



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/09792/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 4<sup>th</sup> April 2018

Decision & Reasons Promulgated  
On 16<sup>th</sup> May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MR D H S  
(ANONYMITY DIRECTION MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

**Representation:**

For the Appellant: No appearance  
For the Respondent: Mr C Avery, Senior HOPO

**DECISION AND REASONS**

1. This is an appeal against a determination of First-tier Tribunal Judge Piers, promulgated on 12<sup>th</sup> July 2017, following a hearing at Hatton Cross on 28<sup>th</sup> June 2017. In the determination the judge dismissed the appeal of the Appellant pursuant to paragraph 352A of the Immigration Rules, in his application for leave to enter as a spouse of [FS], who has been granted asylum in the UK. The decision appealed against is dated 23<sup>rd</sup> September 2015, and the basis of the decision is that the parties had not been able to show that they intended to live together permanently with each other as their partners, or that the marriage was subsisting.

### The Appellant's Claim

2. The Appellant states that he was born on 16<sup>th</sup> May 1977 in Somalia. However, due to the war in Somalia, he had fled to Uganda, living there for eight months. He has been supported by his spouse, [FS], who had arrived in the UK on 11<sup>th</sup> October 2010. The Sponsor herself had confirmed during her screening interview that she was married to the Appellant, that he was born in 1977, and that at the time in October 2010 the Appellant had been living in Somalia. She last saw him in October 2009. Judge Piers had only been provided with two copies of the asylum interview of [FS], and this identifies her husband's clan, and it states that the two of them had lived together for a "little like four months".

### The Judge's Findings

3. Judge Piers found himself in an unfortunate situation at the hearing on 28<sup>th</sup> June 2017 at Hatton Cross. As he observed there were no witness statements from either the sponsoring wife or the Appellant. The Sponsor did, however, turn up at the hearing together with her cousin, [AS]. In giving them evidence, the Sponsor stated that the Appellant was not in a position to show his identity as he is a refugee except that there was a document to show his name and the time he entered the country. The judge ruefully commented that this was not before him in the Tribunal. The Sponsor went on to explain that although she was married she had no documentation to this effect. The two of them had remarried in June 2009 and that "we fled" after that. She last saw the Appellant in 2009. She did send him money for his subsistence but had recently stopped doing so because she wanted him to stand on his own two feet and to work. She had a daughter but this was from a previous husband. The Appellant, her current husband had started working in a little restaurant in Kenya and that they were in contact using phone cards and through WhatsApp and IMO. The messages were sent in Somali and she went on to explain that her husband, the Appellant, had been in Kenya for about two and a half years now. Judge Piers observed that, according to the Sponsor, "material had been sent to the Home Office and it appears that she was correct but seemingly not since the application" (paragraph 11). The Sponsor now worked part-time as a cleaner. In cross-examination the Sponsor indicated that she did not know where her husband currently was and explained that she had been in trauma herself as a refugee in this country (paragraph 12).
4. In his decision the judge went on to note that "evidence was filed by the Appellant with the application which has not been passed on by the Respondent. That is not satisfactory" (paragraph 17).
5. Judge Piers also went on to say that he accepted that "the Appellant was married to the Sponsor in 2009 and that was before the Sponsor claimed asylum since it is mentioned in her asylum documents and the details of her husband are sufficient to correlate with the Appellant" (paragraph 19).
6. However, this was as much as the judge could accept, observing that the Sponsor had last supported the Appellant some two and a half years ago, there was no evidence of this support, and no evidence of contact in the form of emails, transcribed text

messages, or printouts from WhatsApp (paragraph 21 to 22). Moreover, the Appellant had been represented up until only a week ago by solicitors, and yet there was no statement from them and no indication that the Appellant wished to continue to pursue his appeal (paragraph 24).

7. The judge concluded that the Appellant could not satisfy the requirements of paragraph 352A(iv). Moreover, nor were there any exceptional circumstances that Article 8 was engaged (paragraph 27).
8. The appeal was dismissed.

### **Grounds of Application**

9. The grounds of application state that the Appellant had been granted refugee status officially in Uganda, and Kenya was the first country to which she had fled when he left Somalia, and that although she had provided an explanation this had not been properly translated by her solicitor, by whom she had been badly served. She was a single mother who had trusted a lawyer to correctly translate her word and now realised that the wrong message had been sent out by the solicitor in the translation. She worried about her husband and could not sleep at night without talking to him and nor could she eat without knowing that he himself had eaten.
10. On 28<sup>th</sup> December 2017 permission to appeal was granted. Judge J M Holmes, in granting permission observed that a feature of this appeal was that the Appellant was unrepresented. The decision of the judge was extremely brief. It contained no findings that the Appellant and the Sponsor were not validly married. There were no findings that they were not validly married prior to the Sponsor's flight from Somalia. Moreover, none of the relevant jurisprudence was referred to. This being so the judge failed to adequately engage with the evidence before him and considered "the nature of the appeal", particularly given that "the Sponsor had given the Sponsor's details as her spouse when she first claimed asylum, and it does not appear to have been disputed that he is who she had referred to, or, that they were validly married" (paragraph 5). Judge Holmes, in granting permission, went on to say that, "it is arguably far from clear why the judge concluded there was no genuine and subsisting marriage given the undisputed evidence" (paragraph 5). It appeared to have been the case that the judge held the "deficiencies of his lawyer" against the Appellant. This was a human rights appeal, and since the couple were married they did enjoy "family life" together, such that Article 8 was engaged, and the issue was one of proportionality (paragraph 6).

### **Submissions**

11. At the hearing before me, it was most unfortunate that neither the Appellant, nor his cousin, and nor indeed was any other person present, and neither was any explanation forthcoming. Mr Avery, appearing on behalf of the Respondent Secretary of State said that, "it is a shame they're not here ...", but the judge was entitled to conclude as he did. The fact was that evidence as to whether the marriage was genuine and subsisting

was lacking and the judge had considered that the parties had only lived together for four and a half months during their marriage and then had to separate.

### **Error of Law**

12. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision and remake the decision. My reasons are as follows.
13. First, it is fundamental to this appeal that this is a marriage that falls to be considered on the basis that the Sponsor is a recognised refugee in the UK, who wishes to be reunited with her Appellant husband, such that the provision made at paragraph 352A of HC 395, expressly recognised the specific context of such family reunification applications.
14. Second, as Judge Holmes pointed out in granting permission, the Sponsor had given details of her marriage to the Appellant when she first claimed asylum and this was undisputed, as is a fact that the Appellant is a person that she named as her husband. It was also undisputed that they were validly married. In the Grounds of Appeal, it was stated that “the couple got married in Somalia where there is not even a camera to take pictures and no officers to issue a marriage certificate” (paragraph 4). Judge Piers rightly accepted that the parties were validly married in 2009 and that the details given by the Sponsor of her husband were accepted as “sufficient to correlate with the Appellant” (paragraph 19). It is also the case that the parties fled in traumatic circumstances as a result of the war in Somalia such that, not only is it the case that the Sponsor gained refugee asylum status in the UK, but the Appellant himself was registered as a refugee in Kampala, in Uganda on 9<sup>th</sup> May 2017, as confirmed in the document in the Respondent Secretary of State’s bundle.
15. Third, Judge Piers was plainly hamstrung by the fact that evidence about the marriage between the Appellant and the Sponsor had been filed with the application “which has not been passed on by the Respondent” and that this was “not satisfactory” (paragraph 17). In the circumstances, it was not open to the judge to come to any conclusion that suggested that the Appellant and the Sponsor were not validly married, nor that they were validly married prior to the Sponsor’s flight from Somalia. Judge Piers observes that there is a lack of history after the Appellant left Somalia, together with the Sponsor’s lack of reason for not supporting the Appellant for the last two and a half years, with an absence of an explanation as to why he would wish to come to the UK now. However, the Sponsor did explain in her evidence that she had been sending monies up to about a couple of years ago but that she had ceased to do so because, “I want him to be able to stand on his own feet and I want him to work” (paragraph 11), the upshot of which was that the Appellant did then begin to work in “a little restaurant in Kenya” (paragraph 11). No finding is made that this evidence is not credible or is to be rejected. As for the suggestion that the Sponsor has not explained her reasons for “wanting to come to the UK”, this hardly needs any further elaboration once it is accepted that the two of them are validly married together. As it happens, the Sponsor does state in her Grounds of Appeal to the Upper Tribunal that

she is enduring, “the torture I’m going through” on account of being separated from her husband, at a time when she is a single mother, and has undergone a trauma as a refugee in seeking sanctuary in the UK.

**Re-Making the Decision**

16. I have remade the decision on the basis of the findings of the original judge, the evidence before him, and the submissions that I have referred to today. I am allowing this appeal for the reasons that have been set out above.

**Notice of Decision**

The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is allowed.

An anonymity direction is made.

**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 their 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

Date

Deputy Upper Tribunal Judge Juss

14<sup>th</sup> May 2018

**TO THE RESPONDENT**  
**FEE AWARD**

As I have allowed the appeal and because a fee has been paid or is payable, I have made a fee award of any fee which has been paid or may be payable.

Signed

Date

Deputy Upper Tribunal Judge Juss

14<sup>th</sup> May 2018