IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003459

First-tier Tribunal No: EA/13756/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

2nd October 2023

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

Ishaq Samira Mahad
(NO ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr E Akohene instructed by Afrifa and Partners
For the Respondent: Miss A Everett, Senior Home Office Presenting Officer

Heard at Field House on 8 August 2023

DECISION AND REASONS

1. The appellant applies with permission against the decision of First-tier Tribunal Judge Mulholland, who on 22nd April 2022 dismissed the appellant's appeal against the Secretary of State's refusal on 31st July 2021, to refuse her application under the EU Settlement Scheme EUSS as a family member, a spouse of an EEA national, with a right to reside in the United Kingdom. The appeal was filed under the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020.

The grounds of appeal

2. The grounds of appeal submitted that the judge erred in law in taking into account irrelevant matters and/or improperly gave significant weight to evidence, that is the lack of evidence from relatives. First that evidence was not germane to the issue, signatures on the marriage certificate. Secondly, these witnesses would not have been available for cross-examination to evaluate their testimony.

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Finally the judge had not challenged or disputed the fact that the appellant and the sponsor both attended the wedding.

3. Further, the judge failed to consider the documents produced in accordance with **Tanveer Ahmed IAT [2002] UKAIT 00431** such that it is for the 'claimant' to show that the document on which he seeks to rely could be relied on although a document should not be viewed in isolation and the decision maker should look at the evidence as a whole or in the round.

4. The sponsor is a relevant EEA citizen. The appellant and sponsor married in Nairobi, Kenya on 20th October 2020. The appellant is a Somalian national and there is evidence that the sponsor and appellant were present at the wedding via the wedding photographs. Further, the extracts from the sponsor's passport also placed him there.

5. The judge had no more expertise in comparing signatures than "we have". It was submitted that upon inspecting the documents individually and in the round the appellant could rely on them to corroborate the case.

6. Permission was initially refused but granted by Upper Tribunal Judge C Lane on the basis that it was arguable that it was not open to the judge to find [13]that the difference in the signatures of the appellant on her passport and wedding certificate should have damaged her credibility. Judge Clive Lane stated that the judge made other findings which cast doubt on the appellant's credibility but the findings at [13] were clearly part of the judge's overall assessment as he states at [16] so any error was in effect material to the outcome.

7. The Secretary of State relied on her Rule 24 response and opposed the appellant's appeal submitting the judge directed himself appropriately. The judge gave adequate reasons for the findings made even if the Tribunal were to find that there was no issue with the signatures. It was notable that the remaining reasons given for finding against the appellant had not been challenged and therefore were still adequate reasons for dismissing the appeal which related to the paucity of evidence and the facts around the core aspects of the claim.

8. At the hearing before me Mr Akohene submitted that the judge should have confined himself to the sole issue of whether or not the marriage certificate could have been accepted as valid. There was no Home Office Presenting Officer at the FtT and no additional submissions and Judge Mulholland did not convey to him that there were further representations to be made. The judge had taken on the role of adversarial inquisitor but had ventured into the territory of a marriage of convenience when he analysed, for example, why the couple had not married in Somalia and observed that no further evidence had been produced. The sponsor was not asked questions. The judge was not an expert in relation to signatures and did not take into account the evidence from pages 28 to 30. There was photographic evidence of the appellant and sponsor and the judge had failed to consider this. There was no requirement to maintain the same signature from one day to the next.

9. Ms Everett submitted that in relation to the ground that the judge overreached his or her remit of the refusal, that was a mistaken submission. The refusal specifically stated the relevant challenges to the evidence. The Entry Clearance Officer was not satisfied that the appellant and sponsor were married as claimed and it was open to the judge to rely on the evidence which was not just in relation to the document which he did. She conceded that the absence of the Presenting

Officer was not helpful and could put a judge in a difficult position but the appellant had provided evidence on which it was incumbent on the judge to make findings and indeed he was entitled to do so otherwise he had no ability to reject evidence merely because the Presenting Officer was not present. The Secretary of State had sensible worries that both signatures were different and indeed the appellant's evidence in the evidence were that in fact they were the same, see [13].

10. It was open to the judge to concur with the respondent's view of the documentation, albeit the judge had not named the documents individually.

11. Mr Akohene submits that the judge had not made it clear that he had looked at all the documents and the appellant's statement at pages 3 to 4 explained why the signatures were different. The refusal letter needed to state if there was an assertion that there was a marriage of convenience, and it was crystal clear what the refusal letter stated._

Analysis

12. What was put in issue by the Entry Clearance Officer's letter was the reliability of the documentation provided to support the claimed valid marriage. As the Entry Clearance Officer stated in the refusal decision

> *"I have compared the signatures on both yours and your EEA sponsor's passports against the signatures on the marriage certificate and the photographic affidavit of marriage. None of the signatures match. This casts doubt on the authenticity of the supporting evidence you have provided with this application. We would expect the signatures on these documents to match or at least be almost identical to those on your passports".*

13. The application was made on 13th May 2021 and the documentation, to which Mr Akohene referred, was all before the Entry Clearance Officer when considering the application, which was made on 13th May 2021 and decided on 31st July 2021.

14. It was submitted that the judge erred in law in taking into account irrelevant matters when considering the documentation and it was also submitted that the judge failed to take into account **Tanveer Ahmed**. I consider that the judge in fact did the reverse. As **Tanveer Ahmed** states "A document should not be viewed in isolation" and that the decision maker should look as the evidence as a whole or in the round (which is the same thing). As Ms Everett submitted, the absence of a Presenting Officer present was unhelpful, but it was entirely open to the judge in view of the decision that was made by the Entry Clearance Officer to question the reliability of the documentation and the judge was entitled to take into account the evidence which was presented and the evidence which was not presented in order to make a balanced decision. There is no indication he did otherwise. As the judge states at paragraph 7 the respondent:"

> *"is not satisfied that the appellant has provided a sufficiency of evidence to demonstrate that she is married as claimed. As evidence of their relationship, the appellant provided a marriage certificate, photographic affidavit of marriage, a Kenyan marriage registration letter and a Kenyan attestation regarding the signatures on the marriage certificate."[my underlining]*

The judge was correct in stating that the respondent put the appellant on notice that there was doubt about whether they were married and as the judge stated, "in the circumstances I would have expected the appellant to have provided sufficient details and support of her claim".

15. The issue was the reliability of the evidence and whether they were indeed married as claimed, not whether the marriage was one of convenience. A marriage of convenience denotes that the sponsor and appellant were validly married as claimed but it was a sham, which was not what was put in the refusal letter. The surrounding circumstances as to whether the appellant had produced supporting evidence that she had been living in Kenya or an explanation why she went there and decided to get married there, was part of the circumstances which the judge took into account. Even if that were not relevant, the judge did address his/her mind to the relevant points germane to the signatures on the marriage certificate. The signatures are clearly a relevant aspect to the appeal. In essence the assertion is that the marriage certificate is not reliable and there was insufficient evidence to show they were married as claimed.

16. At [13] the judge states that he did carefully consider the signatures on the documents, and it is clear from the Entry Clearance Officer's decision that there were three documents which were at variance with each other in terms of the signatures. The judge was correct in stating that at the very least the spouse's claim was that they were not different when indeed they were and that indeed is borne out by his witness statement. Mr Akohene submitted that the appellant disagreed that they were different but that in itself is unsatisfactory as both appellant and sponsor evidently disagreed. The judge does not have to be an expert in signatures to assess the evidence. He did what he was expected to do, which is assess the evidence in the round and in accordance with **Tanveer Ahmed**. It is not that the judge was assessing a marriage of convenience but assessing the reliability of the evidence and that is what he did in the context of the documents themselves and the surrounding circumstances.

17. Not only did the judge find that the signatures were different, but he also rejected the assertion on the part of the sponsor at the very least that the signatures were the same and also, thirdly, observed that there was a failure to explain why the signatures were different. It was entirely open to the judge to conclude that he would have expected the signatures on important documents such as the passport, marriage certificate and affidavit to be the same and that they were in fact different casts doubt upon the claim. Indeed, there were three documents on which the signatures which were different, and it is most surprising that the signatures on the marriage certificate and affidavit, which were issued within a short space of each other, should be different.

18. At [14] the judge stated he would have expected to have seen more evidence and was surprised not to have done so. That does not undermine his assessment of the documentation at [13] which was central to the appeal. The refusal had also highlighted the dearth of evidence.

19. It was further open to the judge at [15] to comment on the lack of evidence supporting the wedding, such as wedding costs, for example the wedding dress and the reception.

20. The judge was specifically provided with photographs, and it was open for the judge to note that despite there being apparently wedding guests at the wedding, none of the relatives had provided supporting statements. The mere fact that the

witnesses would not have been able to give oral testimony in order to be cross-examined, does not necessarily mean that the lack of evidence in relation not the wedding was not relevant. If witness statements had been provided an explanation could have been given as to why the various witnesses could not attend.

21. Contrary to the assertion that the judge failed to consider all of the evidence, he detailed the evidence at [7] and it cannot be rationally advanced that a mere nine paragraphs later he would have forgotten that evidence. This application was made on 13th May 2021 and the evidence was before the Entry Clearance Officer who had remarked upon the difference in the signatures in the refusal of 31st July 2021, which the judge dealt with at [13]. The judge specifically stated that he had considered “all of the evidence individually and in the round” and it was open to him to consider that the appellant had not provided sufficiency of evidence to demonstrate that she was a spouse of an EEA national. The judge again remarked, which must have been in relation to all of the documentary evidence that the signatures were different. The judge clearly addressed the documents of the marriage certificate and the affidavit at paragraph [13]. In view of the validity of the documentation the fact that the sponsor and appellant may have attended the wedding is not necessary to the point.

22. I was specifically referred to the documentation by Mr Akohene and note that the letter dated 22nd October 2020 signed by the Senior Resident Kadhi Nairobi the Honourable A I Hussein was two days post the stated marriage but this in fact made no reference to the difference in signatures. The letter at [29] of the Home Office bundle from the Ministry of Foreign Affairs signed by William Hiribae was said to verify the letter of 22nd October 2020, cited above but was undated. The fact that a verifying letter is undated does not assist the documents said to be verified. The letter dated 6th May 2021 merely confirmed the signatures appearing on the certificate and asserted that the marriage certificate was valid and genuine, but despite being some months after the said marriage did not address the key point, which was that the signatures on the passport and the marriage certificate, the affidavit and the passports were all different. That issue the judge had addressed and despite the fact that Senior Resident Kadhi of Nairobi asserted that the marriage certificate was valid and genuine, the judge was entitled not accept the evidence for the reasons he gave and which was not specifically addressed by the various letters.

23. I find that it was open to the judge to make the findings that he did, and I find no error of law in the FtT decision which will stand. The appellant’s appeal remains dismissed.

Helen Rimington

Judge of the Upper Tribunal
Immigration and Asylum Chamber

26th September 2023