



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal no: OA 09262-11

THE IMMIGRATION ACTS

At **Field House**
on **29.10.2013**

Decision signed: **30.10.2013**
sent out: **6.11.2013**

Before:

Upper Tribunal Judge
John FREEMAN

Between:

YUSUF Hussein Ali

appellant

and

Secretary of State for the Home Department

respondent

Representation:

For the appellant: *Anthony Vaughan* (counsel instructed by Lawrence Lupin)

For the respondent: Mr John Parkinson

DETERMINATION AND REASONS

This is an appeal, by the appellant, against the decision of the First-tier Tribunal (Judge Aftab Khawar), sitting at Hatton Cross on 3 October 2011, to dismiss a husband appeal by a citizen of Somalia, born 1 August 1976. Since the sponsor Ubah Ahmed Nur has been recognized as a refugee in this country, the only issues have been whether they were validly married before she left Somalia in October 2008, and if so intended to live together as husband and wife at the date of the decision under appeal.

2. The first-tier judge took a number of negative credibility points against the appellant, in particular about the absence of documentary evidence to support his claim to have been married to the sponsor before an imam in Mogadishu in April 2008. Before me it was agreed that there was no effective government in Somalia at the time; so a valid common-

law marriage (using the term properly for once) could be effected by the customary exchange of vows before an imam. Mr Vaughan accepted that some documentary evidence of this ceremony would normally be expected, and the issues before me mainly concerned the absence of any in the present case, and the parties' explanation for that, which had also formed the basis on which permission to appeal was given.

3. Judge Khawar however had also declined to accept the evidence of two further witnesses, the sponsor's half-sister Maryan (they share a father, so have the same patronymics) and her friend Farhiyo Nur, as supporting the appellant's case, on the basis that they had only been told about the marriage by the sponsor. This, on the basis that it had involved unwarranted application of the rule against hearsay, was why deputy Upper Tribunal Judge David Kelly declared, on 21 March 2012, that there had been a material error of law in Judge Khawar's decision, and resolved to re-make it himself, on a hearing to be listed in September last year. As for some reason no such hearing was arranged, it fell to me to re-make the decision.
4. Voluminous evidence was filed on behalf of the appellant; but the case turned on a limited number of issues, mainly covered in cross-examination; so I shall go directly to the oral evidence. This was the sponsor's explanation for the lack of any documentary evidence of the marriage:

I have no marriage certificate as there was no functioning government

I have no paper signed by the imam: he issues certificate and signs it, which takes 3 – 4 weeks to arrive and we had to wait.

The imam required a fee and we didn't have enough money

We told him, and he told us to come back when we did

We raised it in due course and went back to him; but there had been fighting and the imam was no longer there: neighbours told us he left.

We looked for him for over a week, but couldn't find him.

5. The only trouble with this explanation was that the sponsor had never given it before, even during the first-tier hearing. Her only explanation for that in cross-examination before me was that no-one had asked her about it at the hearing before Judge Khawar. Since she had been represented by Mr Vaughan then, as before me, this explanation did not seem at all satisfactory to me when I heard it; nor did Mr Vaughan ask anything in re-examination to correct the impression I had received.
6. It was not till Mr Vaughan's closing speech that he drew my attention to further evidence which had been filed, consisting in a statement by a member of his instructing solicitors' firm called Anna Hawkes. Miss Hawkes had taken over this case from the previous worker, Sophie Freeman (no relation), who had been the firm's representative at a conference with counsel on 23 September 2011, before the first-tier hearing. She did not annex Miss Freeman's notes of the conference to her statement, as might have been expected; but they were in Mr Vaughan's possession at the hearing, so the relevant pages were copied for Mr Parkinson and me. Having seen them, Mr Parkinson did not challenge the accuracy of the notes as a record of what was said at the conference.

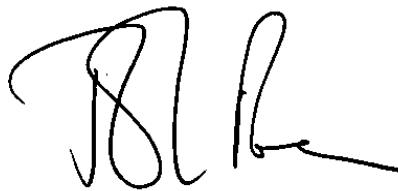
7. This is what the notes record the sponsor as saying on the question of documentary evidence of the marriage: there was no official certificate to be had; one could get a letter to confirm it; but they had had no money to pay the fee. As for finding the imam (referred to as a sheikh in the notes), no-one knew where he was now. There is another relevant point in the notes, to which I shall come when I have introduced the issue with which it deals.
8. This was the question of where the sponsor and the appellant had been living in Mogadishu after their marriage: she was cross-examined about her original statement in support of the visa application, where she simply says at paragraph 4 that they lived together there. This however had been corrected in another statement, taken in 2011, where she explained that the appellant had stayed with her as much as he could at the house of a friend of her family called Halima, where the wedding had also taken place; but sometimes he had had to be with his children by his first wife, who had died in 2005. I shall return to the children in due course; however this was not only the account of events the sponsor gave before Judge Khawar, by way of the 2011 statement, but it had also been referred to in the conference notes, where the appellant told Mr Vaughan that Halima's house was overcrowded already, and there had been no room for the appellant and his children there.
9. That brings in the evidence of Abdalla Ibrahim Mohd., a distant relation of the sponsor's on her mother's side: he gave a detailed account of the wedding ceremony, as did the sponsor herself, but was disbelieved by Judge Khawar because of what were said to be contradictions between his evidence and the sponsor's about where that had taken place. However, cross-examined on this point before me, he said that the wedding had been held at the house where the sponsor had been living (with Halima and her family), and her mother had told him on the day that the parties were going to be living there afterwards.
10. Coming on to the children themselves, the sponsor said they had been 13, 12 and 11 when she left Somalia in 2008: sadly they are now all dead. After she arrived in this country and claimed asylum on 1 October, she had mentioned about being married to the appellant at her screening interview; but she had given his age as "25 year old approximately": of course this was quite incompatible with his then having children of those ages, though she hadn't been asked about them at that stage. Again she had corrected that, after calling the appellant and getting his correct date of birth, at her main asylum interview on 12 November. There she had given his date of birth as 1 August 1976, making him 32 at the time in question.
11. Although the parties themselves had said the appellant wanted the sponsor to be a mother to his children (sponsor's asylum interview, concluding questions; appellant's statement 26 September 2011), she did not take either them or him with her when she left Somalia, by air through Dubai. The sponsor said they couldn't afford to, though her own trip, with an agent, had been organized by her mother, and she had no idea how much it had cost: her mother had sold some land to raise the money.

12. Since then, the sponsor lost touch with the appellant for some time, owing to difficulties in communication with Somalia, until he made his way to Uganda in November 2010. The person who put them back in touch was the appellant's friend Farhiyo (see 3), who she had met at college in this country, and told about her marriage and missing husband. They were members of the same Ashraf clan, at least on the sponsor's mother's side, and Farhiyo gave the sponsor contact details for a cousin of hers in Uganda, who had been in touch with a number of other asylum-seekers from the clan there. The sponsor rang the cousin, and in due course he put her in touch with the appellant. Farhiyo confirmed this account of events in cross-examination before me; but she said her cousin was now in the United States, and there was no further evidence from him.
13. Oral evidence was also given by the sponsor's half-sister Maryan: she had arrived in this country in 2001, and said she had heard about the sponsor's marriage and flight to this country from her own mother, by phone from Somalia in 2009. In her witness statement she simply says "[The sponsor] told me about her husband as soon as we were reunited in this country", without mentioning how that happened: Maryan simply said she hadn't been asked about that, or about how the sponsor had asked her for help in tracing the appellant, as she also mentioned in her oral evidence.
14. After the sponsor and the appellant got back in touch, they applied for a visa for him to join her on 28 January 2011. Meanwhile, and since, they kept their contact going by post, e-mail and telephone: a number of telephone bills, as well as cards and e-mails, were produced in support. The one on which the sponsor was cross-examined showed frequent calls to a local London number, which she said was the one for a calling card she had been using; and to a Ugandan mobile, which she said was the appellant's. As Mr Parkinson pointed out, there was nothing to confirm that either of these numbers had involved calls to him. There is also evidence from a phone shop, by way of a letter saying the sponsor was a regular customer of theirs, and had called her husband in Uganda twice a week from October 2010 till now. They give a slightly different spelling of the appellant's name, and the same mobile number, though again they cannot confirm that this was his.
15. **Conclusions** The strongest point against the sponsor's credibility seemed at one stage to me her failure to mention at any previous stage the explanation she now gave about why there was no documentary evidence of her marriage to the appellant. However, once the conference notes had been produced, and Mr Vaughan had taken responsibility for not bringing out at the first-tier hearing the explanation the sponsor had given then, this point seemed to me to fall away. The explanation did leave a question as to why there should have been no money to pay for a certificate from the imam, but not long after, plenty to pay for the sponsor's travel all the way to this country by air. However, while it seems her mother sold family land to do that, this might not have been done before the imam disappeared.

16. The important thing to me seems that the sponsor did mention the appellant as her husband right from the start of her time in this country, at her screening interview. Though she then gave an age for him, 25, at which he could not credibly have been the father of three children, of whom the eldest was 13, she did correct that at her main interview a few weeks later to one which made him 32. Though that may not be a very likely an age for a man to have children of those ages, in Somalia or anywhere else, it is certainly not an impossible one.
17. As for how the sponsor had come to make a mistake about the appellant's age in the first place, that might seem odd in this country; but I am not prepared to disbelieve her evidence on this point, on the basis of any assumptions about social *mores* in Somalia: it would have been another matter if there had been no correction of the original age given. I do not see any reason to suppose that the sponsor was pressed for an age at her screening interview: she was simply recorded, and accepted as giving an approximate figure.
18. On the question of where and how the sponsor and the appellant lived together after their marriage, I regard the point about where as satisfactorily dealt with by the explanation about her staying for a limited period before her departure with Halima, and when by the lack of room there for the appellant and his three children: although both the sponsor and Abdalla say there were about 40 people at the wedding, there is no evidence about how many were actually living at Halima's, or how many rooms she had for people to sleep in.
19. As for how the parties were put in touch again, I do not see any reason not to accept Farhiyo's evidence about that: while a letter from her cousin in the United States might have provided added confirmation, I do not think the absence of one detracts from it. While Maryan's evidence about why there is nothing in her statement about how she heard of the marriage from her mother might not seem satisfactory, it does appear from the terms of her original statement (29 September 2011) that she was not asked about this. The statement simply records her not being at the wedding, but knowing about the marriage: it goes straight on to say the sponsor "... told me about her husband as soon as we were reunited in the United Kingdom". Clearly she was not asked by the person who took it about how that had happened. Though Maryan's explanation on this point is less satisfactory, I do not regard any failure by her to mention being asked to help trace the appellant as particularly important, since in any case it was not through her that this came about.
20. While neither the phone bill nor the phone shop evidence can confirm the identity of the person the sponsor called when she and the appellant were put in touch, so that this must depend on her own credibility, that is an almost inevitable feature of such evidence, and does not subtract anything from hers. In the light of the evidence as a whole, I regarded it as more likely than not that the sponsor had been regularly calling someone in Uganda with whom she was on close terms.

21. The sponsor and her witnesses, with the reservation about Maryan already mentioned, impressed me as generally credible. This was particularly the case with Abdalla, who had been present at the wedding himself, and who was not cross-examined on his detailed account of it. As already made clear, I regard the question of its location as satisfactorily resolved.
22. The result is that I accept that the sponsor and the appellant were validly married in Somalia in April 2008, at a time when no settled government existed there, and before she left that country to seek asylum here. I also accept, in view of my findings on the contact they have had since they were put back in touch in 2010, that they each intend to live together as husband and wife when they are able to do so, so that their marriage was 'subsisting' (to use the peculiar language of the Immigration Rules) at the date of the decision under appeal.

Appeal allowed

A handwritten signature in black ink, consisting of stylized, overlapping letters that appear to be 'JLR' followed by a horizontal line.

(a judge of the Upper Tribunal)