



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/06400/2017

**THE IMMIGRATION ACTS**

Heard at North Shields  
On 7 September 2018

Decision & Reasons Promulgated  
On 13 September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES

Between

A. F.  
(ANONYMITY ORDER MADE)

Appellant

And  
ENTRY CLEARANCE OFFICER

Respondent

**Representation:**

For the Appellant: Ms Cleghorn, Counsel instructed by Halliday Reeves Law Firm  
For the Respondent: Mr Diwnycz, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a national of the Sudan, who has made two applications for entry clearance as the spouse of a recognised refugee. The most recent was refused on 4 April 2017. This second decision quoted from the first decision and set out the ECO's position in relation to the new information that had been supplied in support of the second application to answer the ECO's identification in the course of the first decision of inconsistencies in the information provided.
2. The Appellant's Article 8 appeal against the second refusal came before the First-tier Tribunal at North Shields when it was heard by First-tier Tribunal Judge Hands. The

appeal was dismissed in her decision promulgated on 2 January 2018. The Appellant's application for permission to appeal was refused by First tier Tribunal Judge Robertson on 15 January 2018. The renewed application was partially granted by Upper Tribunal Judge Plimmer on 27 March 2018. The allegation of bias in paragraphs 7 & 8 of the renewed grounds was refused as unarguable. Whilst the grounds were not considered to have been well drafted, permission was granted to advance the remainder - in particular the assertion that the Judge had wrongly gone behind a material concession of fact. A Rule 24 Reply was lodged by the Respondent dated 19 April 2018. No application has been made by either party to rely upon further evidence. Thus the matter comes before me.

3. The Appellant's case was initially advanced before me, on the mistaken assumption that the Respondent had conceded that the Appellant and the sponsor were married. As Ms Cleghorn ultimately accepted, no such concession was ever made by the ECO. Indeed the ECO made it clear that this was an issue in dispute, and thus it remained for the Appellant to establish on the balance of probabilities that she had married the sponsor prior to his departure from the Sudan.
4. As the Judge recorded in her decision [25] the sponsor produced from his briefcase, during the course of his oral evidence, a document and a translation, that he said had been created in the Sudan and sent to him in the UK. He relied upon these documents as corroborative evidence of the marriage that was said to have taken place prior to his departure from the Sudan. It is noteworthy that even the renewed grounds make no complaint about the Judge's treatment of that document, or, her analysis of its content. The Judge's finding was that this document contained a false declaration, namely that the couple currently lived together in Omdurman city. That false declaration was purportedly confirmed, and witnessed, by a number of people whose names were given in that document. That finding was one that was plainly open to the Judge. She went on to conclude that in the circumstances the weight she could place upon both this document, and its content, was seriously damaged. In so doing she did no more than follow the approach of Ouseley J in CJ (on the application of R) v Cardiff County Council [2011] EWHC 23, when he stressed the importance of the approach in Tanveer Ahmed v SSHD [2002] Imm AR 318.
5. The Judge was also provided in evidence with some photographs which had been placed before the ECO, and which were said to record the marriage between the Appellant and sponsor which they claimed had taken place in the Sudan [ApB p55-59]. The ECO had noted that these photographs had been "heavily digitally enhanced"; ie they had been manipulated digitally, so that the photographs no longer represented the picture that would have been recorded in the original. It was not disputed before the Judge that this was the case. The Judge concluded that in the circumstances of the "obvious enhancements to the photographs" she could place very little evidential weight upon the existence and content of these photographs, noting that it was possible to alter photographs both to add material, and to remove it [24]. The grounds assert, quite wrongly in the circumstances, that the Judge "invented" a point that had not been taken by the ECO, and that the Appellant had been denied any opportunity of dealing with it. The point was taken by the ECO, and the Appellant had the opportunity of dealing with it. However the evidence of the sponsor did not

engage with this, so that his witness statement of 20 November 2017 is silent upon the issue. Ms Cleghorn did not seek to take me to any evidence that was placed before the Judge to explain what the limits of the manipulation of the photographs had been, or to explain why that had taken place. The Appellant did not produce in evidence what were said to be the original un-manipulated photographs.

6. The Judge also noted inconsistencies in the evidence of the Appellant and the sponsor as to where she had lived as a married woman following his departure from the Sudan [27-8]. The Judge considered the inconsistency of whether the Appellant lived with the sponsor's family, or, lived with her father was a significant one. The grounds make no complaint about this, and once again the findings were open to her.
7. The ECO accepted in the course of making his decision upon this second application that a credible explanation had been offered for the discrepancies he had identified in his decision upon the first application between; (i) the name given by the Appellant as her own, and that given by the sponsor for that of his wife when first interviewed, and, (ii) the dates given initially by the Appellant, and by the sponsor for their marriage. However, as Ms Cleghorn accepted before me, the ECO maintained in the course of this second decision, his stance that the Appellant had not established that she was married to the sponsor, or living with him in a relationship akin to marriage for a period of two years prior to his departure from Sudan. There was never a concession that the couple were ever married, and that is in my judgement the context in which paragraph 23 of the Judge's decision must be read. I am not satisfied that the Judge sought therein to go behind any concession of fact.
8. Looking at the grounds for which permission was granted in the round, I am not satisfied that they demonstrate any material error of law that requires the Judge's decision to be set aside and remade. The ECO was not satisfied that the Appellant and the sponsor were married to one another, and the Judge was not satisfied of this either. In the circumstances there was no material error in the Judge's finding that the Article 8 rights of the Appellant and the sponsor were not engaged by the decision under appeal. I therefore dismiss the appeal.

#### Notice of decision

The decision promulgated on 2 January 2018 did not involve the making of an error of law sufficient to require the decision to be set aside. The decision of the First tier Tribunal to dismiss the appeal on Article 8 grounds is accordingly confirmed.

#### Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed  
Deputy Upper Tribunal Judge J M Holmes

Date 11 September 2018