Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/07882/2013

THE IMMIGRATION ACTS

Heard at Field House	**Oral Determination**
On 16 July 2014	**Promulgated**
	On 08 August 2014

Before

UPPER TRIBUNAL JUDGE JORDAN

Between

SOLOMON HAGOS GEBREMEDHIN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Stevens, Legal Representative, instructed by Duncan Lewis,
Solicitors
For the Respondent: Ms A Holmes, Home Office Presenting Officer

DECISION ON ERROR OF LAW

1. The appellant is a citizen of Eritrea who appeals against the determination of First-tier Tribunal Judge Napthine promulgated on 6 March 2014 dismissing his appeal against the decision of the Entry Clearance Officer to

refuse the appellant entry clearance to join her spouse who holds leave to remain in the United Kingdom until 1 August 2016. The application was made for entry clearance as a spouse for the purposes of family reunion. It was refused by the Entry Clearance Officer on 4 February 2013 on two bases. First, paragraph 320(7A) of the Immigration Rules and then second under paragraph 352A. Paragraph 320(7A) is a mandatory basis:

> "Where false representations have been made or false documents or information have been submitted (whether or not material to the application and whether or not to the applicant's knowledge) or material facts have not been disclosed in relation to the application."

2. The basis of that stance adopted by the Entry Clearance Officer related to the submission of a marriage certificate which the Entry Clearance Officer found to a high degree of probability was false. The judge considered the marriage certificate and looked at what the respondent submitted. A copy of it had been endorsed "the marriage certificate is forget" with an indecipherable signature. Assuming that it is meant to convey that the marriage certificate is forged, there was no document verification report which had been submitted for consideration and accordingly there was little in the way of cogent material to establish why the marriage certificate was false.

3. The sponsor had given an explanation as to how the marriage certificate had come into her hands. She had obtained the document from her husband's paternal uncle so she could not speak directly as to its provenance. The judge did not make any express finding in relation to paragraph 320(7A) but it might be assumed from the absence of a document verification report that he was not satisfied that it was forged.

4. Having directed himself as to the contents of **Tanveer Ahmed (HX23022/01)**, he then said

> "The marriage certificate is unreliable at the very least. The sponsor accepts that it is not original and doubt has been cast on its authenticity even if it has not been proved to a high degree of probability that that copy marriage certificate is a forgery".

I am bound to say I do not understand what the judge was saying in relation to the authenticity of the document. He appears to be suggesting that although there was not adequate evidence to suggest that the marriage certificate was a forgery, nevertheless the evidence was sufficiently probative to show that it could not be relied upon. In my judgment that cannot be the right approach. Either the marriage certificate had been properly shown to be a forgery by credible evidence or the evidence in relation to its unreliability was not itself reliable. There was no reason why, if a marriage certificate had been provided by the appellant's paternal uncle that this inevitably meant that the marriage certificate was inauthentic, at least not as explained by the judge. All that meant was that the appellant was not able to vouch for its authenticity.

5. He then went on to deal with a number of matters dealing with the absence of a wedding reception and waiting three months to register the wedding. There was no evidence of a wedding such as photographs and accordingly he dismissed the appeal on the basis that the appellant was not married to the sponsor as claimed. There was however material that the judge simply did not consider in relation to the existence of the marriage. The judge did not recite the material that was provided by the various witnesses in relation to the marriage. There was evidence that the sponsor had visited the appellant in Uganda. There was evidence that she had been financially supported by him ever since he had fled Eritrea and made his way to Uganda as a refugee. Money receipts were produced. None of this material was assessed by the judge in the way that is now normal in cases of this nature. It may be that the marriage certificate was not determinative of the marriage but there were other sources of information which the judge was required to consider such as whether the sponsor had visited Uganda, what the purpose of that visit was, who she had met on her visit to Uganda and the time that she had spent there. There was also likely to be evidence of contact and if there was no contact then there is likely to have been some evidence as to why there was not any contact in this period. Similarly, there was material in relation to the financial support that had been provided. None of this was assessed by the judge.

6. Accordingly the focus by the judge on the marriage certificate, although he had not found that it was a forgery, amounted to an error of law which deprived the appellant of a proper determination of his appeal. In those circumstances I consider that it is appropriate for the matter to be looked at afresh in the First-tier Tribunal and I direct that the appeal is to be re-heard there rather than in the Upper Tribunal.

ANDREW JORDAN
UPPER TRIBUNAL JUDGE