



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

Appeal Number: HU/06019/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 20th September 2018**

**Decision & Reasons
Promulgated
On 5th October 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

**SELAM [A]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER - PRETORIA

Respondent

Representation:

For the Appellant: Ms K McCarthy instructed by DWFM Beckman Solicitors
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Eritrea, applied for entry clearance to enter the UK to join the Sponsor who has been recognised as a refugee. The Entry Clearance Officer (ECO) refused the application in a decision dated 5th April 2017. The application was refused because the Entry Clearance Officer was not satisfied that the parties are actually married or that the marriage took place prior to the Sponsor being granted asylum. First-tier

Tribunal Judge Lawrence dismissed the appeal in a decision promulgated on 18th May 2018. The Appellant now appeals to this Tribunal with permission granted on 12th July 2018 by Judge Hollingworth.

2. The First-tier Tribunal Judge noted at the hearing that the Appellant's representative Ms McCarthy had accepted that the parties are not married in accordance with Eritrean laws or in the Sudan because they were not allowed to marry there. The case was therefore put on the basis that the Appellant is the partner of the Sponsor on the basis of a relationship akin to marriage over a period of over two years. The ECO accepted that the Sponsor named the Appellant in his application form. This was noted by the judge. The judge noted that the parties claimed that they first met in Eritrea in 2006 and next met in Sudan in 2008 and entered into a customary marriage ceremony followed by a blessing ceremony the first of which is said to have taken place on 3rd August 2008 and the second on 10th August 2008. The judge attached little weight to a letter from the administrator of the church where the blessing was said to have taken place on the basis that he did not accept that the administrator could recall the ceremony after 9 years without reference to any written record [12]. The judge considered that it was damaging to the Appellant's credibility that the photographs produced were not wedding photographs. The judge considered other matters and concluded that there was no evidence of cohabitation over the claimed period of 2008 to 2012. The judge concluded that the Respondent's refusal to grant the Appellant entry clearance was not a breach of her human rights or that of the Sponsor.
3. There are two Grounds of Appeal. The first ground contends that the judge failed to consider relevant evidence and misrecorded other evidence. The second ground of appeal is that the judge failed to give reasons for rejecting the credibility of the witness and that he misrecorded the witness's evidence.

Error of Law

4. At the hearing before me Mr Clarke conceded that there are material errors in the judge's decision. He conceded that it is quite clear that not all of the evidence was taken into account and he accepted that there were clear mistakes of fact. I agree with the concession made by Mr Clarke. There are a number of issues of concern in the decision.
5. The judge failed to take into account the evidence in the Sponsor's witness statement that the marriage covenant had been lost, and that the couple had contacted the church who had conducted the marriage for evidence of the marriage. I also note that there is no indication in the document at page 24 of the Appellant's bundle that the author is recalling the dates from memory. Accordingly the judge made a mistake of fact where he said at paragraph 12 that the author of the letter remembered the two dates without reference to a written record. It is not clear from the evidence that this is what was done.

6. I also accept that the judge has misrecorded the contents of the letter from the Church administrator at page 24 of the Appellant's bundle. At paragraph 13 the judge stated that the letter said that the couple had to 'flee the Sudan due to their circumstances', the judge considered that this was inconsistent with the Appellant's evidence elsewhere that she had left Sudan with the family she was working for. In fact the letter from the Church administrator says that the couple were regular members at the church in Khartoum "until they were forced to leave Sudan due to their circumstances". The difference in wording as recorded by the judge is capable of other interpretations and accordingly this is a material mistake of fact.
7. It is further contended in the grounds that the judge further misrecorded the evidence in relation to the photographs produced. I accept that the judge appears to have made a mistake of fact in relation to the photographs. At paragraphs 15 and 16 the judge drew adverse conclusions from the fact that some of the photographs produced were taken under the same tree and one in front of a bush and that the photographs at page 45 were taken in a studio. The judge concluded that these photographs were "staged" and must have been expensive and that;

"This does not sit well with the claim that they couple were living in limited circumstances and could not afford photographs of the wedding ceremony. Weddings are memorable events. If one could afford to take photographs in a park they have access to a camera. If one could afford to take photographs in a studio surely they have access to funds to take photographs at the 'wedding ceremony' I do not find limited circumstances to explain the lack of wedding photographs" [15].

However that fails to have regard to the evidence in the Appellant's witness statement at paragraph 39 that the photographs were taken after the ceremony although the photographs capturing the officiating of the relationship were lost and that they were wearing traditional clothes for the ceremony (paragraphs 39 to 41 of the Appellant's statement). I accept that the judge appears to have misunderstood that it was the Appellant's case that the photographs at page 45 of the Appellant's bundle were photographs taken after the wedding ceremony.

8. I also accept that the judge appears to have misunderstood or misrecorded the evidence from the witness, Mr [A]. It is recorded at paragraph 20 that Mr [A] said that he saw the couple in church and outside of church on week days. He had a stall in the market from Mondays to Fridays. The judge said "however the Sponsor told me that the Appellant worked as a maid in a family and only came to him at the weekends. Therefore Mr [A] could not have seen the couple crossing the road or walking past his stall during the week days." The judge went on to conclude that Mr [A] gave false evidence and considered that this undermined the credibility of the Appellant and Sponsor [22]. However the

judge appears to have failed to take into account the evidence from the Sponsor's witness statement where at paragraph 20 he said that the Appellant lived at her employer's house during the week and "she would come home to me on the weekends. I would see her during the week when she would shop or go to the market ..." I accept that this apparent mistake appears to have fed into the finding at paragraph 22 that the witness gave false evidence.

9. These are a number of material mistakes which impacted on the assessment of the evidence and of the credibility of the Appellant and Sponsor. These mistakes undermine the judge's findings in relation to this appeal. I therefore set aside the findings of the First-tier Tribunal Judge in their entirety as I consider that the errors made go to the heart of the issues to be determined in this case.
10. In light of the Presidential Practice Statements I take into account that the effect of the errors identified has been to deprive the Appellant of the opportunity for her case to be considered by the First-tier Tribunal and that the nature or extent of the judicial fact finding which is necessary for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008, it is appropriate to remit the case to the First-tier Tribunal.
11. The parties requested that Ms McCarthy's minute of the adjourned and resumed hearings in the First-tier Tribunal should be put before the First-tier Tribunal Judge who will deal with the case upon remittal. I agreed with that request.

Notice of Decision

The decision of the First-tier Tribunal contains a material error of law and I set it aside in its entirety.

The appeal is to be remitted to the First-tier Tribunal for a de novo hearing.

No anonymity direction is made.

Signed

Date: 28th September 2018

Deputy Upper Tribunal Judge Grimes

TO THE RESPONDENT FEE AWARD

As the matter has been remitted to the First-tier Tribunal the issue of the fee award is to be determined by the First-tier Tribunal Judge who hears the appeal.

Signed

Date: 28th September 2018

Deputy Upper Tribunal Judge Grimes