



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005597
First-tier Tribunal No:
EA/02112/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 24 July 2023

Before

UPPER TRIBUNAL JUDGE HANSON

Between

OSMAN ISMAIL MOHAMED
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Nima Ali - EEA national sponsor.

For the Respondent: Mr Lawson - Senior Home Office Presenting Officer.

Heard at Birmingham Civil Justice Centre on 18 July 2023

DECISION AND REASONS

1. The appellant appeals with permissions a decision of First-tier Tribunal Young-Harry ('the Judge'), promulgated on 17 August 2022, in which the Judge dismissed the appellant's appeal against the refusal of his application for a Family Permit as the spouse of an EEA national exercising treaty rights in the UK under Appendix EU of the Immigration Rules. The date of the refusal is 19 October 2021. The appellant is a citizen of Somalia.
2. The Judge notes no attendance on behalf of the appellant by his UK based representative but was satisfied that he had had reasonable notice and that it was appropriate to proceed to consider the merits of the appeal in his absence, pursuant to Rule 28 of the First-tier Tribunal (Immigration Asylum Chamber) Rules 2020.
3. A ground of challenge asserting the appellants legal representative had not received notice of the hearing was rejected by the First-tier Judge considering the application or permission to appeal who wrote:
 2. The grounds request a remittal of the Appellant's appeal, primarily on the basis that the Appellant's representative, namely Mr Mohammed Toesef Afzal of Global Migration Solutions UK LTD "did not receive the notice of hearing" [2(d)]. I do not

accept this, because I contacted the hearing centre and was provided with a copy of the email delivery receipt received at 9:37am on Monday 6 June 2022 confirming that the Appellant's representative received email notification on 6 June 2022 of the hearing scheduled to take place on 18 July 2022.

4. Having considered the documentary evidence the Judge noted the basis of the refusal of the application for a family permit was because the appellant had failed to show that his marriage to the sponsor was valid, as both the appellant and the EEA national had failed to provide documentary evidence confirming they are both divorced. The Judge finds the appellant has had ample opportunity to provide relevant documents to show they are both divorced and that his marriage to the sponsor is valid, and recognised, but that as he had failed to do so he had not shown he meets the requirements of Appendix EU, leading to the appeal being dismissed.
5. The application for permission to appeal which was refused was renewed to the Upper Tribunal. Permission was granted by Upper Tribunal Judge Reeds on 23 January 2023 in the following terms:
 1. The issue identified in the grounds relates to that of procedural fairness. The FtTJ heard the appeal in the absence of the sponsor and his legal representatives on the basis that neither he nor they attended at the hearing before him.
 2. Whilst the FtTJ referred to the lack of attendance of the sponsor and his legal representative, he makes no reference to the email sent to the FTT at 12.07 on 18 July 2022 setting out that the representative was unable to recall or unable to locate the email as to the notice of the hearing and requested a short adjournment for them to attend the hearing. It is not known from the decision whether he addressed his mind to that request or if he did so what reasons he gave for rejecting the contents of the email.
 3. Furthermore, the papers include an email sent on 10 February 2022 at 23.14 from the appellant's representatives referring to divorce certificates being provided. It is unclear from the electronic file where those documents are but reference was made to them and it appears that the email was sent prior to the hearing in July 2022. This was the main issue in contention between the parties and thus it is arguable that the FTT J erred in law by hearing the appeal in the sponsor's absence but also it is arguable that even if the sponsor and the representative had not attended, those relevant documents do not appear to have been put before the FtTJ when deciding the appeal although reference is made to them in the email.
 4. The appellant's representatives should provide a chronology of when the relevant documents were sent and any non-compliance by the respondent as set out in the grounds.
 5. Permission is therefore granted.
6. There has been no further communication from the appellant's representative or provision of a chronology as provided in [4] of the grant of permission to appeal prior to the hearing.
7. A communication was received by the Upper Tribunal on the morning of the hearing claiming that the appellant's representative, Mr Afzal, had hurt himself and was having to walk to court and would therefore arrive after the allotted time. This is not an issue as the Tribunal had other business to attend to. The court clerk as advised, later in the morning, that Mr Afzal was not attending. The Sponsor was advised but told the Tribunal clerk that she wished to proceed without the representative being present.
8. A later email sent by Mr Afzal at 11:07 stated he had tried to walk to court but was unable to manage it and asking if he could attend remotely. This email was

not seen by me until after the hearing had been concluded but would not have changed the Sponsor view.

9. The outset of the hearing the procedure was fully explained to the Sponsor who, again, confirmed that she wished to proceed in Mr Afzal's absence.

Discussion and analysis

10. There is a very straightforward issue arising from the refusal, that although the marriage certificate had been provided there was no evidence that the appellant and sponsor had been divorced, such that their marriage could be shown to be valid and recognised.
11. The Judge was clearly aware of the provision of the email by the appellant's representatives dated 10 February 2022 referring to the divorce certificates being provided. The Judge's specific finding is that notwithstanding what was said in the email the documents were not provided.
12. The documents I have received for the purpose of this appeal contain the email with the grounds of appeal referred to attached, but do not contain the divorce documents. There was nothing before the Upper Tribunal to establish that the divorce documents have not only been referred to in the email but had been sent as attachments that had been received by the First-tier Tribunal.
13. The Sponsor was asked whether the divorce documents actually existed. She stated they did. When asked whether she had the documents with her she referred to copies held by her on her phone. The Sponsor showed those to Mr Lawson who observed that although the documents provided may be divorce documents, and that some parts may be written English, there was no certified translation of all of the documents which meant that they were not admissible in their current state.
14. The Sponsor, who is clearly unhappy at the service received by the appellant's representative, by whom they feel let down as he did not respond to communication, had to be chased, and was not considered to have represented the appellant's interests properly, did her best, and the Tribunal is grateful for all that she was able to do.
15. I find the statement by the First-tier Tribunal relating to the service of notice of the original hearing has not been shown to be irrational. No procedural unfairness is made out.
16. I find it has not been established that the divorce certificates were sent to the First-tier Tribunal Judge, whatever was said in the February email. It is not clear that even if sent they were accompanied by a translation (if required), or that there was sufficient evidence before the Judge to enable the Judge to find that the marriage certificate was valid and would be recognised. On that basis I have no option other than to dismiss the appeal.
17. There was discussion about the ability to make a further application under the EU settlement scheme (EUSS) which, if the required evidence is available, the appellant and Sponsor may wish to consider giving thought to.

Notice of Decision

18. I find the Judge has not been shown to have erred in law in a manner material to the decision to dismiss the appeal. The determination shall stand.

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C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

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19 July 2023