



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006034

First-tier Tribunal No: EA/00465/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 17th of January 2024

Before

UT JUDGE PERKINS & DEPUTY UT JUDGE FARRELLY

Between

Mr Ali Yusuf Guled
(anonymity order not made)

Appellant

And

The Secretary of State for the Home Department

Respondent

For the Appellant: Mr Afzal, Counsel instructed by Global Migration Solutions UK Ltd.
For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

Heard at Field House on 7th September 2023

DECISION AND REASONS

Introduction

1. The appellant a Somalia national, born in December 1994. On 29 June 2021 he applied for entry clearance as the husband of Mrs Faduma Cumar , hereinafter referred to as his sponsor. She is a national of the Netherlands. The application for a family permit was made under the EU settlement scheme . His application was refused on 20 December 2021.
2. He provided a marriage certificate from Somalia as well as a document from the court there. However, he did not provide translations of the documents. The respondent took the view he had not established he was married to an EEA citizen. When the application was made the appellant signed a form stating that all documents in support of the application were to be accompanied by an English translation and guidance was available on the UK Government website.
3. His appeal was heard by First-tier Tribunal Judge Row at Birmingham on 19 August 2022. The appellant was represented by Mr Afzal of Global Migration

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Solutions UK Ltd. The respondent choose not to be represented. Bundles were received electronically. His appeal was dismissed.

4. In the bundle was a document in English, said to be a translation of the marriage document submitted. At paragraph 12 the judge commented that the original and the translation were similar in structure. At the same time, there were also obvious differences. For instance, the document in English described the sponsor as employed by the Longhurst group yet this was not apparent in the untranslated marriage document.
5. The judge commented at paragraph 13 that the respondent's instructions to applicants was that documents were to be accompanied by a translation . The refusal stated this was part of the instructions given with the application and refers to a link for guidance.
6. At paragraph 14 the judge comments that to comply there must be a statement certifying it is an accurate translation by the person performing the translation and the date of translation must be given. The translator's name, signature and contact details are to be provided. The judge comments that these shortcomings could have been rectified before the appeal hearing yet the bundle was only served on the day of the hearing and the requirements had not been complied with . The judge dismissed the appeal.

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7. Permission to appeal was refused by First-tier Tribunal Judge Cruthers who referred to the absence of evidence to support the assertion documents had been provided in accordance with local custom.
8. A renewed application for permission to appeal to the Upper Tribunal was made. The grounds are that the judge failed to acknowledge that the documents had been issued by a competent authority and should be afforded appropriate weight. It was also suggested that the judge erred in considering the documents as the judge was not an expert on documents.
9. Permission to appeal was granted on a renewed application by Upper Tribunal Judge Owens on 23 March 2023. It was arguable the judge gave inadequate reasons for finding the original marriage certificate and the document in English was insufficient evidence of marriage.
10. The respondent lodged a rule 24 response opposing the appeal. It stated that the grounds submit the judge failed to acknowledge submissions to the effect that the marriage certificate and the English document had been raised in accordance with normal custom. However, such a submission is not in the decision. Furthermore, the claim as to custom is not supported by objective evidence.
11. It was also contended in the rule 24 response that the First-tier judge's reference to apparent differences between the English and Arabic documents was a finding open to the judge without requiring him to be an expert. The judge had acknowledged he was not an expert and that he cannot speak Arabic and did not want to engage in speculation.

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12. At hearing Mr Afzal submitted that the marriage took place in Somalia and the documents provided had been issued by the authorities there. It was suggested that the guidance to applicants referred to in the refusal related to visit Visa applications.
13. In response Mr Diwnycz acknowledged there had been no presenting officer in attendance. He referred to the country policy note and the unreliability of documents from Somalia. The issue arising was whether the documentation could be relied upon. He suggested if an error of law were found the matter should remain in the first-tier Tribunal for a de novo hearing.

Consideration

14. As the First-tier Tribunal judge pointed out, the issue arising was straightforward. There was a requirement that the document in a foreign language be accompanied by a certified translation. The guidance is for the translator to provide their details. The sponsor provided an untranslated marriage certificate and a further document said to be an affidavit from a Somali court official confirming the marriage. The sponsor's account is that these two documents were provided by the Somali authorities. The respondent's concerns had not been addressed in the period between the refusal and the hearing. Alternatively, the respondent invited the appellant to make a new application free of charge with the appropriate evidence. The appellant did not follow this up.
15. It is for the appellant to show he is married to the sponsor. The burden of proof is upon him. It was asserted that the documents issued were issued according with normal custom. However there is no reference to such a submission in the First-tier decision nor was any country information provided to indicate what the normal custom was.
16. The first document has not been translated. The heading is in English and indicates it was issued by a district court in Mogadishu. The appellant and sponsor's names can be seen. There is then a second document in English on the same date, 12 June 2021. It is not apparent if this is meant to be a translation. As the judge observed, it refers to the sponsor's profession as 'Longhurst Group' and this is not apparent in the marriage certificate. The judge is not an expert in document verification. He does not claim to be. However, it is legitimate for the judge to compare two documents provided to see if there are any obvious issues. This is what has occurred. We do not see this as amounting to an error of law.
17. We do not find the appellant has demonstrated an error of law on the part of the judge. The judge did give reasons for not being satisfied that the two documents could be relied upon as establishing marriage. Principally, there was no certified translation and the document in English was not on the face of it consistent with the untranslated document.

Decision.

No material error of law has been demonstrated in the decision of First-tier Tribunal Judge Row missing the appeal. Consequently, that decision shall stand.

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Francis J Farrelly
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
10th of January 2024