



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/23443/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Royal Courts of Justice, Decision & Reasons Promulgated
Belfast**

On 5 June 2019

On 25 June 2019

Decision given orally at hearing

Before

**THE HON. MR JUSTICE LANE, PRESIDENT
UPPER TRIBUNAL JUDGE RINTOUL**

Between

**IFRAH ALI SAID
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Brennan, Martin Brennan Solicitors

For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of the First-tier Tribunal, which followed a hearing in Belfast on 19 April 2018 in which First-tier Tribunal Judge Fox dismissed the appellant's human rights appeal following a decision of the respondent to refuse her human rights claim and refuse the appellant entry clearance to the United Kingdom as the spouse of a person present and settled in the United Kingdom and recognised in this country as a refugee under the Refugee Convention.

2. The judge heard evidence from the sponsor and also from a witness. He described the core of the dispute as revolving around the fulcrum, as he put it, of the lack of proof of the marriage. The judge was concerned, as we see at paragraph 13, that in his view no attempt had been made by the appellant to return to the Somali Embassy in Ethiopia to have her identification certified.
3. At paragraph 16, the judge said it would in his view have taken very little for the Embassy to undertake a process which they would have been used to performing; namely, to certify the identity of one of the nationals.
4. At paragraph 17, it was recorded by the judge that the sponsor's cross-examination indicated that he and the appellant did not attend the Embassy with a view to asking them to carry out this task.
5. At paragraph 18, the judge stated that over and above this problem hovered an issue as to the source of the information regarding the claimed marriage. It was in the judge's view not made clear, either by the sponsor or by the evidence of the witness, who the people were who actually witnessed the ceremony, and why they had not been required to make statements.
6. At paragraph 21 the judge said:

"What is required is that an agency that can be accepted as capable of so doing certifies the appellant's identity as claimed. The obvious source of that certification would have been the Somalian Embassy in Ethiopia. The failure of the appellant to approach the Embassy has the effect of mitigating against her credibility and the validity of the claimed marriage. This remaining hurdle is all is required to ensure a successful outcome in her application."
7. The application for permission to appeal was put forward on a number of grounds. In his submissions to the Tribunal today, Mr Brennan began his critique of the judge's decision by reference to his own Record of Proceedings, saying that the judge was mistaken in saying what he had about the visit, or lack of visits, to the Ethiopian Embassy and what had been done there.
8. The questions and answers in that Record, attached to Mr Brennan's witness statement, make it plain that the sponsor was asked about this issue in detail. He answered that his wife went to the Embassy with everything she had for them to identify her and that she had been told by the Embassy that a Somali Community ID was enough and she did not require another ID. When she went to the UK Embassy she had, according to the sponsor, taken all her documents. There was no one there who told her from the beginning that they did not accept a Somali Community ID.
9. As for obtaining a letter from the Somali Embassy, again the sponsor told the judge that his wife went several times and they did not give her anything and eventually she gave up, since "when you are from a small clan, he said, no one values you".

10. None of this finds any expression in the decision of the judge. It is apparent to the Upper Tribunal that the credibility of the appellant's case was severely affected by the mistaken assumption of the judge, as just described. That error is material because there was a wealth of evidence before the judge, dealing with not only the issue of identification, which seems to have preoccupied the judge, but also the evidence as to the marriage of the sponsor and the appellant. Reference is made in paragraph 1 of the grounds to some of the more salient aspects of the evidence. That evidence is to be found in an appellant's bundle, which runs to more than 200 pages.
11. Ms Cunha for the respondent submitted that none of this was in effect material because it could be inferred from the decision of the judge that, although he concentrated upon the issue of identification of the appellant, he also in effect found that there was not any evidence that was sufficient to satisfy him on the balance of probabilities that the appellant and the sponsor had married in Somalia before the appellant left to claim asylum: namely in 2005, when the marriage is said to have taken place.
12. We respectfully reject that submission. It is difficult to infer such a finding on the part of the judge but, even if one could, his errors regarding the credibility of the appellant and the sponsor nullified any findings that he made regarding the date and nature of the marriage. The judge had heard evidence from the sponsor as to the date of the marriage. The judge had also heard evidence from a witness who said that she had been invited to the wedding. There was a certificate issued in respect of the marriage by the Embassy of Somalia in Ethiopia that recorded the marriage as having taken place in 2005. The respondent had cast doubt on the genuineness of the information contained in that certificate because the certificate was only obtained in 2016.
13. There was, however, evidence before the judge that could, if properly considered, have overcome that problem. We say this, bearing in mind what is said in the Family Reunion Home Office Guidance, which was helpfully supplied to us by Ms Cunha. There, at page 21 of 31 we see what we respectfully regard as sensible statements concerning the difficulties that people in the position of the appellant face in providing documentary evidence. Those difficulties are plainly exacerbated in the case of a country such as Somalia, which has suffered from significant lawlessness for a considerable period of time and certainly was suffering from that in 2005.
14. For those reasons, we have decided to set aside the decision of the judge and to re-make the decision ourselves. To that end we heard evidence from the sponsor who spoke in English and who, we are satisfied, understood the questions being put and was able to answer them satisfactorily in that language. We did not hear evidence from the witness but Ms Cunha helpfully indicated that the only question that she had about the witness's evidence; namely whether the witness had actually attended the wedding of the appellant and the sponsor in 2005, could be put to the sponsor. That question was indeed put and he gave a detailed account of

the reason why the witness did go to the wedding, having been invited to it. That account concerned the relationship between the witness and the witness's sister who, was known to the sponsor,

15. Overall, we have come to the conclusion that the sponsor was a witness of truth. We have regard to the evidence as a whole. Notwithstanding the concerns raised by the respondent, in particular those relating to the date on which the marriage certificate was obtained, we are satisfied that a marriage took place between the appellant and the sponsor in 2005. It is quite understandable, for the reasons we have given, why there may not have been any formal documentary material relating to that marriage, produced in 2005. It is also noteworthy that the sponsor referred in some detail to his wife when he came to the United Kingdom to claim asylum.
16. Even if we were wrong about that, however; and even if the evidence did not show on balance that the parties had actually been married, it is manifest that there has been at the relevant time a relationship between them. As Upper Tribunal Judge Rintoul pointed out at the close of submissions, the relevant Immigration Rules changed in November 2016. Paragraph 352A of the Rules now covers a relationship akin to marriage that has subsisted for at least two years. Ms Cunha quite correctly appreciated that point and its significance.
17. In all the circumstances, therefore, we are satisfied that the requirements of the Immigration Rules relating to refugee family reunions, as they bear upon this particular appellant, are met in the present case. They are met by the fact that it has been shown on balance that the appellant and the sponsor were married in Somalia in 2005. Alternatively, the Rules are met for the reason given by Upper Tribunal Judge Rintoul.
18. That being so, it is clear that the respondent can point to no aspect of his immigration policy as a justification for interfering with the enjoyment of Article 8 family life between the appellant and the sponsor in the United Kingdom. Accordingly, to refuse the human rights claim and the related refusal of entry clearance would amount to a disproportionate interference with their Article 8 rights. We therefore re-make the decision by allowing it on human rights grounds.

Decision

The appeal is allowed.

Signed

Date 22 June 2019

The Hon. Mr Justice Lane
President of the Upper Tribunal
Immigration and Asylum Chamber