IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005965
First-tier Tribunal No: EA/06345/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 25 May 2023

Before

UPPER TRIBUNAL JUDGE SMITH

Between

SAYNAB MOHAMED MOHAMUD
(NO ANONYMITY DIRECTION MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:
For the Appellant: The Appellant did not attend and was not represented
For the Respondent: Mr N Wain, Senior Home Office Presenting Officer

Heard at Field House on Monday 15 May 2023

DECISION AND REASONS

BACKGROUND

1. The Appellant appeals against the decision of First-tier Tribunal Judge McMahon promulgated on 27 January 2022 ("the Decision") dismissing the Appellant's appeal against the Respondent's decision dated 10 March 2021 refusing her application for a family permit as the spouse of Mr Mohammed Ahmed Saleh ("the Sponsor") under the EU Settlement Scheme ("EUSS"). The Appellant is a national of Somalia currently residing in Turkey. The Sponsor is a national of Finland residing in the UK.

2. The Respondent refused the Appellant's application on the basis that she was not satisfied that the Appellant was married to the Sponsor as claimed. The Appellant had failed to provide evidence of the marriage.

3. At the heart of the appeal is a marriage certificate dated 10 November 2020 ("the Marriage Certificate"). The Respondent reviewed her decision in light of that evidence but pointed to various inconsistencies in the document and maintained her refusal.

4. The Judge considered the Marriage Certificate and the other evidence put forward on behalf of the Appellant as purporting to show that she is married to the Sponsor as claimed. The Judge rejected that evidence and dismissed the appeal.

5. The Appellant appeals on two grounds as follows:

   Ground 1: The Judge gave weight to immaterial matters.
   Ground 2: The Judge's assessment of the evidence was irrational.

6. Permission to appeal was granted by First-tier Tribunal Judge R Chowdhury on 13 October 2022 in the following terms so far as relevant:

> "..2. It is arguable that the Judge did not properly assess whether the marriage certificate was valid. Further it appears the Judge, by arguably an unknown standard, has found the content of the WhatsApp messages are not those to be expected of a married couple.
> 3. Permission is granted on all grounds."

7. The Respondent filed a Rule 24 reply dated 2 November 2022 seeking to uphold the Decision (although I did not have that document until the hearing itself).

8. The matter comes before me to decide whether the Decision does contain an error of law. If I conclude that it does, I must then decide whether the Decision should be set aside in consequence. If the Decision is set aside, I must then either re-make the decision in this Tribunal or remit the appeal to the First-tier Tribunal for re-determination.

9. I had before me a core bundle of documents relating to the appeal, the Appellant's bundle ([AB/xx]), supplementary bundle and second supplementary bundle ([ABS2/xx]) which were before the First-tier Tribunal together with the Appellant's skeleton argument and the Respondent's bundle which were also both before the First-tier Tribunal.

10. At the start of my hearing list, neither the Sponsor nor the Appellant's representatives were in attendance (the Appellant could not be as she is presently outside the UK). The Tribunal clerk made enquiries of the Appellant's solicitors. The person with whom he first spoke said that the Appellant had asked for the error of law hearing to proceed on the papers. There is no communication on the Tribunal's file making any such request. The Tribunal clerk therefore sought confirmation of the position by email. In response, an email was sent by the solicitors at 1016 hours indicating that they were no longer acting and were not instructed to attend the hearing. There had been no earlier communication to that effect, despite the notice of hearing having been sent on 18 April 2023. I have considered whether it is appropriate to

make a direction for the solicitors to explain their conduct in that regard. I would have done so if the hearing had to be adjourned in consequence.

11. As it was, though, the Tribunal file shows that notice of the hearing was sent not only to the solicitors but also to the Sponsor at both an email address (email) and a postal address which is the address given in the solicitor's email (home address). I am therefore satisfied that the Sponsor (and therefore the Appellant) was notified of the hearing and could have attended if, as is said to be the case, the Sponsor was no longer instructing solicitors to act on behalf of the Appellant.

12. I invited Mr Wain to make submissions as to whether the hearing should proceed or be adjourned. He submitted that the hearing should proceed. I carefully considered whether I should adjourn. However, as indicated above, I was satisfied that due notice was given to the Sponsor who could have attended if he wished to do so. The Appellant could not have attended in any event as she is outside the UK. I therefore decided that it was in the interests of justice to proceed. I confirm that I have taken into account the entire substance of the Appellant's written grounds when deciding the appeal.

13. Mr Wain made brief oral submissions adopting the Respondent's Rule 24 Reply. Having heard those submissions, I indicated that I would reserve my decision and provide that in writing which I now turn to do.

DISCUSSION

14. I deal with the grounds in the order they are pleaded.

Ground 1: Irrelevant considerations

15. The Appellant submits that the Judge has taken into account issues which were not relevant, namely whether the relationship between the Appellant and the Sponsor is a genuine one or is a marriage of convenience. This relates in particular to what is said at [32] of the Decision.

16. As the Appellant's grounds accept, the Judge was aware that the only issue was "a single, narrow point as to the validity of the marriage certificate" ([10] of the Decision). That point is repeated at [31] of the Decision. The Judge concluded in the opening words of [32] of the Decision that the Appellant had not proved that the Marriage Certificate was reliable. It is of particular note however that he went on to say that the Appellant had also not demonstrated "that reliance may be placed on it when considering all the evidence in the round".

17. That then is the context against which what is said at [32.1] to [32.4] of the Decision must be assessed. When read in that context, the assessment of the evidence carried out by the Judge is not irrelevant.

18. The Judge considered the witness statements of the Appellant and Sponsor at [32.1] of the decision but found that those were "devoid of any detail about their relationship or their marriage". Whether there was additional evidence of, in particular, the marriage having taken place was clearly relevant to the issue whether the Appellant and Sponsor are married as claimed.

19. At [32.2] of the Decision, the Judge found that the evidence of the WhatsApp messages was "simply not consistent with what one would expect from parties who are married and intend to live together as husband and wife". Contrary to what is asserted in the grounds, that is not a finding that the relationship is not genuine but that the evidence does not support a finding that the marriage has occurred as claimed.

20. Paragraph [32.3] (about which no complaint is made under this ground) is central since it concerns the Marriage Certificate itself.

21. Paragraph [32.4] reads as follows:

> "Finally, the only evidence of the marriage comes from the Appellant and her Sponsor. The absence of any independent evidence (despite others apparently being present) or documentation confirming the Sponsor travelled to Somalia in March 2020 casts doubt on the Appellant's case".

22. As is clear when those paragraphs are read together and in the context of the opening words of [32] of the Decision, the Judge was simply considering all the evidence taken as a whole in order to assess whether, in spite of the concerns about the validity of the Marriage Certificate, the marriage could be found to have occurred as claimed.

23. The first ground does not disclose any error of law.

Ground 2: The Judge's assessment of the evidence was irrational

24. The Appellant begins by asserting that she had produced a Marriage Certificate and verified it via the Court in Somalia. She says that "she produced the manner" by which that verification (by the solicitors) had taken place.

25. The Marriage Certificate appears at [AB/24-25]. That includes a first translation of the certificate. At [ABS2/1-3] appears a further copy of the Marriage Certificate and a second translation. The Tribunal was invited to disregard the first translation due to what were said to be translation errors. At [ABS2/4-6] is a brief exchange of emails between the Appellant's solicitors and a person at a "gmail" e-mail address purporting to confirm the authenticity of the Marriage Certificate.

26. The Judge set out what the evidence showed at [19] to [23] of the Decision. He recorded the Sponsor's oral evidence in cross-examination ([25]). There can be no criticism of what is there said which reflects the evidence as presented.

27. The Judge properly directed himself as to the law which applies to this appeal at [11] to [18] of the Decision. Of particular note is the reference to the evidence which is required to show a family relationship in applications made under the EUSS ([15]) and that the burden of proving the reliability of the evidence is on the Appellant to a standard of balance of probabilities ([17] and [18]). No criticism is or could be made of that self-direction.

28. Having considered the evidence about the Marriage Certificate, the Judge made the following finding in that regard:

> "32.3. Thirdly, the document purporting to be the marriage certificate does contain a number of deficiencies. There is also no detailed explanation about precisely how that certificate was obtained some 8 months after the marriage apparently took place. The Sponsor attempted to explain some of those deficiencies but there is no objective evidence and there are too many deficiencies and the explanations are too incredible to accept when considering all the evidence in the round. In any event, to have a security situation where, for security reasons, the judiciary of Wardhigley District Court are required to sit at Hamarweyne District Court on two occasions, and for those two occasions to coincide with the dates where documents were issued in relation to this matter is simply not credible. The correspondence between the Appellant's solicitor and the court is sent to 'gmail' account, and it is noted that the spelling of Wardhigley in that email address is inconsistent with the spelling used in all of the formal documents. No explanation has been given about this discrepancy. The supplementary information contained in the Second Supplementary Bundle does explain the fact that the name of the district did not get changed officially through a Bill of Parliament, but fails to address how there is the seal of a different court on the marriage certificate and subsequent declaration document."

29. The Appellant relies on the guidance given in QC (verification of documents; Mibanga duty) [2021] UKUT 33 ("QC"). She submits that the Respondent "chose to mount" a challenge based on Tanveer Ahmed [2002] UKIAT 00439 ("Tanveer Ahmed") rather than seeking to authenticate the Marriage Certificate in accordance with the guidance in QC.

30. The Respondent points out that the guidance in QC makes clear that Tanveer Ahmed "remains good law as regards the correct approach to documents adduced in immigration appeals" and that "[a]n obligation on the respondent to take steps to verify the authenticity of the document relied on by an appellant will arise only exceptionally (in the sense of rarely)". Such obligation arises only "where the document is central to the claim; can easily be authenticated; and where….authentication is unlikely to leave any 'live' issue as to the reliability of its contents". The guidance in QC goes on to make the point that "[i]t is for the Tribunal to decide, in all the circumstances of the case, whether the obligation arises".

31. As Mr Wain pointed out in submissions, the Respondent did not assert that the Marriage Certificate was a forgery but rather that it was not reliable evidence on which the Appellant could rely to show that the marriage had taken place as she claimed. As such, this was a situation within the realms of Tanveer Ahmed rather than placing any obligation on the Respondent to authenticate the document.

32. Moreover, as the Respondent points out in her Rule 24 Reply, the burden of showing that the Marriage Certificate was a reliable document was on the Appellant.

33. For those reasons, the Judge was entitled to form a conclusion whether the Marriage Certificate was reliable evidence applying Tanveer Ahmed. The Judge directed himself in relation to Tanveer Ahmed and QC at [17] of the Decision. He directed himself appropriately in that regard.

34. At [32.3] of the Decision, the Judge provided adequate reasons for his finding that the Marriage Certificate was not a document on which weight could be placed. His assessment of that evidence there and in the context of all the evidence at [32] more generally was not irrational.

35. The Appellant also relies in her grounds on the judgment in R (oao Nooh) v Secretary of State for the Home Department [2018] EWHC 1572 (specifically [51] and [52] of that judgment).

36. There are a number of reasons why reliance on that case does not disclose any error in the Judge's reasoning.

37. First, as Mr Wain pointed out, the Appellant did not place any reliance on this case before the First-tier Tribunal. There is no reference to it in the Appellant's skeleton argument. The Judge was not therefore required to consider it (absent obvious relevance).

38. Second, the passage of the judgment relied upon simply records evidence provided by the applicants in that case. True it is that the Judge accepted that this showed that there may be multiple ways of spelling, in particular names of persons, in Somalia and that spelling errors in that regard are not uncommon but that reflects the underlying issue in that case and is certainly not expert evidence or a conclusion which can be relied upon in other contexts.

39. Third, and following on from that, the spelling inconsistency relied upon by the Judge related to the name of the Court when compared with the spelling of that area in the "gmail" address. A distinction in spelling of a formal organisation or authority is very different from an inconsistency in spelling of an individual's name.

40. Fourth, and more importantly, the Appellant's solicitors did not explain that inconsistency when providing the evidence purporting to show their verification of the Marriage Certificate.

41. The Judge was entitled to reach the conclusion he did about the reliability of the Marriage Certificate having regard to the certificate itself, the documents surrounding that certificate and in the context of all the evidence. The Judge provided adequate reasons for his conclusion.

42. The Appellant's ground two is merely a disagreement with the conclusion reached.

CONCLUSION

43. The Appellant has failed to show by her two grounds that the Decision contains errors of law. I therefore uphold the Decision with the consequence that the Appellant's appeal remains dismissed.

NOTICE OF DECISION

The decision of First-tier Tribunal Judge McMahon promulgated on 27 January 2022 does not contain errors of law. I therefore uphold the decision with the consequence that the Appellant's appeal remains dismissed.

L K Smith

Upper Tribunal Judge Smith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

17 May 2023