



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006356
First-tier Tribunal No:
EA/00485/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 25 June 2023

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

SAMIRO ALI ASMA
(NO ANONYMITY ORDER MADE)

Appellant

and

The Entry Clearance Officer

Respondent

Representation:

For the Appellant: Mr A Hersi, Albertson Solicitors

For the Respondent: Ms S Rushmore, Senior Home Office Presenting Officer

Heard at Cardiff Civil Justice Centre on 22 June 2023

DECISION AND REASONS

Introduction

1. The Entry Clearance Officer has been granted permission to appeal the decision of First-tier Tribunal Judge Clemes promulgated on 25 May 2022.
2. However, for ease of reference hereafter the parties will be referred to as they were before the First-tier Tribunal.
3. Permission to appeal was granted by First-tier Tribunal Judge Hollings-Tennant on 18 November 2022.

Anonymity

4. No anonymity direction was made previously, and there is no reason for one now.

Factual Background

5. The appellant is a national of Somalia, residing in Sweden, who is now aged thirty-five. She made an unsuccessful application for a EUSS Family Permit on 30 March 2021. On 13 June 2021, the appellant made a further such application which was refused by way of a decision dated 15 November 2011. The basis of the application is that the appellant was the spouse of a relevant EEA citizen, in that a marriage took place by proxy in Mogadishu on 16 June 2018. The respondent refused that application because no evidence had been provided from the Somali authorities confirming that the marriage was registered properly and as such it was not accepted that the appellant was the spouse of a relevant EEA citizen.

The decision of the First-tier Tribunal

6. The sponsor, namely Abdiaziz Korane Mohamed, gave evidence at the hearing before the First-tier Tribunal and reliance was placed on a certificate signed by two witnesses who attended the wedding in Mogadishu. Reference was also made to a wedding celebration which took place in Sweden. The judge allowed the appeal, accepting the evidence provided, both documentary and oral.

The grounds of appeal

7. The grounds assert that the First-tier Tribunal erred in failing to provide reasons or any adequate reasons as to why he found that the proxy marriage was valid or why the sponsor was a satisfactory witness,
8. Permission to appeal was granted on the basis sought, with the judge granting permission making the following remarks.

The Judge sets out his findings in two short paragraphs (at [9] and [10]) but fails to give any reasons therein as to why he found the Sponsor to be a satisfactory witness. Further, whilst he was satisfied that relevant documents were adduced, he makes no findings as to the validity of those documents, having recorded that the question of validity was in issue between the parties (at paragraph [6])

9. The appellant filed a combined Rule 24 response and skeleton argument dated 22 December. In it, the appeal was opposed, with it being argued that the judge had little option but to allow the appeal on the basis of the supporting evidence alone.

The error of law hearing

10. Ms Rushmore relied on the sole ground of appeal, that of the inadequacy of the reasons. In addition, she asked me to note that at [5], the judge recorded that the sponsor accepted that the certificate he relied upon only went some way to meet the respondent's objections. Furthermore, nothing had been submitted from a government authority at the appeal stage. Mr Hersi relied upon the Rule 24/skeleton argument which he drafted. He argued that any error by the judge was immaterial. The first issue was whether the marriage was legally valid in Somalia and there was no evidence that it was not. This was not dependent on credibility of the sponsor.
11. Mr Hersi was unable to point me to any evidence regarding whether proxy marriage is recognised in Somalia, in general, and whether the appellant's proxy

marriage in this instance was valid. He referred me to the case of *Awuku* [2017] EWCA Civ 178 but this was of little assistance in relation to the position in Somalia.

12. At the end of the hearing, I announced that the decision of the First-tier Tribunal contained a material error of law and set it aside. In discussing whether the matter could be remade before the Upper Tribunal, I took into consideration Mr Hersi's concerns that he may need to obtain expert evidence on the issue of proxy marriages in Somalia and concluded that it would be fairer to the appellant to remit the matter to the First-tier Tribunal for a de novo hearing. Ms Rushmore had no strong view either way.

Decision on error of law

13. The judge's findings were set out at [9-10] of the decision and reasons. They are so brief that I will set them out in full.

My decision and the reasons for it

9. I am satisfied that the required evidence goes to show that the marriage is genuine is present and I found the sponsor to be a satisfactory witness. Accordingly, I am satisfied that the sponsor and appellant are husband and wife and fall within the Rules. Mr Kersi (sic) had added an Article 8 component to his Skeleton Argument but he was not entitled to make such an argument and in any event I do not need to rule on that claim as the application and decision were made under Appendix EU of the Rules.
10. The burden of proof is on the appellant in this appeal, which effectively means that he or her sponsor must send to the Tribunal (and initially the respondent) the documents which were suggested as relevant by the respondent when she refused the claim. I am satisfied that they have done so and the appeal succeeds.
14. The above extracts contain statements as opposed to findings. While it is clear that the judge accepted the sponsor's evidence and placed weight on the documents submitted, the judge's reasons for doing so are entirely absent. I do not accept the suggestion that there is anything set out in the preceding eight paragraphs which could assist the reader because the content of those paragraphs amounts to little more than a description of events and a list of documents provided by the sponsor. It is hard to understand how the appeal was allowed when the issues raised in the decision notice were not addressed. Those issues were whether the marriage was recognised as valid in Somalia and whether the marriage was 'performed and registered' so that it satisfied Somali law. The additional evidence referred to fleetingly in the decision did not address these issues, as the sponsor accepted at the First-tier Tribunal hearing.
15. The decision in *Budhathoki* (reasons for decisions) [2014] UKUT 00341 (IAC) which at [14] provides the following useful guidance:

We are not for a moment suggesting that judgments have to set out the entire interstices of the evidence presented or analyse every nuance between the parties. Far from it. Indeed, we should make it clear that it is generally unnecessary, unhelpful and unhealthy for First-tier Tribunal judgments to seek to rehearse every detail or issue raised in the case. This leads to judgments becoming overly long and confused. Further, it is not a proportionate approach to deciding cases. It is, however, necessary for First-tier Tribunal judges to identify and resolve the key conflicts in the evidence and explain in clear and

brief terms their reasons for preferring one case to the other so that the parties can understand why they have won or lost.

16. It follows that a total lack of reasons must amount to a material error of law.
17. As indicated above, I canvassed the views of the parties as to the venue of any remaking Applying *AEB* [2022] EWCA Civ 1512 and *Begum* (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC), I carefully considered whether to retain the matter for remaking in the Upper Tribunal, in line with the general principle set out in statement 7 of the Senior President's Practice Statements. I took into consideration the history of this case, the nature and extent of the findings to be made as well as the fact that the nature of the errors of law in this case meant that the parties were deprived of an adequate consideration of this appeal. I further consider that it would be unfair for either party to be unable to avail themselves of the two-tier decision-making process and therefore remit the appeal to the First-tier Tribunal.

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

The decision of the First-tier Tribunal is set aside.

The appeal is remitted, de novo, to the First-tier Tribunal (Newport) to be reheard by any judge except First-tier Tribunal Judge Clemes.

T Kamara

Judge of the Upper Tribunal
Immigration and Asylum Chamber

23 June 2023