



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2023-003805

First-tier Tribunal No: EA/51626/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

13<sup>th</sup> December 2023

**Before**

**UPPER TRIBUNAL JUDGE PICKUP**

**Between**

**Shafie Abdiladif Said**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**Entry Clearance Officer**

Respondent

**Representation:**

For the Appellant: No attendance by appellant or sponsor. Not legally represented.  
For the Respondent: Ms T Rixom, Senior Home Office Presenting Officer

**Heard remotely at Field House on 6 December 2023**

**DECISION AND REASONS**

1. By the decision of the First-tier Tribunal dated 7.9.23, the appellant, a national of Somalia, has been granted permission to appeal to the Upper Tribunal against the decision of the First-tier Tribunal (Judge Safer), dated 18.7.23, dismissing his appeal against the Entry Clearance Officer's decision of 14.2.23 to refuse his application made on 4.10.22 for an EU Family Permit to enter the UK as the spouse of SB, a Dutch national, pursuant to Appendix EU of the Immigration Rules.
2. The respondent refused the application as it was not accepted that the appellant was married to SB.
3. On 5.12.23, the day before the listed error of law hearing before me, the appellant's legal representatives notified the Upper Tribunal that they are no longer instructed for the appeal hearing, referring future correspondence to the sponsor, SB.

4. There was no attendance at the hearing by either appellant, sponsor, or any legal representative at the start time of 10am. I was satisfied that appropriate notice of the hearing had been given and, therefore, that it was in the interests of justice to continue to hear the appeal.
5. Following the helpful submissions of Ms Rixom on behalf of the respondent, I reserved my decision to be given in writing, which I now do.
6. In summary, the grounds as drafted argue that the First-tier Tribunal: (i) failed to consider relevant law (Appendix EU) and to provide adequate reasoning; and (ii) failed to consider evidence.
7. The grant of permission by Judge Karbani is somewhat peculiar in that at [3] of the grant it is stated that “The judge has given more than adequate reasons for rejecting the marriage certificate as unreliable.” It follows that Judge Karbani could not be granting permission on that ground. In fact, the only ground on which permission is granted is set out at [4] of the permission decision, where it is stated that there is an arguable error of law in the application of article 8 in an EUSS appeal without the consent of the respondent. This is an arguable error of law.” For the reasons set out below, I am not persuaded that this ground is even arguable let alone discloses any error of law.
8. In the absence of representation or attendance on behalf of the appellant, I have carefully considered the impugned decision in the light of the written grounds.
9. In relation to the first ground, the appellant complains that Appendix EU was not referred to and the judge failed to provide any reasons why the appellant failed to meet the requirements of the Rules. However, the crucial factual issue was whether the appellant was validly married to the sponsor at all. The resolution of this issue comes before any consideration of Appendix EU. Given that the judge was not satisfied that there was a valid marriage, there can be no error of law by failing to address Appendix EU, such an omission is immaterial to the outcome of the appeal.
10. The marriage in question was said to have taken place in August 2020 by proxy. They did not meet in person until February 2022 in Ethiopia. It was accepted that they had been in recent contact by social media and that the sponsor visited him in Ethiopia. Unarguably, the judge considered all the submitted evidence and took into account the sponsor’s oral evidence.
11. However, it was open to the judge to find on the evidence that there was a discrepancy as to whether both or either were present at the marriage ceremony. From [5] of the decision, it is clear that the judge was aware that the marriage was said to have been performed by proxy with the appellant in person and the sponsor represented by a family member, her uncle. The judge was not taking issue with the principle of a proxy marriage, only the reliability of the evidence. In that regard, the judge noted that the documentary evidence of Dr Muse said that they were both represented by family members, in other words that neither were present in person, and yet the marriage certificate stated that both were present. The sponsor’s evidence was that she was not present, and she appeared unsure whether the appellant was present at the ceremony. Given these significant discrepancies, and after taking account of the oral evidence, it was entirely open to the judge to conclude that such limited weight could be given to the documentary evidence so that the appellant had failed to demonstrate that he and the sponsor were married in accordance with Somali law. In any event, as noted above, permission was not granted on this ground.

12. The second ground entirely misunderstands the decision of the First-tier Tribunal; the judge was not looking for proof that both parties were present at the marriage ceremony, only concerned about the discrepancy between various aspects of the evidence, some of which stated that both were present and others that neither were present, as addressed above. Complaint is also made that the judge stated at [11] that the marriage certificate stated that they were both present, when the document was untranslated. It was for the appellant to provide a translation. Without a translation, no complaint can be made if the judge's assessment of the evidence on the face of the document suggested that both parties to the marriage were present in person. It was those discrepancies that led the judge to be not satisfied that the evidence could be relied on and, ultimately, that the appellant failed to demonstrate that there was a valid marriage. No error of law is disclosed by this ground.
13. In respect of the only ground on which permission was granted, it is argued that the judge erred by finding article 8 ECHR was not engaged as family life had not been established, when article 8 does not apply to an Appendix EU based appeal without consent for that issue being raised was granted by the respondent. Whilst the reference to article 8 may have been an error, the finding was that article 8 was not engaged. Strictly speaking, this is accurate. In any event, the brief reference to article 8 at [11] of the decision is entirely immaterial to the outcome of the appeal and, therefore, this ground cannot succeed. Put another way, the inclusion of the article 8 reference did not prejudice the appellant and if the decision had been made with no article 8 reference, it would have provided no assistance to the appellant in any way.
14. In all the circumstances, no error of law is disclosed in the making of the decision of the First-tier Tribunal.

### **Notice of Decision**

The appellant's appeal to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal stands, and the appeal remains dismissed.

I make no order for costs.

DMW Pickup

**DMW Pickup**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**6 December 2023**