



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

Appeal Number: OA007192015

**THE IMMIGRATION ACTS**

**Heard at Taylor House**

**On 25<sup>th</sup> April 2017**

**Determination**

**Promulgated**

**On 5<sup>th</sup> May 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE  
G A BLACK**

**Between**

**MS LEILA AHMED ABDUL SHIKUR  
NO ANONYMITY ORDER MADE**

Appellant

**and**

**ENTRY CLEARANCE OFFICER (PRETORIA)**

Respondent

**Representation:**

For the Appellant: Mr M Shrimpton (Counsel instructed by UK LAW)

For the Respondent: Mr E Tufan (Home Office Presenting Officer)

**DECISION AND REASONS**

1. The appellant in this matter is Ms Shikur. I shall refer to the parties as “the appellant” and “the Respondent” who is the Entry Clearance officer /Secretary of State. This is an error of law hearing. I consider whether or not there is a material error of law in the decision of the First-tier Tribunal

(Judge Devittie)(“FTT”) promulgated by on 27th September 2016 in which the appeal was dismissed.

## **Background**

2. The Appellant is a citizen of Ethiopia. She made an application for leave to enter as the spouse/family member of a refugee under the family reunion provisions in paragraph 352A Immigration Rules. The Respondent refused the application on 27.11.2014 on the grounds that there was insufficient evidence to show that the Appellant was a part of the spouse’s pre flight family in Eritrea. There was little evidence to show that the parties were in a subsisting and genuine relationship, in particular from previous years. It was considered that Libya was not the country of habitual residence for the sponsor who fled from Eritrea. The Appellant waited until 2014 to apply to join her husband when he had been granted leave in 2012. The decision was upheld in a review by the Entry Clearance manager on 25.6.2015 with reference to Immigration Rules paragraph 352A(i)(ii)(iv).

## **FTT decision and reasons**

3. In a decision and reasons the FTT found that the Appellant was not a member of the sponsor’s family at the time he fled from Eritrea. It found that Libya was not the sponsor’s country of habitual residence which was Eritrea. It was claimed that the parties had met and married in Libya, where the sponsor had lived for 6 years prior to coming to the UK where he claimed asylum. The FTT did not accept the Sponsor’s account that whilst out shopping in Tripoli, the Appellant was taken and deported to Sudan and then she returned to Ethiopia [8(ii)]. The FTT found that the account about her exit from Libya lacked the detail that would have been given to the sponsor by his wife if they were in a genuine relationship. [8(iii)] The FTT found a lack of evidence to show previous cohabitation in Libya between 2008 -2011 as claimed. It was accepted that the sponsor mentioned his wife in his application for leave to remain, a marriage certificate was produced, there was correspondence with the Red Cross dated 2011 indicating attempts to locate the Appellant made by the sponsor and evidence that the sponsor visited the appellant in Addis Ababa in 2015 together with evidence of financial support [8(i)]. The FTT dismissed the appeal with reference to habitual residence and genuine and subsisting relationship.

## **Application for permission to appeal**

4. It was argued that the FTT erred by reaching a negative conclusion as to the genuineness of the marriage which was against the weight of the evidence. Further the FTT made a material misdirection in law by failing to consider **AA Somalia (Marriage, country of nationality)[2004] UKAIT** where it was accepted that a country of habitual residence could include a country where a person had resided for one month.

### **Grant of permission**

5. On renewal permission was granted by UTJ Rintoul who found arguable grounds that the FTT made a misdirection as to the country of habitual residence being Eritrea rather than Libya where the sponsor lived for 6 years. Further it was unclear if the FTT had put to the sponsor or to the appellant's representatives any of the negative points relied on to reach its evaluation of the evidence.

### **Submissions**

6. Mr Shrimpton cited and relied on **AA(Somalia)** and argued that the country of nationality was not confined to the country of nationality. The marriage predated the grant of asylum and habitual residence was a broader test than was applied by the FTT. The sponsor lived in Libya for an appreciable period of time and it was a place adopted voluntarily for settlement purposes. The FTT failed to put to the sponsor the matters that formed the basis of the FTT's reasoning for rejecting the appellant's evidence. There was no cross examination as there was no presenting officer and it had not been stated by the FTT that those matters were put to the sponsor by the FTT. The appellant's explanation had to be considered in the light of the civil war in Libya at the time. There was a wealth of evidence to support the genuineness and subsistence of the relationship as set out in [8(i)].
7. Mr Tufan accepted that the case law cited supported the first ground of appeal and that Libya could be treated as the country of habitual residence, notwithstanding that the sponsor had not fled from Libya in fear of persecution. The FTT ought to have put the questions to the sponsor but there was insufficient evidence overall to show that it was a genuine or subsisting relationship. Any error was not therefore material and the FTT made adequate findings to sustain the decision reached.

### **Discussion and conclusion**

8. At the end of the hearing I confirmed my decision that ground one was made out and that the FTT erred by failing to treat Libya as a country of habitual residence given that the sponsor lived there for 6 years before being granted refugee status. I reserved my decision on the second ground.
9. I am satisfied that the FTT erred in failing to put to the sponsor or the appellant's representative the negative points taken by the FTT in support of its decision. There was no presenting officer present and so it was incumbent on the FTJ to raise concerns at the hearing thus allowing for an opportunity to respond. This was material in the light of the fact that

there was considerable evidence in support of the appellant's claim, which the FTT set out at [8(i)] including mention of the spouse in the sponsor's asylum application, the marriage certificate showing date of marriage as 16.6.2010, correspondence from the Red Cross dated 2011, and remittances from the sponsor to the appellant between September 2015 and August 2016. The appellant claimed that she traced the sponsor in 2014 and it was the sponsor's unchallenged evidence that he visited the appellant in 2015.

### **Decision**

10. There are material errors of law disclosed in the decision which shall be set aside.
11. At the end of the hearing I proposed that if I were to find an error of law on ground two, the matter could be dealt with by the UT or remitted to the FTT for a re hearing. I have decided to re make the decision without further hearing. I heard full submissions from both representatives. Whilst acknowledging that one of the errors was the failure to put matters to the sponsor, I nevertheless take the view that there is more than sufficient evidence produced by the appellant to show on balance of probabilities that she is in a genuine and subsisting relationship with the sponsor. None of which was challenged by the respondent in the refusal letter save for the marriage certificate which could not be verified. Looking at all of the evidence in the round in particular that predating the more recent reunion, I am satisfied that the appellant has shown that she married and lived with the sponsor in Libya until 2011 and that they became separated until 2014. There was evidence of current contact in the form of financial remittances and a visit in 2015, together with evidence of past references to the marriage both in the sponsor's asylum application screening interview and asylum interview and correspondence with the Red Cross.
12. **Accordingly I allow the appeal on immigration grounds.** The appellant has met the requirements of paragraph 352A and is entitled to entry clearance as the spouse of a person with limited leave to remain as a refugee.

Signed

Date 3.5.2017

GA Black  
Deputy Judge of the Upper Tribunal

NO ANONYMITY ORDER  
NO FEE AWARD

Signed

Date 3.5.2017

GA Black

Deputy Judge of the Upper Tribunal