimed by the sponsor to have become separated did not withstand examination. The sponsor sought to give the impression that the decision to flee Mogadishu was made on the day she left. This did not ring true in light of the background evidence that there was very heavy fighting in Mogadishu throughout 2006 between the government and Al-Shabab and the sponsor had only been married to the appellant for a few weeks and wanted to have a male figure to protect her and help her raise the children. Her claim in cross examination that the appellant went to the market to sell fish (in the midst of serious background fighting), fighting broke out that day whereupon she and the children left the same day for Kenya is simply not credible.

9. Mr Panayi noted the lack of detail in important aspects of the claim, for example the manner in which the sponsor managed to contact the appellant in July/December 2012, of whom in the Somali community in the UK helped her or her claimed BBC radio appeal and the noticeable lack of evidence from the appellant including of his circumstances since the sponsor left Mogadishu. She gave an account that he had been hijacked by the rebels and made to work for them as a farmer but this was not supported by evidence from him. The burden is on him to prove his case and he has not done so. The sponsor claimed to have contacted him in December 2012 that conflicted with the information in the VAF that he arrived in Ethiopia from Somalia in July 2012 for the purposes of the application (emphasis added). Mr Panayi noted the lack of contact between the appellant and the sponsor since they claimed to have re-established contact. There was scant evidence of letters, emails or texts between them. In December 2012 when the sponsor lived in London and had access to a landline her telephone bill records only 3 calls to the appellant's mobile, one of 46 minutes and 2 of approx. 3 minutes each. She stated that she now used telephone cards to call him on his mobile telephone approximately twice a week.

10. The sponsor's evidence was that the appellant lived on funds she remitted to him which were insufficient for him to afford to use the internet to contact her yet an email address is given in the VAF. She stated that her daughters were very close to the appellant, itself not credible given that they were only 8 years old and 2 years old (they are now 15 years old and 10 years old) when they last saw him allegedly 8 years ago. She stated that she took them to the library when they wished to use the internet but there was not evidence of any emails between the appellant and the children and/or the sponsor. The sponsor is only 35 years old. It was difficult to accept that she was not able to text and use the internet which is the impression she sought to give. It was also difficult to accept that she and the appellant would not have remained in mobile telephone contact when she left Somalia in 2006 when that country is known for the proliferation in the use of mobile phones or as Mr Panayi noted, a country that is "techno savvy". Her claim was that she and the appellant could not afford one.

> 11. The sponsor sent US$100 to the appellant in January 2013 through Dahabshill, details of which are fully recorded on the Company's receipt. Receipts for similar sums sent to him from June 2013 to the present lack the imprimatur of authenticity. Details one would expect to see such as the address of the transfer agent, Olympic International, or the name of the cashier are not apparent. If as claimed the sponsor is poor and has been sending money to her mother it is difficult to understand how she is able to afford to send the appellant any money. Mr Panayi noted that the remittances (except for January 2013) post dated the decision but as rightly noted by Miss Thirumaney is evidence I can take into account as evidence of intervening devotion but I was not satisfied that the receipts genuinely represented the facts.
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> 12. The appellant has failed to deal substantively with the respondent's legitimate concerns. I have found the sponsor not to be a credible witness. The evidence as a whole lacked coherence and cogency. There was a distinct lack of evidence of contact and intervening devotion since contact was re-established by the parties. I concluded on the evidence that the appellant and the sponsor were not married prior to the sponsor's departure from Somalia in 2006. I am not satisfied that the relationship has begun let alone is subsisting. The appellant does not meet paragraph 352A of the Rules for entry clearance as the spouse of a person with refugee status. It follows from the above that I am satisfied that there is not family life between the parties following Razgar for the purposes of article 8 and that article 8 is not engaged let alone that there is interference with family life. The appellant has not discharged the burden on him to show that on balance there is an unlawful interference with his rights to respect for his family life – **Naz (subsisting marriage-standard of proof) Pakistan (2012) UKUT 00040(IAC)**. The appeal fails.

5. An application for permission to appeal to the Upper Tribunal was lodged on behalf of the appellant. The lengthy grounds suggested, in summary, that the judge had erred in failing to attach "proper weight" to aspects of the evidence, in attaching "inappropriate weight" to irrelevant matters and in failing to properly engage with the evidence as a whole. Permission to appeal was granted on the basis that it was arguable that the judge had taken into account irrelevant considerations and applied too high a standard of proof. Matters were then listed for a hearing before the Upper Tribunal (before me) for a consideration as to whether or not the judge had erred in law and, if so, what should flow from that.

6. The sponsor did not attend the hearing. The appellant's legal representatives did not attend the hearing either. Indeed, nobody attended, in any capacity, on behalf of the appellant. Mr Mills was in attendance in order to represent the respondent. It does appear, in looking at the Upper Tribunal file, that correct notification as to the time, date and place of the Upper Tribunal hearing was sent to the appellant's current UK based legal representatives and also to the sponsor. No explanation regarding the non-attendance was received. Mr Mills, at my request, checked Home Office records but having done so he indicated there was no trace of any change of address by the sponsor or change of representatives by the appellant. In the circumstances he urged me to proceed. I considered his request in light of rules 2 and 31 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and did decide, in light of the above and in the face of there being no reason to think the position regarding representation would be any different if I did adjourn to a different date, to proceed.

7. Mr Mills addressed me. He urged me to dismiss the appellant's appeal. The judge had not erred in law. In particular, and in response to a concern I raised with him, Mr Mills submitted that it had been open to the judge to conclude that the sponsor might have given dishonest information about her claimed marriage when she came to the UK and claimed asylum (see paragraph 6 of the determination) and whilst what the judge had said about that might amount to a bold finding, it was not an irrational one.

8. I have, in fact, decided that the judge did not make any error of law and that the determination shall stand. I set out my reasoning below.

9. In general terms I find that the grounds relied upon by the appellant do not go beyond mere disagreement with the judge's findings and an attempt to simply re-argue matters of fact. It is clear that, without more, such grounds are incapable of establishing legal error.

10. Further, in my judgment it was open to the judge to conclude that the appellant and sponsor had given differing information as to their schooling in Somalia. The sponsor had said, at one stage, that she had attended Hamar Jadeed Primary School from 1985 to 1991 but had, at a different stage, said that both she and the appellant had attended a different school between 1984 and 1990. There was an element of inconsistency as to whether the two were related or not which it was open to the judge to attach some weight to notwithstanding an explanation for that subsequently offered in the grounds. The judge was not obliged to accept the sponsor's claims regarding the relationship merely because she had been accepted, without her credibility having been tested at an appeal hearing, as a refugee. Such an acceptance does not, of itself, amount to an authoritative finding as to credibility in relation to all aspects of an asylum claim or future credibility with respect to any subsequent claims that might be made in the context of a family reunion application. It was open to the judge to attach weight to the lack of evidence regarding ongoing contact between the two.

11. As indicated, I did wonder about the judge's treatment of information the sponsor had given when she claimed asylum. She had claimed to be married to the appellant and had provided some personal details about him. The judge, though, was not persuaded that that represented a significant point in favour of the appellant (at least that is how I read what is said in the determination) because as an intelligent and not wholly honest individual (in the judge's view) the sponsor might have been falsely claiming to be married with an eye to securing future admission for him on an artificial basis. Mr Mills is right to acknowledge that that was a bold finding on the part of the judge. It does suggest a manipulative approach and a considerable degree of forethought on the part of the sponsor if, for example, the appellant was simply a friend or relative or other type of associate who she thought she might be able to artificially assist at some point in the future. However, irrationality and the perversity do have strikingly high thresholds. I am not able to conclude that the judge's finding, whilst perhaps not one many judges would have made, quite reached the high threshold applicable. I have to conclude, therefore, that that finding was open to the judge.

12. In light of all of the above, therefore, I conclude that the judge did reach findings and conclusions which were open to her on the evidence and which were adequately explained. Accordingly, I conclude that the determination does not contain legal error and that, accordingly, it must stand. I do, therefore, dismiss the appellant's appeal to the Upper Tribunal.

Decision

The making of the First-tier Tribunal's decision did not involve the making of an error of law. Accordingly that decision shall stand.

Anonymity

I make no anonymity direction.

Signed Date
Upper Tribunal Judge Hemingway

TO THE RESPONDENT
FEE AWARD

I make no fee award.

Signed Date
Upper Tribunal Judge Hemingway