



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER
Extempore

Case No: UI-2023-004121

First-tier Tribunal Nos:
HU/54561/2021 & IA/11493/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 24th of April 2024

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**YAGEEN IBRAHIM HASSAN ABDALLA
(NO ANONYMITY ORDER MADE)**

Respondent

Representation:

For the Appellant: Mr A Mullen, Senior Home Office Presenting Officer
For the Respondent: Mr J Bryce, instructed by Maguire Solicitors

Heard at 52 Melville Street Edinburgh on 10 April 2024

DECISION AND REASONS

1. The Secretary of State appeals with permission against a decision of First-tier Tribunal Judge Komorowski promulgated on 21 August 2023 allowing the appeal of Ms Abdalla against a decision of the Secretary of State to refuse her entry clearance to the United Kingdom to join the sponsor who is also a Sudanese national and who is recognised as a refugee in the United Kingdom. The application for entry clearance was made pursuant to paragraph 352A of the Immigration Rules which is the relevant provisions. That application was refused for a number of reasons but the core issue is the validity and/or subsistence of the marriage between the appellant and sponsor.

2. The marriage in this case took place by proxy and took place when the sponsor was not in Sudan. The judge concluded that the marriage was valid both as regards the capacity of the appellant and the sponsor to enter into the marriage given their respective ages at the time, and according to the applicable law governing the ceremony which as the marriage took place in Sudan would have been the law of Sudan, the “lex loci celebrationis”. The judge was also satisfied that there were no reasons of public policy or otherwise why the marriage should not be recognised; accepted that the appellant was habitually resident at the time of the marriage ceremony and was satisfied also that despite the Secretary of State’s submissions to the contrary that the relationship was genuine and subsisting.
3. The Secretary of State sought permission to appeal against the decision on three principal grounds. First that the sponsor could not have been habitually resident in Libya at the date of marriage. Second that the judge had failed to establish whether the marriage was legal, that is according to the law of Sudan, and third that the judge had failed to give adequate reasons for the finding that the marriage was genuine and subsisting. Permission was granted on all grounds.
4. When the matter came before me the appellant, that is the Secretary of State, was represented by Mr Mullen. The respondent in this case, Ms Abdalla, was represented by Mr Bryce. Mr Mullen accepted that there was little or no merit in the first ground given that the issue of habitual residence appeared to have been resolved by the judge by reference to the case of **A**. It appears to me also that the author of the grounds appears not to have understood the “domicile” in this context did not mean the place where one lives (its usual meaning) but rather the technical term of art in deciding for the purposes of private international law and conflict of laws which law governs a person, in this context their capacity to enter into a marriage. Accordingly, and in light of these observations I am not satisfied that ground 1 is made out.
5. Turning to ground 2, I remind myself that a finding with respect to foreign law is a question of fact. The issue here was whether the law of Sudan permitted proxy marriages and for the reasons set out in Mr Bryce’s helpful Rule 24 notice pointing out that proxy marriages are common and accepted in Sudan and in the absence of any rebuttal of that by Mr Mullen I am satisfied that the judge did in this case make a sustainable finding that the marriage was valid according to the law of Sudan, that is the place in which it took place. Accordingly and for these reasons there is no merit in ground 2.
6. Finally turning to ground 3 Mr Mullen readily accepted (and he was correct to do so) that in reality this is a disagreement as to a properly reached finding of fact. In essence what the challenge here is whilst described as a failure to give reasons is in effect seeking reasons for reasons. The judge’s finding that the appellant and sponsor are “probably in a relationship”, is, as can be seen in the context of the decision,

nothing more than a finding that it is more probable or not that the marriage exists and subsisting. What is averred at (e) to (g) of ground 3 again is simply submissions and there is no proper indication that the judge failed to take into account any of the facts and accordingly for these reasons I find that there is no merit in ground 3.

7. Having found that there is no merit in the grounds as pleaded I dismiss the appeal and I uphold the decision of the First-tier Tribunal.

Notice of Decision

- (1) The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it.

Signed

Date: 18 April 2024

Jeremy K H Rintoul
Judge of the Upper Tribunal