



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

Appeal Number: OA/15907/2012

THE IMMIGRATION ACTS

Heard at Newport

**On 1 May 2014
Delivered orally**

Determination

**Promulgated
On 11th July 2014**

Before

**MR C M G OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE GRUBB**

Between

HANAAN AHMED

Appellant

and

THE ENTRY CLEARANCE OFFICER - NAIROBI

Respondent

Representation:

For the Appellant: Mr G Hodgetts, instructed by South West Law
For the Respondent: Mr I Richards, Home Office Presenting Officer

DECISION AND REMITTAL

1. The appellant is a national of Somalia who claims to be married to a Dutch national exercising treaty rights in the United Kingdom. The appellant applied for entry clearance to enable her to join her husband in the United Kingdom. That application was refused. The notice of refusal is dated 9

July 2012. The appellant appealed to the First-tier Tribunal and after a hearing on 15 April 2013 Judge A E Walker dismissed the appeal. The appellant now has permission to appeal to this Tribunal.

2. The grounds of appeal raise a number of issues. There is a reply from the Entry Clearance Officer's representative who indicated that, in the view of the respondent, the Judge dealt properly with all the material before her in reaching her conclusion that, as she put it, the reasons given by the respondent do justify the refusal of this application. It appears to us, and we say it with regret, that the determination falls far short of what might be expected from a Judge of the First-tier Tribunal. It contains a considerable number of misprints; it contains a considerable number of errors both of law and fact. The Judge gives in our view no real indication that on the two issues before her, (that is to say, firstly the validity of the marriage, bearing in mind that there is a suggestion that the appellant was below the age that a marriage could be contracted in Ethiopia where the marriage took place and secondly, the question as to whether the marriage was a marriage of convenience) the burden of proof differed between the parties, and the standard of proof may be different. Bearing in mind the errors and the lack of reasoning it appears to us that there is no alternative but to direct that the case be heard again in the First-tier Tribunal.
3. We emphasise in doing that firstly, that we do not reach the conclusion that the First-tier Tribunal Judge's judgement was on the merits wrong: we do not know; but we emphasise also that although none of her findings of fact are preserved the evidence that was given before the First-tier Tribunal is evidence in the case and will fall for consideration in addition to any other evidence when the appeal is reheard.
4. We therefore set aside the Judge's decision and direct that the appeal be reheard by the First-tier Tribunal by a different judge.

Signed

UPPER TRIBUNAL

C M G OCKELTON
VICE PRESIDENT OF THE
IMMIGRATION AND ASYLUM CHAMBER
Date: 4 July 2014