



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: OA/14039/2012

**THE IMMIGRATION ACTS**

**Heard at North Shields  
on 21<sup>st</sup> February 2014**

**Determination  
Promulgated  
On 16<sup>th</sup> May 2014**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**YAKOB MATEWOS**

Appellant

**and**

**ENTRY CLEARANCE OFFICER - CAIRO**

Respondent

**Representation:**

For the Appellant: Ms Soltani of Iris Law Firm.

For the Respondent: Mrs Rackstraw – Senior Home Office Presenting Officer.

**DETERMINATION AND REASONS**

1. On 26<sup>th</sup> January 2012 the Appellant's application for settlement under the refugee family reunion provisions of the Immigration Rules was lodged. He wishes to join his spouse and sponsor Senait Solomon, an Eritrea national born on 1<sup>st</sup> January 1976, who has been recognised as a refugee in the United Kingdom. The application was refused by an Entry Clearance Officer (ECO) in a decision dated 28<sup>th</sup> May 2012 as the authenticity of the marriage certificate was doubted. As a result it was not accepted as evidence of a marriage that took place in 1992 and that in the absence of that document there was no satisfactory evidence that the Appellant is the pre-flight spouse of his sponsor.
2. The ECO noted that when interviewed in connection with her asylum claim in 2008 the sponsor stated she was married to a man with the name of Yakob Matewos, the same name as the Appellant states he is

known by, although the ECO also asserted that he had not provided satisfactory evidence of his identity by way of a passport or national identity card, bar a handwritten identity card apparently issued by the UNHCR. The ECO stated that such cards have little evidential value as they are issued without background checks or supporting documents. The ECO also noted that the Eritrean authorities in Sudan have recently confirmed that they are willing to issue identity documents to any Eritrean national present in Sudan regardless of their legal status. The ECO questions the failure to provide a passport or identity card and the Appellant's motive in not doing so. As the ECO was not satisfied the Appellant is the pre-flight spouse of a person recognised as a refugee it was not accepted he met the requirements of paragraph 352A (i) and (ii) of the Immigration Rules.

3. The appeal against the refusal was considered by First-tier Tribunal Judge Holmes who, in a determination promulgated on 15<sup>th</sup> July 2013, dismissed the appeal. Permission to appeal was granted by Designated First-tier Tribunal Judge Murray on 6<sup>th</sup> August 2013. On 30<sup>th</sup> September 2013 Judge Aitken, Deputy Chamber President (HESC) who was due to hear the initial hearing, noted that an issue had arisen relating to the minimum age at which an individual in Eritrea was permitted to marry which required further investigation. That hearing was adjourned and a further hearing listed on 18<sup>th</sup> December 2013 before Upper Tribunal Judge McKee.
4. Having considered the evidence and submissions Judge McKee found that Judge Holmes had erred in law such that the determination had to be set aside on the basis of a misunderstanding of the evidence in a way that was material to the outcome of the appeal. It was not possible for Judge McKee to remake the decision as time had only been allowed to deal with the issue identified by Judge Aitken. This issue had been resolved by an addendum report from Gunter Schroder who explained that one can lawfully marry in Eritrea at the age of 16, with the consent of one's parents, and that such consent was likely to have been forthcoming in the present case.
5. Judge McKee made it clear that as the parties had not been expecting to deal with the remaking of the decision it was not feasible to proceed to do so and the matter was accordingly adjourned to the hearing that came before me following the retirement of Judge McKee. The document produced by Judge McKee following the hearing in December does, however, contain two errors. The first of which is that it is described as a 'determination and reasons' whereas it is a decision on a preliminary issue and, secondly, after the heading "decision" Judge McKee has stated that the appeal is allowed.
6. This was raised as a preliminary issue at the start of the hearing and it accepted by all parties that this was not the intention of Judge McKee. I find the reference to the appeal being allowed is an error and that

such a purported finding has to be set aside as it could not have been properly made without the evidence being heard and the parties being given the opportunity to make representations.

7. Mrs Rackstraw confirmed that no document verification report has been provided by the ECO, despite reference the same in e-mails.

## **Background**

8. In his application the Appellant states that he was born on 1<sup>st</sup> January 1975 in Eritrea. He currently lives in Sudan and claims that his spouse, who he names as Senait Solomon, was born on 1<sup>st</sup> January 1976. He provides her address in the United Kingdom.
9. He states he is unemployed and is supported by money transfers from his wife in the United Kingdom. He entered Sudan in July 2011 where he was granted refugee status.
10. The Appellant claims he and his sponsor grew up together and first met as children in Eritrea. They married on 7<sup>th</sup> January 1992 and he says he last saw his sponsor in August 2011 when she travelled to Sudan to visit him. They maintain contact by her visiting him and via telephone calls.
11. The Appellant states it is an arranged marriage although he and the sponsor are not related outside marriage. He states his sponsor has children and that they have lived as man and wife following marriage in 1992, prior to the sponsor leaving Eritrea. They have two children who were living with the maternal grandparents in Eritrea who financially support them. The children were born in May 1993 and June 1995.
12. The sponsor is currently unemployed and in receipt of jobseekers allowance. She came to the United Kingdom in 2008.
13. In the sponsor's screening interview, dated 14<sup>th</sup> November 2008 and forming part of the evidence in her asylum claim, she was asked her marital status. She provides the name Yakob Matewos as that of her husband and states they married in 1992 although at that time of the interview she had not seen her husband since he was imprisoned in 2006. The sponsor confirmed details of two children who are in Eritrea and who are being looked after by family and provides the same dates of birth for the children as the Appellant did in his application form.
14. The Appellant has also provided a copy of a document described as a refugee card issued by the Republic of the Sudan Commissioner for Refugees Office (CRO). The card is in the name of Yakob Matewos

Melake born in 1975, of Eritrean nationality, his place of work and residence is described as 'freelance' and Elshagarab (2) Camp.

## **Discussion**

15. The sponsor gave detailed oral evidence and I have considered all the available material with the required degree of care, that of anxious scrutiny.
16. Both the sponsor and Appellant name their respective spouses as having the same name as the other. The sponsor has been consistent in her evidence that her husband has the same name as the Appellant and visa versa.
17. An issue arose at the hearing in that the Appellant's refugee card has a fuller name of Yakob Matewos Melake. The evidence before the Tribunal is that the inclusion of Melake is a family name and not part of the name used on a day to day basis. Habesha names, which include Eritreans and Ethiopians, appear to be constructed in a fashion similar to other ethnic groups such as found in some Arabic and other conventions. In this convention there are no family names and a person is known through their lineage with a given name followed by a father's given name and a grandfather's given name.
18. In light of the above I do not find a reference to the full name in the refugee card yet a reference to the Appellant by omission of the grandfather's name in the marriage certificate to be determinative of this appeal.
19. Judge McKee accepted that it is plausible that the parties were able to marry, notwithstanding their ages at the date of the marriage, leaving the need to consider the ECO's concerns regarding the validity of the marriage certificate. The ECO stated in the refusal notice:

I have cause to doubt the authenticity of this certificate. The certificate consists of a piece of card with photographs of the bride and groom attached with staples. The certificate has been completed by hand using a bic. I have noted the following inconsistencies with the certificate:

- Both of the applicant and sponsor's photos would indicate that neither has aged physically in the past 20 years. At the time of the wedding the applicant would have been 17 years old, and his sponsor 16 years old. Both photos would appear to depict the applicant and sponsor in recent years during adulthood.
- The photos are stamped with an authenticating wet ink stamp. The stamp covering the applicant's photo is misaligned with the stamp on the certificate. In addition the portion of the stamp covering the

applicant's photo is a different colour and lacks the detail of the remaining portion of the stamp on the certificate.

- Sight of the reverse of the applicant's photo indicates that the photo was printed on photo paper produced by "Centuria Digital". The brand name of photo paper is not in keeping with the apparent age of the photograph.

20. The Appellant relies upon a report prepared by Gunter Schroder whose expertise is not challenged before this Tribunal. The report is to be found at pages three to six of the Appellant's appeal bundle and is dated 30<sup>th</sup> June 2013. The first part of the report deals with marriage and registration of marriage in Eritrea and the second section an assessment of the validity of the marriage certificate. In relation to the certificate, Gunter Schroder notes that even now there is no standardised format for a marriage certificate issued by the Eritrean Orthodox Tewahdo Church which is prescribed and issued by its head office in Asmara and used by local churches. As before 2001 each local church or parish issued its own format although after 2001 certain standardisation has occurred with a standardised version of the Orthodox marriage certificate which has only very minor variations at local level, which is now used in many parishes [A's bundle, p 18-19, para 51]. The report contains scanned copies of marriage certificates including on page 22 the disputed certificate.

21. Gunter Schroder, in his assessment of the disputed certificate, writes:

60. The document format conforms to the common format more and more used since 2001 by local churches of the ErOTC (see specimen B above).

61. As common with such marriage certificates issued in rural areas, it is filled out only in Tigrinnic.

62. The use of the proper name only and not also the father's name for the three best men serving as witnesses is also typical of marriage certificates from a rural setting.

63. The interruption of the church seals stamped on the two photos clearly is due to the fact that because of the photos being stapled rather than glued on that there was not an even surface for stamping. I have seen other genuine church marriage certificates where the photos were stapled to the format and as a consequence the stamps of the seal were interrupted and the two parts might even be misaligned. Examined under magnifications it is clear that for each photo the upper part found on the photos ties in with the lower part on the document as such.

64. The use of the correct secular (region/subregion) and church (diocese/sub diocese (parish)) administrative units. This confirms that it was issued long after the original marriage took place. In this regard it is similar to specimen D shown above. At the time the marriage was contracted these units did not exist. As discussed above they came only into existence after the governmental administrative restructuring of Eritrea decreed in 1996. In my experience forged documents frequently are spotted because of the use of wrong, i.e. outdated secular and/or church administrative units.

65. Serejeka is one of three rural subregions (districts) of Central Region (Zone). Deki Petros is one of the villages of this district. According to consulted locals from this area living at Frankfurt there is a church named Kidane Mehret in this village.

22. It is the expert opinion of Gunter Schroder, based upon his professional experience and an assessment of the certificate, that he has no reason whatsoever to doubt that the submitted document is genuine [A's bundle page 24, para 66]. He states the document proves that a valid religious marriage was contracted which under the applicable Eritrean legislation is a valid marriage also for the secular authorities.
23. It is clear that the detail contained in the expert report based upon information relating to Eritrean issued marriage certificates, and the fact that it is common for them to be issued sometimes many years after the marriage had actually taken place using formats and/or pictures from the time of issuance and not those from the time of marriage, was not available to the ECO or not considered by him. The expert also challenges the assertion the stamps on the photographs are misaligned claiming that they actually tie into each other.
24. In relation to the reference by the ECO to the issuance of Eritrean identity documents by the Eritrean diplomatic mission in Sudan, this is stated to be "faulty" by Gunter Schroder who states that the issuance of such documents is to tie in with (a) the payment of the 2% National Tax and (b) the signing of the document in which the applicant admits that he/she has committed crimes against the Eritrean nation for which this person will be held accountable, were he/she to return to Eritrea and that understandably not every refugee is willing to sign such a document.
25. In relation to the situation of Eritrean refugees arriving in neighbouring countries and registering with the UNHCR and the respective refugee agency for the host country, it is said that often they do not carry identification documents although before a UNHCR

registration or ID card is issued to them they use are usually carefully screened by both the UNHCR and the National refugee agency.

26. Having considered the weight of evidence provided and in the absence of a document verification report supporting the assertion made by the ECO, I find the Appellant has discharged the burden of proof upon him to the required standard to prove that the marriage certificate is valid.
27. I am satisfied that as a result it is been proved that a marriage took place between the sponsor and an individual with the same name as the Appellant prior to her leaving Eritrea and that this is therefore a pre-flight marriage.
28. In relation to the assertion that whilst having the same name the Appellant is not in fact the person the sponsor married; I find having considered the evidence in the round including that arising from the sponsor's own asylum claim, the oral evidence, and the documentary evidence made available, that the Appellant has discharged the burden of proof upon him to the required standard of proof that he is the person the sponsor married and therefore her pre-flight spouse. Accordingly I am satisfied that at the date of decision the Appellant was able to meet the requirements of the relevant immigration rule and allow the appeal on that basis.

## **Decision**

29. **The First-tier Tribunal Judge was found to have materially erred in law and his decision set aside. I remake the decision as follows. This appeal is allowed.**

Anonymity.

30. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I make no such order.

Fee Award.

Note: this is **not** part of the determination.

31. In the light of my decision to re-make the decision in the appeal by allowing it, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007). I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011). I make a whole fee award.

Reasons: The Appellant has succeeded on appeal. The refusal by the ECO does not appear to have been based upon relevant country information regarding the format and practices relating to Eritrean marriage certificates and factual inaccuracies.

Signed.....  
Upper Tribunal Judge Hanson  
Dated the 16<sup>th</sup> May 2014