



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

Appeal Number: OA/03251/2015

THE IMMIGRATION ACTS

**Heard at Birmingham
On 25 September 2017**

**Decision & Reasons Promulgated
On 9 October 2017**

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MRS FAIZA JEWAR KEMAL
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr P Singh, Home Office Presenting Officer

For the Respondent: No appearance

DECISION AND REASONS

1. The hearing of this case was fixed following a decision by me dated 19 May 2017 setting aside the decision of First-tier Tribunal Frankish for material error of law. I stated that it would be necessary for there to be a further hearing in order for the decision to be re-made in the Upper Tribunal so that the appellant (hereafter the Entry Clearance Officer or ECO) through the HOPO had an opportunity to test the evidence of the sponsor and receive further submissions from the parties in the light of that examination.

2. In a fax sent to the Tribunal on 22 September 2017 by the respondent's (hereafter the claimant's) nominated representatives stated that the sponsor would not be attending the hearing "and the above appeal will not be pursued any further". They also stated that they were no longer acting for the claimant. In a faxed reply sent the same day the Tribunal pointed out to the claimant that since the appeal had been brought by the ECO against the FtT decision, it was "not for the or her sponsor to withdraw" and that the appeal "will proceed to a hearing".
3. Having considered the above development I decided to proceed with the hearing in the absence of one of the parties and I heard very briefly from Mr Singh.
4. I have decided to re-make the decision by dismissing the claimant's appeal.
5. First of all, although the claimant and her representatives failed to understand that at this stage of the proceedings it was not open to them to withdraw the ECO's appeal, it is clear that they wished not to pursue these proceedings any further.
6. Second, for the reasons made clear by me in my decision setting aside the FtT decision, two things are indubitable. First of all, the claimant could not succeed under paragraph 352A of the Immigration Rules because the claimant's marriage did not meet the *lex loci celebrationis* requirement because of her status as a minor at the time the marriage was said to have been contracted and the subsequent absence of any application for dispensation from the requirement of Article 7 of the Revised Family Code of Ethiopia. Second, the claimant has failed to substantiate her sponsor's claim that the parties are in a subsisting relationship and intend to live together permanently one with the other. Despite my making very clear several concerns regarding the nature of the couple's relationship and convening a further hearing specifically so the sponsor could give evidence to be tested by the HOPO, the claimant has written to say through her representative that she does not pursue the appeal. Having regard to all the evidence before me, I find that the claimant has not discharged the onus of proof on her to establish that she meets the requirements of paragraph 352AA or that there is a sufficient factual basis to engage Article 8 of the ECHR.
7. For the above reasons:

I have already set aside the decision of the FtT Judge for material error of law.

The decision I re-make is to dismiss the claimant's appeal against the ECO decision.

No anonymity direction is made.

Signed

Date: 6 October 2017

A handwritten signature in black ink that reads "H H Storey". The letters are cursive and connected, with a distinct loop at the end of the word "Storey".

Dr H H Storey
Judge of the Upper Tribunal