



IAC-AH-SAR-V1

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

Appeal Number: OA/10905/2014

**THE IMMIGRATION ACTS**

**Heard at Bradford  
On 9 February 2016**

**Decision & Reasons Promulgated  
On 3 March 2016**

**Before**

**UPPER TRIBUNAL JUDGE CLIVE LANE**

**Between**

**HANAN MOHAMMED ABDULLA ASEEL  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms N Wilkins, instructed by Pepperells Solicitors

For the Respondent: Mr M Diwnycz, a Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, Hanan Mohammed Abdulla Aseel, was born on 1 January 1982 and is a female citizen of Sudan. She appealed to the First-tier Tribunal (Judge Birkby) against a decision of the respondent dated 12 August 2014 refusing her application for entry clearance to the United Kingdom to settle pursuant to paragraph 352A of HC 395 (as amended). Judge Birkby dismissed her appeal. She now appeals, with permission, to the Upper Tribunal.
2. I am grateful to Ms Wilkins of Counsel who had clearly spent a great deal of time and preparation of this case and was able to explain to me why

confusion appears to have arisen at the First-tier Tribunal regarding various items of documentary evidence adduced by the appellant. Judge Birkby [23(i)] appears to have assumed that he had before him one “marriage document” but two translations of that document which he considered differed in ways that persuaded him that the evidence was not consistent or reliable. Ms Wilkins told me there were, on the contrary, two separate marriage documents issued by two different courts, a regional court and the High Court in Khartoum. One of these documents contained the names of the witnesses who had attended the wedding, and the other did not. It was also clear from the evidence that there were relatives “giving away” the parties to the marriage but who were not also witnesses. The judge appears not to have taken into account that evidence when he found [23(ii)] that the sponsor gave inconsistent evidence as to who had attended and witnessed the wedding. The confusion over the identity of the documents appears to have compounded the problem because the judge then gave additional weight to inconsistencies between what he considered to be two different translations of one marriage document when there were, in fact, two documents before him.

3. I am satisfied that the confusion generated at the hearing regarding the documentary evidence was such that it misled the judge and that his findings as to the credibility of the appellant’s evidence cannot stand. I therefore set aside the decision. The matter will be remitted to the First-tier Tribunal (not Judge Birkby) for that Tribunal to re-make the decision following a fact-finding exercise. I set aside all the findings of fact of the First-tier Tribunal. However, as I pointed out to Ms Wilkins, the judge recorded oral evidence from the sponsor and also a Mr Abdulrahman [23(v) and (vi)] which raised legitimate doubts in the mind of the judge as to the credibility of both witnesses. The record of what was said by both witnesses at the hearing, and which is recorded in the decision, constitutes evidence which may well be raised by the respondent at the next hearing before the First-tier Tribunal. If the witnesses attend and give evidence and seek to reconcile the apparent inconsistencies in the evidence which they gave to Judge Birkby, they may well need to explain why their evidence has changed. However, that is a matter for the First-tier Tribunal on remittal.

### **Notice of Decision**

4. The decision of the First-tier Tribunal which was promulgated on 15 June 2015 is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal (not Judge Birkby) for that Tribunal to re-make the decision.
5. No anonymity direction is made.

Signed

Date 18 February 2016

Upper Tribunal Judge Clive Lane