



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case Nos: UI-2022-003886
UI-2022-003885
UI-2022-003604
First-tier Tribunal Nos:
HU/55003/2021
HU/55002/2021
HU/55004/2021

IA/12539/2021 & Others

THE IMMIGRATION ACTS

Heard at Field House (Hybrid)
On the 15 December 2022

Decision & Reasons Promulgated
On the 14 February 2023

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL G A BLACK

Between

MR FERAZ HASSEBU ADEM (& 2 DEPENDENTS)
NO ANONYMITY ORDER MADE

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Butler (Counsel)

For the Respondent: Mr S Walker (Home Office Presenting Officer)

ERROR OF LAW DECISION AND REASONS

1. This is an error of law hearing. The appellant appeals against the decision of the First- Tier Tribunal (Judge Stedman)(FtT) promulgated on 22.5.2022 in which the appellant's human rights claims were dismissed.
2. This was a hybrid hearing as Mr walker attended remotely by CVP.

Background

3. The appellant, whose date of birth is 27.2.1994, is a citizen of Eritrea. The second and third appellants are the sponsor's dependent children living with the appellant in Ethiopia. The sponsor is the spouse of the appellant who was granted refugee status in the UK. The appellant applied under Appendix FM to join her spouse in the UK. The respondent refused the application and was not satisfied that the appellant and sponsor were in a genuine and subsisting relationship, and was not satisfied that the appellant met the English language test or provided a TB certificate.

Grounds of appeal

4. In grounds of appeal the appellant argued that the FtT erred in assessing the genuineness of the marriage applying the standard in the current caselaw **Goudey (subsisting marriage - evidence) Sudan [2012] UKUT 00041 (IAC)** and failed to give sufficient reasons and failed to give anxious scrutiny to the Article 8 claim.

Permission to appeal

5. Permission to appeal to the Upper Tribunal (UT) was granted by FTJ Boyes for grounds one and two but permission was refused in ground 3 in its current form.

Submissions

6. I heard oral submissions from both representatives. Ms Butler expanded upon her skeleton argument and sought to argue ground 3. Mr Walker conceded that the first two grounds were made out.

Discussion and conclusion

7. The FtT found that the parties were married, that they had met in person, there was financial support forthcoming from the sponsor and recent visits were made by him and which involved a degree of risk, that the appellant and sponsor had known each other since childhood and there was evidence of calls and cards. There was no dispute that the children were the biological children of the sponsor and that the first appellant was caring for them (see decision [25-30]). The FtT attached little weight to the evidence of communication. The FtT was concerned at the lack of evidence as to how the relationship had

developed and that there were no photographs of the wedding ceremony and few otherwise.

8. Having heard the submissions (and concession by Mr walker) made in respect of grounds 1 and 2 by both representatives and taken into account the findings made by the FtT in respect of the genuineness and subsistence of the marriage, I am satisfied that the FtT failed to properly apply the legal standard as set out in **Goudey (subsisting marriage - evidence) Sudan [2012] UKUT 00041 (IAC)**. The evidence before the FtT as to communication and contact amounted to 48 pages of screen shots and there was unchallenged evidence that the first appellant was caring for the children and there were visits made by the sponsor to Eritrea and Ethiopia. The FtT had in my view focussed on peripheral issues such as the absence of photographs of the wedding ceremony, for which some explanation had been given, and ventured beyond the scope of what was required in **Goudey** as evidence of a genuine and subsisting marriage. There was more than adequate evidence of a high quality before the FtT for it to conclude accordingly.
9. As to ground 3, I am satisfied that this too is made out as the FtT failed to properly consider the evidence of the dire situation in Eritrea and Ethiopia for the appellants if returned there. There was no dispute as to the country situation in either country.

Error of law decision

10. There are material errors of law disclosed in the decision which shall be set aside.

Re making decision

11. The Tribunal heard briefly from both parties as to future disposal and decided that it was appropriate to go on to remake the decision and to allow the appeal on the evidence before the FtT which established that the parties were in a genuine and subsisting relationship, and there was no dispute as to the country conditions and accordingly there were exceptional circumstances such that GEN 3.2 was met.
12. The appeal is allowed.

Signed

Date 19.12.2022

GA Black
Deputy Judge of the Upper Tribunal

NO ANONYMITY ORDER
NO FEE AWARD

Signed

Date 19.12.2022

GA Black
Deputy Judge of the Upper Tribunal