



**Upper Tribunal  
(Immigration and Asylum Chamber)**  
OA/18826/2013

Appeal Number:

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 17<sup>th</sup> November 2014**

**Decision and Reasons  
Promulgated  
On 24<sup>th</sup> November 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON**

**Between**

**Entry Clearance Officer - Nairobi**

Appellant

**and**

**Mrs Shafaa Abdallah Said  
(Anonymity Direction Not Made)**

Respondent

**Representation:**

For the Appellant: Mr Muquit, Counsel.

For the Respondent: Mr E Tufan, Home Office Presenting Officer

**DECISION AND REASONS**

**The Appellant**

1. The application for permission to appeal was made by the Entry Clearance Officer but nonetheless I shall refer to the parties as they were described before the First Tier Tribunal that is Mrs Said as the appellant and the Entry Clearance Officer as the respondent.

2. The appellant is a citizen of Kenya born on 18<sup>th</sup> December 1975 and she appeals against a decision of the respondent dated 29<sup>th</sup> August 2013 refusing her leave to enter as a spouse under the Immigration Rules (HC 395 as amended). The ECO in his refusal identified that the appellant and the sponsor had both been previously married. The appellant was divorced and the sponsor a widower. It was asserted that no evidence to that effect was placed before the Entry Clearance Officer and thus the application was refused under paragraph EC-P-1.1(d) of Appendix FM of the Immigration Rules.
3. In a determination dated 22<sup>nd</sup> August 2014 Judge of the First Tier Tribunal Majid allowed the appellant's appeal stating at [8] that  

‘Mr Muquit said that Ms Cooke [the Home Office Presenting Officer] has been told that, although it is not in the Respondent's bundle, the evidence of the divorce of the appellant's father with his first wife and the death certificate of the appellant's mother was in front of the ECO. Since these were the main objections and were not justified because the ECO had not looked at the evidence properly, the young appellant should be able to come to the UK and join her refugee father. Mr Muquit also said that the appellant was without any support and she should be helped’.
4. The application for permission was granted by First Tier Tribunal Judge Parkes.
5. Judge Majid's determination paragraph [8] contained fundamental errors and it was not clear whether the submissions related to the instant case because they described the divorce of the appellant's father and death of the appellant's mother. They also referred to a ‘young appellant’. The appellant was born in 1975.
6. At the hearing Mr Muquit at first contended that this was not a material error of law. In my view it is not clear that the Judge was in fact even referring to this case. I find also that the Judge is in effect recording the submissions of Mr Muquit rather than making findings. In effect there is an error of law which is material.
7. At the hearing before me Mr Tufan confirmed that no issue was taken with regards to the income and maintenance. It was submitted by Mr Muquit that it was always the appellant's case that the ECO had the divorce certificate and the affidavit in relation to the death of the sponsor's wife had been sent to and reviewed by the Entry Clearance Manager. The documentation

had not been considered carefully. Further no ECO bundle had been sent to the appellant.

8. However, Paragraph 8 discloses an error of law and the matter should be remitted to the First Tier Tribunal for a hearing de novo.
9. The Judge erred materially for the reason identified. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Both representatives agreed that there would need to be a re-hearing. Bearing in mind the nature and extent of the findings to be made the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (ii) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement.

### **Directions**

1. The divorce certificate and affidavit regarding the sponsor's wife should be forwarded with 14 days of the date of this notice, by the appellant or her representatives to the ECO in Nairobi for any representations to be made on those documents. The ECO should make any representations on that documentation at least 28 days prior to the substantive hearing before the First Tier Tribunal.
2. The Tribunal is to serve the ECO bundle on the appellant or her representative.
3. All further evidence should be served on the Tribunal and the opposing party not later than 14 days prior to the substantive hearing.

Signed

Date 17<sup>th</sup> November 2014

Deputy Upper Tribunal Judge Rimington