



**Upper Tribunal
(Immigration and Asylum Chamber)
OA/21316/2013**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Birmingham Employment
Centre
On 9 February 2016**

**Decision and Reasons
Promulgated
On 2 March 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE McCARTHY

Between

**TEWOLDE BERHANE WAGAYE
(NO ANONYMITY ORDER)**

Appellant

and

ENTRY CLEARANCE OFFICER (ECO), CAIRO

Respondent

Representation:

For the Appellant: Mr A Reza, of Sultan Lloyd Solicitors

For the Respondent: Mr G Harrison, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant was born on 16 August 1983 and claims to be a citizen of Eritrea. He applied to join his wife, a refugee, but his application for entry clearance under paragraph 352A of the immigration rules was refused on 21 October 2013.
2. The appellant's subsequent appeal was dismissed by First-tier Tribunal Judge O'Hagan on 16 March 2015. The appellant sought permission to appeal against that decision. First-tier Tribunal Judge Nicholson refused permission on 5 June 2015 but after renewing his application, Upper Tribunal Judge Pitt granted permission on 24 August 2015.

3. At the heart of this case lie the difficulties the appellant has in proving his identity and that he is married to his wife. The ECO disputes both claims. The appellant argues that as he is a refugee in Sudan it is difficult for him to obtain the types of evidence that would usually be expected and it is clear that this was uppermost in the mind of Judge Pitt when granting permission.
4. Before hearing any arguments, I enquired as to what facts might be agreed. Mr Reza confirmed that the appellant was not lawfully married according to Eritrean law and therefore any marriage conducted by the illegal church is not a marriage for the purposes of English law. He also accepted that the appellant had not cohabited with the sponsor for a period of over two years. In conceding these facts, it was evident that the appellant did not satisfy the provisions of either paragraph 352A or 352AA of the immigration rules on their face.
5. Mr Reza advised me that Home Office policy instructions contained a provision relating to common law marriages and that such a marriage could be accepted as a marriage for immigration purposes. The requirements for a common law marriage to be treated as a marriage are that the relationship was entered into by private agreement, that it has existed for a long time and that it seems permanent. Mr Reza submitted that the appellant should be allowed to benefit from this guidance because of his personal circumstances and those of his spouse.
6. Mr Harrison and Mr Reza agreed that whether the appellant benefited from the policy guidance depended on whether he was in a relationship as claimed. Having identified this legal framework, I heard submissions as to whether Judge O'Hagan had erred in law when determining the appeal.
7. There is no need for me to set out the competing submissions at length. Mr Reza argued that Judge O'Hagan had erred in failing to have regard to the difficulties the appellant and sponsor had in obtaining evidence which resulted from their refugee status. Mr Harrison rebutted this by saying that the judge had properly assessed the evidence and found it to be lacking. The judge was not satisfied there had ever been a marriage of any kind because there were serious doubts as to the reliability of the marriage certificate and because there were inconsistencies in other parts of the evidence. Mr Reza conceded that the sponsor's witness statement contained an inconsistency but said that was the result of a drafting error. He was unable, however, to say whether the drafting error had been brought to Judge O'Hagan's attention.
8. The grounds of appeal do not, in my opinion, identify any legal error. The grounds seek to reargue the issues decided by Judge O'Hagan. Although the grounds make a number of allegations against the findings made, they are merely dressed up disagreements with those findings.
9. Having discussed the decision and reasons statement at length with the representatives, I am satisfied that Judge O'Hagan was properly seised of the issues in dispute. He considered that the marriage certificate was not

reliable because it was not reasonably likely that an illegal church would issue such a document that might put itself and its members at risk. That is not a contradictory finding that such a church might issue a document. By making the contrast the judge is showing his open mindedness.

10. Judge O'Hagan considered other aspects of the evidence and found that there was a significant inconsistency in the sponsor's evidence that undermine her reliability. That further weakened any notion that the couple were married. The general credibility issues undermined what weight could be placed on the appellant's claimed Sudanese issued identity card. It merely recorded what the appellant told the authorities and did not demonstrate on what basis it was issued.
11. I find no evidence that the judge applied a disproportionate standard of proof. He was required to apply the normal civil standard but it is evident from his assessment that he was conscious that standard might need to be lowered for the same reason it has to be lowered in asylum appeals. The decision shows care and attention to the appellant's circumstances and those of his sponsor. However, it was not open to the judge simply to allow the appeal because of what he was told by the sponsor and appellant. The evidence was unsatisfactory and for that reason the appeal failed.
12. In reaching these conclusions I have considered Mr Reza's skeleton argument. Most is dealt with by the findings I have made but not all. The remaining issues are disposed of easily.
13. Mr Reza suggests that the judge should have adjourned to enable the respondent to verify the Sudanese document. That would be to shift the burden of proof. There is no explanation why the appellant did not seek his own verification if he thought that was necessary.
14. Mr Reza argues that the appellant should have been given the benefit of the doubt but in context that is an argument that the appellant should have been believed without question. No judge could accept that approach.
15. Mr Reza argues that the judge went too far and expected the appellant to obtain an identity document from the Eritrean authorities. That is not the case. Judge O'Hagan found that the information from the US authorities showed that the appellant's explanation for not having an identity document was doubtful. It was for the appellant to muster a stronger explanation, particularly given the adverse credibility findings.
16. As I indicated during the hearing, much of the appellant's argument is predicated on the basis that he is a refugee in Sudan. That fact has not been established since his ID card is disputed. If the appellant is not a refugee in Sudan, then many of the arguments mustered fall away.
17. For all these reasons, I find that there is no legal error in the decision and reasons statement and it stands.

Decision

There is no legal error in Judge O'Hagan's decision and reasons statement and it stands.

Signed

Date

Judge McCarthy
Deputy Judge of the Upper Tribunal