



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

Appeal Number: UI-2021-001817  
HU/02976/2021

**THE IMMIGRATION ACTS**

**At: Manchester Civil Justice Centre  
On: 9<sup>th</sup> December 2022**

**Decision & Reasons Promulgated  
On: 16<sup>th</sup> February 2023**

**Before**

**UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**Zebib Keleta Tesfahiwet  
(no anonymity direction made)**

Appellant

**And**

**Secretary of State for the Home Department**

Respondent

**For the Appellant: Mrs Johnstone, Broudie Jackson and Canter**

**For the Respondent: Mr Bates, Senior Home Office Presenting Officer**

**DECISION AND REASONS**

1. The Appellant is a national of Eritrea born in 1998. She seeks entry clearance to come to the United Kingdom to be reunited here with her refugee husband, the Sponsor Mr Redae Hidru.

**Case History**

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2. The Appellant applied for entry clearance on the 14<sup>th</sup> November 2020. The application was refused on the 22<sup>nd</sup> February 2021 in the following terms:

It was concluded in your previous visa applications (Ref: 310494 and 363918) that you were 16 years and 6 months old when you claim to have married your sponsor. It was outlined that the legal age of marriage in Eritrea is 18 years old. As your sponsor states in his statement in support of your application, and in his previous statement in support of your previous application, it is acknowledged that there are exceptional circumstances where a couple can legally marry under the age of 18. You have submitted a letter from an Eritrean Church in Leicester in support of this stating that it is legal to marry in Eritrea at the age of 15. However, you have not demonstrated that you and your sponsor have satisfied the requirements in order to be allowed to marry under the legal age, and you have not demonstrated that your marriage was legally recognised in Eritrea under these conditions. It is therefore considered that you have not demonstrated to the required standard that you were legally married in Eritrea.

3. The Appellant appealed and on the 8<sup>th</sup> October 2022 the matter came before the First-tier Tribunal (Judge Herwald). Judge Herwald dismissed the appeal in his decision of the 3<sup>rd</sup> December 2021.
4. The Appellant appealed to this Tribunal. On the 27<sup>th</sup> September 2022 the matter came before myself and Deputy Upper Tribunal Judge Sills. Mr Bates, who appeared for the Respondent that day as he does today, accepted that the decision of Judge Herwald did contain a material error of fact, namely that the judge appeared to be under the impression that the Appellant was 15 when she married her husband. He accepted that this misapprehension probably coloured the judge's view of the case generally, and certainly impacted on his assessment of proportionality, since in that part of the reasoning he makes reference to the public policy concerns about child marriage. Accordingly the decision of Judge Herwald was set aside by consent: Judge Sills issued a written decision to that effect on the 18<sup>th</sup> October 2022. It has now come back before me for the decision in the appeal to be re-made.

### **The Issue**

5. There is one issue in the appeal. That is whether the marriage contracted by the Appellant and her husband before he fled Eritrea is lawful. If it is, then she must be granted entry clearance pursuant to the Respondent's refugee family reunion policy, as set out in the Immigration Rules.

## **Discussion and Findings**

6. In the hiatus between the hearing in September and today the Appellant has obtained an expert report on the applicable law in Eritrea. Mr Amanuel Yohannes is a lawyer qualified in Eritrea who for 10 years sat as a judge in that country. He is the expert cited in the refusal letter, and is the author of an article on marriage laws in Eritrea that was before the First-tier Tribunal. His report is dated the 22<sup>nd</sup> October 2022.
7. Mrs Johnrose draws two points from Mr Yohannes' evidence.
8. The first is that there are exceptions to the Eritrean law which mandates that persons must have attained the age of 18 before they marry. One of those exceptions is where the parents of a 16 or 17 year-old consent to their marriage. Mr Yohannes explains that the relevant provisions continue to be found in the Transitional Civil Code of Eritrea (TCCE). This was brought into force in 1991 after the independence referendum and is an adaptation of the Ethiopian Civil Code which had operated hitherto. The TCCE stipulates that the minimum age for marriage in Eritrea is 18, but there are a number of exceptions to this rule. One of those exceptions is where the guardians of the minor agree, or where a council acting on the minor's behalf give consent. Mr Bates accepts that I can proceed on the basis that this is the applicable legal provision. If I accept that the Appellant's parents (here agreed to be her guardians) consented to the marriage, then the appeal must be allowed since she will have proven that her marriage is regarded as valid in Eritrea.
9. It is the case for the Appellant that her parents did so consent. The evidence she relies upon in this regard is as follows:
  - i) Her own signed detailed statement in which she explains that her parents and Mr Hidru's parents are very close and were happy to consent to the marriage, which they organised together;
  - ii) The Sponsor Mr Hidru's evidence is to the same effect. He and his wife knew each other growing up, liked each other and married with the consent of their mutual families, who participated in the wedding;
  - iii) Photographs of the wedding show an elaborate and traditional ceremony, with various people in attendance, and the couple with the officiating priest. In his oral evidence before me the Sponsor identified that in three of the photographs his wife's family can be seen. His mother-in-law

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appears in three and there is one which is just of the couple and her parents;

- iv) A letter, signed by Mr Keleta Tesfahiwot and Mrs Zewdi Zeweldi and dated 27<sup>th</sup> November 2022 in which the writers state that they are the Appellant's parents. They confirm that before the wedding they went to visit the priest in their home church to inform him that their daughter was under 18, but that they were "happy and willing to let her marry Redai Hidru" with their blessing. The priest informed them that if it is their wish, marriage under the age of 18 is allowed, and there is no problem with it;
- v) The original application in which her parents are named – this is relied upon inasmuch as it confirms the names shown on the subsequent letter at (iv).

10. Mr Bates submitted that this evidence, even considered cumulatively, is insufficient to discharge the burden of proof. He asked me to note that the letter, purportedly signed by the Appellant's parents, was only belatedly produced and is not supported by any identity documents which would enable me to know that the letter is from who it says it is from. Although Mr Bates was unable to say what form of identification that might be (he agreed that these Eritrean nationals may not be in possession of passports) he submitted that it diminished the weight that I could attach to the letter. Nor was the means by which it came to be in the bundle (said to be by email) verified by the production of evidence.

11. Mr Bates is correct to say that there is a limit to the weight that I can attach to the letter purportedly from the Appellant's parents. Not just because of the lack of supporting identity documentation, but because there is always going to be a limit to the weight to be attached to untested written evidence. I am nevertheless satisfied that the burden of proof is satisfied, when all of the evidence is weighed together.

12. The Sponsor is a recognised refugee. His evidence, and that of the Appellant, is detailed and straightforward. They grew up together and their families were close. He was due to go away to the army, and they decided that they wanted to get married before he went. A wedding took place. They lived together, as is customary, in his family home. He went to perform his military service, decided he could not live with it, and fled Eritrea. As soon as she could get out of Eritrea she was able to make an application to join him. The wedding photographs strongly support this evidence. They show lots of different people posing with the couple, who are wearing traditional wedding attire and are in a number of photographs shown with the priest. The strength of that evidence is such that the ECO never

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doubted that the Appellant is who she says she is, that the couple are in fact married, or that this is a genuine marriage.

13. Now however, for some reason, I am asked to doubt the equally detailed and straightforward evidence of the Appellant and Sponsor that all of this took place with the consent of her parents. Other than the possibility that this is a belated fabrication by two hitherto credible witnesses, there is no foundation for this submission at all. In truth I have absolutely no reason to doubt the evidence of the Sponsor that his mother and father-in-law can be seen in these pictures, posing as if it is their daughter's wedding day. I infer from the photographs that Mr Tesfahiwoot and Mrs Zeweldi were there by choice, and that they would not be there if they had not consented to their daughter's marriage. I would also be very surprised if such an elaborate wedding would have taken place at all, had the bride's family not been part of it. It is against that background that I assess the letter said to be from them. Whilst it is true that it could have been produced earlier, and it is not supported by identity documents, it confirms in writing what the rest of the evidence says. All of the evidence points one way.
14. The burden of proof having been discharged on this point, I allow the appeal on the grounds that the marriage is legally valid in Eritrea because there, as in England and Wales<sup>1</sup>, a 16 year old can legally marry with their consent of his or her parents.
15. It follows that I need not really address Mrs Johnrose's alternative submission based on Mr Yohannes' evidence. In his report he points out that the marriages of under 18 year-olds fall into a peculiar position in Eritrean law. Although not permitted (absent an exception like that discussed above) they are not void *ab initio*. If the marriage survives until both parties attain the age of 18 without a court having declared it invalid, the original defect is corrected and the marriage becomes valid. Mrs Johnrose submitted that since there is no evidence that a court in Eritrea has made such a declaration of invalidity, I could also allow the appeal on the alternative proposition that any legal defect in the marriage has now been corrected by the Appellant attaining the age of 18 and continuing to give her consent.
16. Mr Bates was not prepared to accept that this was a correct interpretation of the law. Although Mr Yohannes is cited in the refusal letter as an expert, and the evidence in his article unchallenged before the First-tier Tribunal, Mr Bates took the position that in respect of this specific point he would want the TCCE translated and produced in evidence so that the Respondent could read the whole thing and work out if what Mr Yohannes was saying was correct.

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<sup>1</sup> At least until the 27<sup>th</sup> February 2023 when The Marriage and Civil Partnership (Minimum Age) Act 2022 comes into effect.

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17. I am quite prepared to accept that Mr Yohannes is a reliable reporter of the Eritrean family law that he spent ten years imposing as a judge. I do not think an English translation of the entire TCCE is necessary, since Mr Yohannes has set the relevant parts out. I am less inclined to make a finding in the Appellant's favour on this point however. That is because in order to succeed she would have to go through the burdensome task of proving a negative. Although not impossible for her I should imagine it would be quite difficult, since both she and her husband are now refugees from Eritrea so are in no position to be approaching the Eritrean courts to ask for confirmation that no declaration has been made. In those circumstances I make no finding on this alternative limb of her case.

### **Decisions**

18. The appeal is allowed on human rights grounds: the Appellant meets all of the requirements of paragraph 352A of the Immigration Rules.

19. The Appellant made her first application to be reunited with her husband in October 2019. Because of the pandemic it took over 18 months for her appeal to come before a Judge, and the onward appeals process has taken a further year. In view of the fact that this is a refugee family reunion case, and the long separation of the parties, I exceptionally ask that the Entry Clearance Officer use their best endeavours to issue the Appellant with a visa as soon as possible.

20. There is no order for anonymity.



Upper Tribunal Judge Bruce  
12<sup>th</sup> December 2022