Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/10030/2015**

THE IMMIGRATION ACTS

Heard at Glasgow	**Decision & Reasons Promulgated**
On 14 February 2018	**On 03 May 2018**

Before

MR C M G OCKELTON, VICE PRESIDENT
DEPUTY UPPER TRIBUNAL JUDGE MACLEMAN

Between

REEM ADAM ABDALLA ABDALMAGID

Appellant

and

THE ENTRY CLEARANCE OFFICER, PRETORIA

Respondent

Representation:

For the Appellant: Mr Winter, instructed by Katani & Co. Solicitors.
For the Respondent: Mr Matthews, Senior Home Office Presenting Officer.

DETERMINATION AND REASONS

1. The appellant appeals, with permission, against the decision of Judge McGrade in the First-tier Tribunal, dismissing her appeal against the decision of the respondent on 12 October 2015 refusing her entry clearance as the spouse of a person granted refugee status in the United Kingdom. The decision is a short one and we set out the relevant parts in full:-

> "6. The Appellant and her sponsor are first cousins. Their mothers are sisters. The sponsor lived in Sayah Village in Darfur until 2004. Prior to his departure from Sudan between July and September 2004, he had contact with the Appellant. When the sponsor left Sudan, the Appellant was only seven years old.

Following his departure from Sudan, he spent a number of years in Libya. He left Libya around 2009 and travelled to Turkey. He spent around five years in Turkey and thereafter travelled to the United Kingdom. Following his arrival in the United Kingdom on 12th August 2014, he was granted asylum.

7. While the sponsor was in Turkey, the parties underwent a marriage by proxy in Sudan. The sponsor's father represented the sponsor in those proceedings. As at the date of that marriage, the Appellant was 13 years old.

8. The parties did not meet between 2004 and October 2016. In October 2016, they both travelled to Ethiopia and spent approximately five days together.

DECISION

9. The Appellant in this case has sought entry clearance as the spouse of a refugee. She submitted this application under paragraph 352A of the Immigration Rules. However, it was clear the Appellant could not succeed under the Immigration Rules as, on the Appellant's version of events, the marriage did not take place until after the Sponsor left Sudan. It was clearly open to the Appellant to seek entry clearance as a souse under Appendix FM. However, she did not do so.

10. The Appellant's solicitor has submitted that it would be disproportionate to refuse the appeal in accordance with Article 8.

11. In order to deal within the application outside the Immigration Rules, I require to be satisfied there is a good arguable case to do so. The Appellant chose to submit an application under a category with which she could not comply. I have been provided with no information by her solicitor as to which of the requirements for entry clearance as a spouse under Appendix FM the Appellant can meet. There is for example no information before me as to the income of the sponsor and whether this meets the minimum income requirements. I also have no information to indicate the Appellant meets the English language requirements.

12. I note at the date of the decision, the sponsor and the Appellant had not met for a period of almost 11 years. When they last met, the Appellant was only 7 years old. They claim to have been married by proxy in Sudan. When they married by proxy, the Appellant was only 13 years old. I have no information before me to establish that marriages by proxy in which one of the parties is 13 years old are lawful under Sudanese law.

13. Given the circumstances I have described above, I am not satisfied there is a good arguable case to enable me to deal with this appeal outside the Immigration Rules, in accordance with Article 8. Even if I was satisfied there was a good arguable case, it is clear the Appellant has either deliberately or inadvertently attempted to bypass the appropriate requirements under the Immigration Rules for leave to enter as a spouse by submitting an application under a category with which she could not comply. It is clearly open to her to submit an application under Appendix

> FM. In these circumstances, I would have held that any interference was proportionate."

2. Permission to appeal has been granted on the ground that the judge erred in law in the first sentence of paragraph 11: it is asserted on the appellant's behalf that she did not need to show a "good arguable case" and that the judge should, in any event, have considered her case outside the Immigration Rules. We heard submissions from Mr Winter but did not need to call on Mr Matthews.

3. Although the phrase used by the judge, might, if taken out of context, be regarded as unfortunate, it does not disclose any error of law in the present case, for there is, in truth, no shadow of substance in the claim that the appellant was entitled to entry clearance on the basis of the material before the judge and despite failing to meet the requirements of the Immigration Rules. The relationship between her and her sponsor cannot in truth be regarded as that of marriage, not only because there was and is no evidence that the marriage was valid in the place where it was celebrated, but because in any event a marriage where one of the parties is aged 13 would not be recognised in any part of the United Kingdom because it would be contrary to public policy to do so. So far as the relationship between the appellant and the sponsor is concerned, it is barely vestigial. They did not see each other between 2004 (when the appellant was 7 years old) and 2016, when they spent five days together. The only other contact of which the judge had evidence consists of telephone calls and texts which, as Mr Winter conceded in the course of his submissions, do not show any particularly close relationship between them. In these circumstances we doubt whether article 8 could even be regarded as engaged by this relationship.

4. If article 8 were to be regarded as engaged, the question would be whether the refusal of entry clearance is a disproportionate interference with the article 8 rights of either of the appellant or her sponsor. The material before the judge, and before us, is wholly inadequate to show that it would be disproportionate. First, as the Judge pointed out, there is no evidence of the sponsor's circumstances, and therefore no material which would enable a judgment to be made on what the appellant's circumstances would be if she came to the United Kingdom: only with such evidence would it be possible to ascertain whether refusing her admission would be disproportionate. Secondly, we wholly agree with the judge's conclusion that in any event there is no basis for saying that it will be disproportionate to require her, if she seeks, admission, to make the appropriate application, rather than an inappropriate one.

5. For these reason we see no basis for interfering with Judge McGrade's decision and we dismiss the appellant's appeal.

C. M. G. OCKELTON
VICE PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Date: 24 April 2018.