



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

Appeal Number: OA/10304/2012

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 7 January 2014**

**Determination  
promulgated**

**On 15 January 2014**

**Before**

**UPPER TRIBUNAL JUDGE MOULDEN**

**Between**

**MR ABDIFATAH ABDULAHI HERSI  
(No anonymity direction made)**

Appellant

**and**

**ENTRY CLEARANCE OFFICER - NAIROBI**

Respondent

**Representation:**

For the Appellant: Mr I Palmer of counsel instructed by Fadiga & Co solicitors  
For the Respondent: Mr J Parkinson a Senior Home Office Presenting Officer

**DECISION AND DIRECTIONS**

1. The appellant is a citizen of Somalia who was born on 1 January 1980. He has been given permission to appeal the determination of a First-Tier Tribunal Judge ("the FTTJ") who dismissed his appeal against the respondent's decision of 30 April 2012 to refuse him entry clearance to join the sponsor who he claims is his wife and a refugee in this country under the provisions of paragraph 352A of the Immigration Rules.

2. The respondent was not persuaded that the appellant was married to the sponsor or that the documents submitted to show that they were married were genuine. It was considered that the application failed both under the Immigration Rules and on Article 8 human rights grounds. There had been an earlier application and appeal which had failed.
3. The appellant appealed and the FTTJ heard the appeal on 18 January 2013. Both parties were represented and oral evidence was given by the sponsor. Another possible witness was present who had submitted a witness statement.
4. The FTTJ placed no weight on the certificate from the Muslim Supreme Council in Uganda and concluded that the appellant had not established that he was married to the sponsor. It was not believed that the sponsor would send approximately 50% of her income to the appellant. The FTTJ reached the conclusion that that the marriage was not genuine or subsisting. The appeal was dismissed under the Immigration Rules and on Article 8 human rights grounds.
5. The appellant sought permission to appeal which was refused by a judge in the First-Tier Tribunal. However, on renewal to the Upper Tribunal, permission was granted.
6. The grounds submit that there was procedural impropriety. It is alleged that the FTTJ directed that the proposed witness should not give oral evidence but then went on to give his written evidence "little weight". It is argued that in fact the FTTJ gave evidence no weight. There is a witness statement from counsel in support of the allegation and a request that the FTTJ be asked for comments and the record of proceedings. It is also submitted that there was insufficient consideration of the appellant's witness statement setting out the circumstances in which the certificate from the Muslim Supreme Council was obtained and that the FTTJ effectively concluded that the marriage certificate was a forgery without giving proper reasons for doing so. There were no clear reasons for rejecting the sponsor's evidence as to the amounts which she had sent to the appellant and the FTTJ failed to have proper regard to the background evidence. It is also submitted that the errors of law in relation to the grounds under the Immigration Rules impinged on the FTTJ's consideration of the Article 8 grounds with the same consequences.
7. The Upper Tribunal Judge who granted permission to appeal directed that the grounds of appeal and counsel's witness statement be sent to the FTTJ for comments. Unfortunately this has not been done. I considered whether this could still be done if there was an adjournment. However, on making enquiries, I was reliably informed that the FTTJ is seriously ill and not likely to be able to assist within a reasonable period. I informed the representatives of this.

8. Mr Parkinson informed me that even without this information the respondent was of the view that this was a case where there were errors of law such that the decision should be set aside with no findings preserved and that it should be remitted to the First-Tier Tribunal for rehearing. I asked Mr Parkinson whether the respondent wished to submit that if there were errors of law they did not make a material difference to the outcome. He said that this was not a course which the respondent wished to follow. Although counsel who appeared before the FTTJ and had prepared the witness statement was present and willing to be cross-examined he did not wish to cross examine her.
9. It is unfortunate but in the circumstances unavoidable that whilst I have the grounds of appeal and counsel's witness statement setting out what happened at the hearing I do not have the benefit of a response from the FTTJ. I have looked at the record of proceedings but it is not sufficiently clear to me to obtain any help from it. Having seen only one side of the story I am not in a position to make a clear finding as to exactly what happened at the hearing but it is sufficiently clear that there is a genuine perception of unfairness which makes it desirable for the decision to be set aside and the appeal reheard.
10. I find that there are errors of law and I set aside the decision of the FTTJ. No findings of credibility or fact are to be preserved and the appeal should be reheard in the First-Tier Tribunal by a judge other than the FTTJ who conducted the previous hearing.

Signed:.....  
2014  
Upper Tribunal Judge Moulden

Date: 11 January