



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006438
First-tier Tribunal No:
HU/50682/2022
IA/01018/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 01 May 2023

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

Faten Mohammed Salusi Musa
(NO ANONYMITY ORDER MADE)

Appellant

and

The Entry Clearance Officer

Respondent

Representation:

For the Appellant: In person
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

Heard at Field House on 27 April 2023

DECISION AND REASONS

Introduction

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge O'Garro heard on 10 August 2022.
2. Permission to appeal was granted by First-tier Tribunal Judge Gumsley on 19 October 2022.

Anonymity

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

Factual Background

4. The appellant is a national of Sudan. On 6 September 2021, she applied for leave to enter under the Family Reunion provisions of the Immigration Rules. The

sponsor is Yousef Abdullah Tahir Faky who is a recognised refugee residing in the United Kingdom.

5. The decision under appeal is dated 13 January 2022. The respondent did not accept the appellant's claim to be married to the sponsor, that they lived together as a family unit before the sponsor left for the United Kingdom or that they had a current, genuine and subsisting relationship. The application was therefore refused with reference to paragraphs 352 (i)(ii)(iii) and (v) of the Rules. The ECO saw no reason to grant the appellant leave to remain outside the Rules owing to the absence of compassionate factors.

The decision of the First-tier Tribunal

6. At the hearing before the First-tier Tribunal, the judge heard evidence from the sponsor. For reasons given in the decision, the judge placed no weight on the document purporting to be a marriage certificate. The judge also noted inconsistencies between the sponsor's statements at the time of his asylum claim, his oral evidence and the appellant's witness statement. The judge rejected the submission that an engagement could be considered as a marriage in Sudanese culture.

The grounds of appeal

7. The grounds of appeal raised four issues. Firstly, that the judge made an error of fact as to the questions put to the sponsor during his screening interview. Secondly, that the judge failed to consider the sponsor's explanation regarding his marital status. Thirdly, that a witness was present who was not called to be questioned and lastly, that no consideration was given to the appellant's written account of her relationship with the sponsor.
8. Permission to appeal was granted on the basis sought, with the judge granting permission making the following remarks.
 - (i) the FtT Judge erred in placing adverse weight upon the answers said to have been given as 'No' to questions 1.18 and 1.19 of the Appellant's screening interview, on the basis that the FtT Judge read them as dealing with whether he was married, when in fact the answers were marked as N/A, and in any event dealt with whether the Appellant had a spouse who was a dependent on his claim as then made.
 - (ii) the FtT Judge erred (on the basis of the assertions made in the Grounds that Abdul Rahim was in fact present (remotely) at the hearing and could have given evidence if the Respondent or FtT Judge had wished to question him) in concluding that little weight should be attached to the statement of the witness Abdul Rahim because he had not cross examined.
 - (iii) given that both matters go to the fundamental issue in the case, namely whether the Appellant was married to her Sponsor, any error, if established, was material.

9. The respondent did not file a Rule 24 response.

The hearing

10. The sponsor, Mr Maky attended the hearing and confirmed that he wished to proceed without a representative.
11. Ms Everett had not seen the grant of permission and she was given the opportunity to peruse that document. Having done so, Ms Everett stated that the respondent's view was that the judge erred in placing weight on answers never given during the screening interview. She added that the evidence of the sponsor's witness was supportive, and it was difficult to tell from the decision whether he was called to give evidence or not and as such she conceded that there was a material error of law. I also raised my concerns that the judge had not considered whether the relationship was genuine and subsisting owing to the focus on the validity of the marriage, as suggested by paragraph 6 of the grounds. In these circumstances, there was no need to hear from Mr Maky.
12. At the end of the hearing, I announced that the decision of the First-tier Tribunal contained material errors of law and that the decision was set aside. After discussing the venue of any rehearing, I decided, with the sponsor's agreement, to remit the matter to the First-tier Tribunal for a rehearing.

Decision on error of law

13. I can be brief given Ms Everett's rightly made concessions. At [12], the judge summarises the appeal hearing by noting that the sponsor attended the hearing, which was held remotely, via video link. There is no mention here of the sponsor's witness Mr Amin, who was present on the video link and who had provided a witness statement. At [23], the judge states that she has placed little weight on Mr Amin's witness statement as his evidence 'was not subject to cross-examination.' There is no indication in the decision and reasons that the judge enquired about the whereabouts of Mr Amin or another witness who had provided a witness statement but who was not present. It is suggested in the grounds that there were technical issues which could have led the judge to believe that the witness was not present. It is manifestly unfair for the evidence of Mr Amin to be effectively disregarded for the reason provided by the judge.
14. In addition, at [19], the judge relied upon the sponsor's apparent failure to state that he was married during his screening interview, as follows.

Generally in these cases where a person claims asylum, he is asked questions about his family and in this case the appellant's sponsor, Mr Faky was asked the usual questions. In his Screening Interview which he had on 8 December 2015, Mr Faky was asked at questions 1.18 and 1.19 if he had a spouse or any dependants. It was noted that no answer was given in his Screening Interview to these questions.
15. The judge's presumption as to what generally happens did not accord with the content of the screening interview in the sponsor's case. At the time of the sponsor's screening interview in December 2015, he was aged around 15 and in response to the questions regarding details of dependants and spouse/partner and children, the phrase N/A was written which indicates that these questions were not put, possibly because the sponsor was a child. The judge's presumption led her to the erroneous conclusion that the sponsor did not mention the appellant, 'because she had not formed part of his family life prior to his departure from Sudan as he was not married to her. '

16. In addition to the foregoing, there was no consideration by the judge of the appellant's relationship with the sponsor aside from the issue of the validity of the marriage. At [29], the judge concluded that as she was not satisfied that the appellant was married to the sponsor, there was 'no family life' with respect to Article 8 ECHR. That was the beginning and end of the Article 8 assessment.
17. The judge's brisk assessment was made without any consideration of the appellant's witness statement, which showed that she and the sponsor were maternal cousins who knew each other from childhood and who married when both were children. The appellant also goes into detail regarding the marriage ceremony and how the relationship has been maintained during the subsequent years including visits by the sponsor to see the appellant in Saudi Arabia.
18. For the foregoing reasons, the findings of the First-tier Tribunal are unsafe and are set aside, with no findings preserved.
19. I canvassed the views of the parties as to the venue of any remaking. Ms Everett did not express a view however the sponsor was happy for the matter to be remitted. 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 appellant was deprived of an adequate consideration of her human rights 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 to be reheard by any judge except First-tier Tribunal Judge O'Garro.

T Kamara

Judge of the Upper Tribunal
Immigration and Asylum Chamber

28 April 2023