IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004393

First-tier Tribunal No: EA/11567/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

12th February 2024

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

Nasra Abdilahi Seleban
(NO ANONYMITY ORDER MADE)

Appellant

and

Entry Clearance Officer

Respondent

Representation:
For the Appellant: Mr M Mohzam of Counsel, instructed by
For the Respondent: Ms T Rixom, Senior Home Office Presenting Officer

Heard remotely at Field House on 9 February 2024

DECISION AND REASONS

1. By the decision of the First-tier Tribunal (Judge Dainty) dated 20.9.23, the appellant, a citizen of Ethiopia, has been granted permission to appeal to the Upper Tribunal against the decision of the First-tier Tribunal (Judge CL Taylor) promulgated 9.8.23 dismissing her appeal against the respondent's decision of 23.10.22 to refuse the application made on 14.7.22 for a Family Permit under Appendix EU of the Immigration Rules, based on the appellant's alleged marriage to her Swedish national sponsor resident in the UK. It is claimed they were married in Ethiopia on 20.10.20.

2. The respondent refused the application being not satisfied that the appellant is the family member of the sponsor as claimed as is necessary to be a family member of a relevant EEA citizen. The respondent pointed to inconsistencies in the marriage certificate itself and between the certificate and the fact that a year after the claimed marriage the appellant applied for a visit visa stating that her

marital state was single, concluding that there was no reliable evidence that the appellant was a family member of a relevant EEA citizen in the UK.

3. In summary, the grounds assert that the First-tier Tribunal failed to provide adequate reasoning for finding the marriage certificate an unreliable document and for rejecting the supporting evidence relied on by the appellant, including the sponsor's evidence, photographs, money transfer receipts, and supporting letters.

4. In granting permission, Judge Dainty considered it "arguable that the judge's reasons were too brief. It is arguable that it was a material error to fail to explain why the sponsor's written and oral evidence should not have weight in the round when the sponsor was before the Tribunal maintaining that the marriage did take place and the certificate is reliable. Witnesses do sometimes make self-serving statements, but the judge was the one who heard the evidence and cross examination and arguably ought to have made explicit findings on the reliability of the sponsor's testimony."

5. Following the helpful submissions of the parties, I reserved my decision to be provided in writing which I do now, taking into account all the evidence that was before the First-tier Tribunal together with the submissions made to me on the error of law issue.

6. Very late, the appellant has a bundle of documents, but I was assured that this contains nothing more that the documentation that was before the First-tier Tribunal, together with the grounds of appeal to the Upper Tribunal and the relevant court-issued decisions. In addition, I have received and considered Mr Mohzam's skeleton argument.

7. Unfortunately, the skeleton argument contains inaccuracies, including the assertion that permission was granted by the Upper Tribunal when in fact it was the First-tier Tribunal. Paragraphs 6 and 7 of the grounds contains several sentences that make no grammatical sense. Paragraph 6 incorrectly asserts that the judge made no finding regarding the marriage certificate. Paragraph 7 is an attempt to reargue the appeal, asserting that the other evidence "goes to support that (the) marriage is genuine". The skeleton argument also makes the surprising assertion that the "only issue was whether the appellant was single as stated in her visit visa application". Perhaps what is meant by the skeleton argument is that the judge failed to provide reasons for finding the marriage certificate not reliable.

8. Before me, Mr Mohzam submitted that the judge failed to address the crucial claim that the statement in the visit visa application was an innocent mistake and determine whether it was a mistake or a deliberate falsehood. It was submitted that the burden was on the respondent to prove that the marriage certificate was an unreliable document, and it was insufficient to merely rely on the inconsistency between the marriage certificate and the later visa application where the appellant's marital status is given as single. Mr Mohzam pointed to the sponsor's evidence that he had completed the application and made an innocent error in doing so. Reliance was made on the Upper Tribunal's decision in DK and RK [2022] UKUT 00112, which held that the burden of proving fraud or dishonesty remains on the Secretary of State on the balance of probabilities, even though in ETS cases the evidence relied on by the Secretary of State was sufficient to discharge the burden of proof so that a response is required from an appellant whose test entry is attributed to a proxy.

9. I am not entirely satisfied that Mr Mohzam's submissions are well-founded in law. This is not a marriage of convenience case, where the burden of proving that rests on the respondent. Unarguably, what was at issue was whether the

appellant is a family member (spouse) of the sponsor. It follows that the reliability the marriage certificate was a crucial aspect of the appellant's case. In general terms, it was for the appellant to demonstrate by reliable evidence on the balance of probabilities that she was the family member spouse of the sponsor. The initial refusal decision appears to raise only reliability of the marriage certificate.

10. However, it does appear from the respondent's subsequent review that the inconsistency between the visit visa application of 5.1.22 and the subsequent EUSS application of 14.7.22 is relied on to suggest that one or both of the applications are fraudulent or that the documentation is not reliable to prove the family relationship. Certainly, if fraud is asserted, the legal burden remains on the respondent. In setting out the issues at [5] of the decision, the judge included at (c) "Whether the appellant has provided fraudulent or unreliable information about her personal circumstances in either of her applications". The judge does not make a finding of fraud but concludes at [15] that the marriage certificate is not a reliable document.

11. However, at [11] of the decision the judge makes a correct self-direction that in an EEA case a marriage certificate is sufficient to establish a prima facie case that the spouse is a family member, and the legal burden is on the Secretary of State to show that any such marriage is one of convenience. The judge correctly stated that the evidential burden may shift to the appellant where the facts give rise to an inference that it is not genuine, and grounds of suspicion have been raised but the legal burden of proving a marriage of convenience remains on the respondent. At [13] of the decision, the judge found for the reasons there stated that there was sufficient the evidential burden had shifted to the appellant and subsequently found that she had not discharged that evidential burden. However, as stated above, this is not marriage of convenience case, and the issue is whether the evidence adduced was sufficiently reliable to discharge the burden on the appellant to demonstrate that she is a family member spouse as claimed.

12. Mr Mohzam submitted that the judge "failed to make findings why the marriage certificate is not a reliable document". On the contrary, the judge did make a finding at [15] that the certificate was not a reliable document. I am not satisfied that on the facts of this case it was necessary for the judge to go beyond that finding and determine that the marriage certificate was fraudulent, given that the burden is on the appellant to demonstrate that documents she has adduced are reliable. If the marriage certificate is not reliable, that undermines the claimed relationship of a family member spouse of a relevant EEA citizen.

13. Contrary to the grounds asserting inadequate reasoning, [15] of the decision provides those reasons. These include the inconsistencies between the two immigration applications. The judge pointed out that the visit visa application not only stated that she was single but made no mention that she was intending to visit her husband, which rather undermines the claim of an "innocent mistake". Unarguably, the judge considered the supporting evidence relied on by the appellant, including the letters, and photographs. The judge explicitly stated at [15] that these had been taken into account when "assessing the evidence in the round". Little weight was accorded to the letter from Mr Abdi, given that it was untested by oral evidence. Unarguably, weight was a matter for the judge. At [14] and [15] the judge provided clear and cogent reasons for rejecting the proffered explanation for not mentioning her husband in the application form.

14. There is no reason to doubt that the judge has properly considered all the evidence as a whole before making findings which I am satisfied were entirely open on the inconsistent evidence before the Tribunal.

15. Complaint is made about the brevity of the decision, but I have to bear in mind that in R (Iran) and others v SSHD [2005] EWCA Civ 982, Lord Justice Brook held that there was no duty on a judge in giving reasons to deal with every argument and that it was sufficient if what was said demonstrated to the parties the basis on which the judge had acted. This approach was adopted by the Upper Tribunal in Budhatkoki [2014] UKUT 00041 (IAC), which held that "it is generally unnecessary and unhelpful for First-tier Tribunal judgements to rehearse every detail or issue raised in a case. This leads to judgements becoming overly long and confused and is not a proportionate approach to deciding cases. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost." I am satisfied that the decision addresses the relevant issues and that the findings were adequately supported by reasoning.

16. Whilst the decision is brief, I am satisfied that it is perfectly plain to any reader why the appeal was dismissed. The assertion that inadequate reasons were provided is not made out. It is clear that the judge rejected the claim that the 'single' statement in the visa application was an "innocent error". It was not necessary for the judge to make separate or specific findings on each piece of evidence, it was sufficient to consider the evidence in the round and before reaching the conclusion that the marriage certificate could not be relied on. Having made that finding, it was not necessary to go on to make a finding whether the marriage certificate was fraudulent or whether the 'mistake' as to marital status in the visit visa application was innocent as claimed, or something more sinister. Once the marriage certificate was found not reliable, the appellant could not rely on that as prima facie evidence of the family member relationship to the sponsor, and necessarily fails to demonstrate that she is married as claimed. That is fatal to the EUSS application.

17. In all the circumstances, I find no material error of law 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 as made.

I make no order as to costs.

DMW Pickup

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Judge of the Upper Tribunal
Immigration and Asylum Chamber

9 February 2024