



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Extempore Decision

Case No: UI-2021-001814
First-tier Tribunal No: EA/10558/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 27 April 2023

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

MOHAMED MAHAMUD ADEN
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Chohan, Solicitor instructed by Kingswood Solicitors.
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

Heard at Field House on 30 January 2023

DECISION AND REASONS

1. In the light of Ms Everett's concession I have given only brief reasons for my decision.
2. This is an appeal against a decision of Judge of the First-tier Tribunal Moon ("the judge") promulgated on 18 November 2021.
3. The two issues in contention before the judge were (i) whether the appellant had entered into a valid proxy marriage in Somalia; and (ii) whether the appellant's partner ("the sponsor") was exercising EU Treaty Rights.
4. The judge found that the sponsor was exercising Treaty Rights and this aspect of the decision is unchallenged. The judge did not, however, accept that the appellant had established that his proxy marriage was valid. The grounds of appeal are concerned with this aspect of the decision.

5. In order to support his claim that the marriage was valid, the appellant submitted, inter alia, a marriage certificate and a document titled Declaration for Marriage Certificate (“the Declaration”). The judge summarised the Declaration in paragraph 25, stating:

“This second document has been signed by Mr Hassan N. Abdi, who is described as the Deputy Minister of Foreign Affairs. This document refers to the marriage as being a proxy marriage and states that the marriage was ‘conducted under the watch of Hargeisa District Judge Sh. Muse Dahur Elmi and followed all necessary guidelines accordingly with Islamic law and Somali’s proxy marriage’. The same witnesses are named and the document states that Farah Ali Ahmed is the sponsor’s uncle and Abdirahman Dahir Jama is the appellant’s brother”.
6. In paragraph 48, when summarising why he had decided to dismiss the appeal, stated:

“The appellant has not provided evidence in relation to the law in Somalia and there is no expert report confirming what the requirements are”.
7. At the outset of the hearing before me Ms Everett conceded that the judge erred in law by not accepting that there was sufficient evidence to establish that the appellant and sponsor entered into a valid proxy marriage. The reason she gave for making this concession was that the genuineness and reliability of the Declaration had not been challenged by the respondent and, on its face, the Declaration makes it clear both that in Somalia proxy marriages are permitted and that the proxy marriage entered into by the appellant was one that accorded with the law in Somalia. Ms Everett accepted that in the light of the Declaration being unchallenged and the judge making positive credibility findings it was difficult to see why the judge found that there was insufficient evidence to establish that a valid proxy marriage was entered into or why there would be a need for an expert’s report.
8. I accept Ms Everett’s concession and for the reasons she has given set aside the judge’s decision on the basis that it involved the making of an error of law.
9. Both parties agreed that I should proceed to remake the decision. Mr Chohan argued that I should allow the appeal because there had been no challenge to the Declaration. Ms Everett stated that she was not in a position to concede this point but that she would not be advancing any arguments to counter it.
10. In the absence of any arguments to the contrary, I am persuaded by Mr Chohan’s submission. It was open to the respondent to challenge the reliability of the Declaration but, as Ms Everett accepted, the respondent has not made any such challenge. I proceed, therefore, on the basis that it is common ground between the parties that the Declaration is a reliable document. The Declaration, if reliable, is clear evidence both (i) that proxy marriages are lawful in Somalia; and (ii) that the appellant’s marriage was in accordance with the requirements of Somali law.
11. Accordingly, I remake the decision of the First-tier Tribunal by allowing the appeal on the basis that (a) the judge’s finding that the sponsor is exercising Treaty Rights is unchallenged; and (b) that the appellant has adduced

unchallenged evidence in the form of the Declaration which establishes that it is more likely than not that he and sponsor entered into a valid proxy marriage.

Notice of Decision

12. The decision of the First-tier Tribunal involved the making of an error of law and is set aside.
13. I remake the decision by allowing the appeal.

D. Sheridan
Judge of the Upper Tribunal
Immigration and Asylum Chamber

2 March 2023