



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/22183/2013

THE IMMIGRATION ACTS

Heard at Field House
On 1st May 2015

Decision & Reasons Promulgated
On 19th May 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

ROBEL GHERMAY
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER - NAIROBI

Respondent

Representation:

For the Appellant: Mr N Stevens of Duncan Lewis Solicitors

For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against a decision of Judge of the First-tier Tribunal N J Bennett promulgated on 28th October 2014.
2. The Appellant is a male Eritrean citizen born 27th November 1982 who applied for entry clearance as the spouse of a refugee, Selamawit Tekeste (the Sponsor).

3. The application was refused on 21st November 2013 with reference to paragraph 352A(i) and (ii) of the Immigration Rules. The Respondent was not satisfied that the Appellant was married to a refugee, and was not satisfied that the marriage did not take place after the person granted asylum left the country of their former habitual residence in order to seek asylum.
4. The Respondent accepted that when the Sponsor applied for asylum she stated that she was married to Robel Ghermay but the Respondent was not satisfied that the Appellant had provided satisfactory evidence to prove that he is Robel Ghermay. The Appellant had provided an Asylum Seeker Certificate issued 8th October 2013 by the Office of the Ugandan Prime Minister, but the Respondent noted that this was not an original document, and that it was simply a record of what the authorities in Uganda had been told. The Appellant had not proved what evidence he had produced to obtain this certificate or whether any checks were conducted to verify the information.
5. The Respondent noted that the Appellant and Sponsor claimed to have married on 20th May 2007, and that they last saw each other on 25th July 2008, and made contact with each other again in September 2013 and thereafter had maintained telephone contact. It was accepted that evidence of recent contact had been provided, but no evidence of a marriage had been produced. The application was therefore refused with reference to the Immigration Rules, and the Respondent did not accept that refusal of entry clearance breached Article 8 of the 1950 European Convention on Human Rights.
6. The appeal was heard by Judge Bennett (the judge) on 1st October 2014. The judge heard evidence from the Sponsor and a witness Daniel Rezene, and accepted that the Sponsor probably married a man called Robel Ghermay in Eritrea before she came to the United Kingdom and was granted asylum. The judge found in paragraph 35;
 “The real issue in this appeal is therefore whether the Appellant is the Robel Ghermay whom the Appellant married in Eritrea in 2007.”
7. The judge did not accept that the Appellant had discharged the burden of proof, and was not satisfied that it was the Appellant who probably married the Sponsor in Eritrea, and the appeal was therefore dismissed with reference to the Immigration Rules and Article 8.
8. The Appellant was granted permission to appeal, and the appeal came before me on 25th February 2015. I found that the judge had erred by not making specific findings as to whether he found the Sponsor’s evidence credible or not. The judge erred by not adequately explaining why cumulatively, the documentary evidence and the Sponsor’s oral evidence was not given sufficient weight to discharge the burden of proof. The judge did not specifically make a finding that the Sponsor was not a credible witness.

9. Full details of the application for permission, the grant of permission by Judge Cox, and my reasons for finding an error of law are contained in my decision dated 26th February 2015.
10. The hearing was adjourned to enable the decision to be re-made by the Upper Tribunal. The finding made by the First-tier Tribunal that the Sponsor had married a man called Robel Ghermay in Eritrea before she left that country was not challenged and was therefore preserved.

Re-Making the Decision

Preliminary Issues

11. The Sponsor attended the hearing. There was no difficulty in communication between the Sponsor and interpreter in Tigrinya.
12. I ensured that I had all documentation upon which the parties intended to rely, and that each party had served the other with any documentation upon which reliance was to be placed. I had the Respondent's bundle with 73 pages, and the Appellant's bundle with 89 pages. I also had a supplementary bundle served on behalf of the Appellant comprising 40 pages, and the Sponsor's supplementary witness statement dated 13th April 2015 together with further money transfer receipts and telephone cards.
13. Both representatives confirmed that they had seen my error of law decision, and understood the issue to be decided was whether the Appellant is the Robel Ghermay whom the Sponsor married in Eritrea in 2007.
14. The representatives indicated that they were ready to proceed and there was no application for an adjournment.

The Sponsor's Evidence

15. The Sponsor adopted her witness statements dated 30th September 2014 and 13th April 2015 as her evidence. She was questioned by both representatives and I have recorded all questions and answers in my Record of Proceedings and it is not necessary to reiterate them here. The Sponsor's evidence may be summarised as follows.
16. The Appellant and Sponsor married in Eritrea on 20th May 2007. They lived together as husband and wife following their marriage until the Appellant had to return to National Service on 20th July 2007.
17. The Sponsor last saw the Appellant on 25th July 2008 in Asmara in Eritrea. In November 2008 the Eritrean authorities arrived at the Sponsor's home to search for the Appellant who had absconded. The Sponsor was told to report to the local administration office and warned that if the Appellant did not surrender by 7th December 2008 the Sponsor would be put in detention if she did not give information as to his whereabouts. On 5th December 2008 the Sponsor fled Eritrea and eventually

arrived in the United Kingdom and claimed asylum. She was granted refugee status on 3rd June 2009.

18. The Sponsor was told by her nephew in Eritrea (who was subsequently granted entry clearance to join her in the United Kingdom) that on 7th December 2008 her home in Eritrea was raided and all the documents in the house taken away including wedding photographs and her marriage certificate. Therefore the Sponsor could not produce documentary evidence of her marriage to the Appellant. The Sponsor did not feel able to contact her family in Eritrea, because she had left illegally, and contact would put them in danger. The Sponsor produced a letter from Daniel Rezene, an Eritrean who had been granted leave to remain in the United Kingdom, and who confirmed that he had attended the Appellant and Sponsor's wedding in Asmara in Eritrea.
19. On 5th September 2013 the Appellant made contact with the Sponsor again by telephone from Uganda, having obtained her contact details from a mutual friend in Uganda. The Appellant explained that he had deserted the National Service and had been imprisoned but escaped on 10th June 2013 and travelled to Uganda via Sudan. He had arrived in Uganda on 27th August 2013.
20. The Sponsor confirmed she had been using telephone cards to maintain regular telephone contact with the Appellant, and had been sending funds to him in Uganda, and this was evidenced by money transfer receipts.
21. The Sponsor had obtained some photographs of herself and the Appellant attending a friend's wedding in Eritrea on 14th July 2007. Her friend now lived in Finland, but had posted the photographs to her, and the Sponsor contended that these photographs showed both herself and the Appellant attending that wedding.
22. A friend of the Appellant, who because he was a trader was allowed to travel abroad from Eritrea, had obtained from the Appellant's family home the Appellant's Eritrean identity card, and academic transcript, both of which contained photographs of the Appellant. The Sponsor produced these documents as evidence of the Appellant's identity.
23. The Sponsor explained that Daniel Rezene who had given evidence before the First-tier Tribunal, is suffering with mental health problems, but this only became apparent after the First-tier Tribunal hearing. He was therefore not fit to give further evidence.
24. The Sponsor confirmed that the Appellant had been a student before being taken to National Service in April or May 2000. A peace agreement was signed on 20th June 2000, and he then returned to his studies, before being taken back into National Service in the summer of 2001. The Sponsor confirmed that she had not known the Appellant at this point, but he had told her this information.

The Respondent's Submissions

25. Mr Avery relied upon the decision to refuse entry clearance dated 21st November 2013 and submitted that it was a matter for me to assess the oral and documentary evidence that had been provided. I was asked to find that there had been no satisfactory explanation given as to why no documentary evidence of the Sponsor's wedding had taken place, although it was accepted that a wedding had taken place, it was the identity of the groom that was relevant.

The Appellant's Submissions

26. Mr Stevens relied upon his skeleton argument contained at pages 36-40 of the Appellant's supplementary bundle. In very brief summary I was asked to find that the cumulative effect of the documentary and oral evidence was that the burden of proof had been discharged, and the Appellant is Robel Ghermay who married the Sponsor in Eritrea before she left that country and was granted refugee status in the United Kingdom.
27. At the conclusion of oral submissions I reserved my decision.

My Conclusion and Reasons

28. When considering the Immigration Rules I remind myself that the burden of proof is on the Appellant and the standard of proof is a balance of probabilities. This is an appeal against refusal of entry clearance and therefore I must consider the circumstances appertaining at the date of refusal of entry clearance, which was 21st November 2013.
29. I have taken into account all the evidence both oral and documentary, placed before me, and considered that evidence in the round. If a piece of evidence is not specifically referred to, this does not mean that it has not been considered, as it is impractical, and unnecessary to rehearse every individual piece of evidence.
30. I find the Sponsor to be a credible witness. I find her evidence to be consistent, and she did not exaggerate or seek to embellish her evidence. She answered all questions put to her.
31. It is common ground that the Sponsor has been granted refugee status in this country. The finding made by the First-tier Tribunal that she married an individual called Robel Ghermay in Eritrea before leaving that country is preserved.
32. I am satisfied that the Sponsor's marriage took place in Eritrea on 20th May 2007. I note that when she claimed asylum, she named as her husband Robel Ghermay. She also named as part of her family her nephew, and subsequently she gave evidence at a Tribunal hearing, which was an appeal against the nephew's refusal of entry clearance. I have seen a copy of the Tribunal determination, in which the appeal was allowed, and the Sponsor was described as "an essentially credible and impressive witness" (paragraph 23 of the determination). It is not disputed that the Sponsor has

maintained telephone contact with the Appellant after they established contact again in September 2013, and has been sending money to him in Uganda.

33. The Sponsor made clear when the application for entry clearance was made by the Appellant, that it was not possible to produce a marriage certificate or photographs of their wedding, as these had been taken by the Eritrean authorities from her home in December 2008.
34. I note that the Appellant's original Eritrean identity card and academic transcript have been produced. The originals, which have been retained by the Sponsor, contain the Appellant's photograph. I place weight upon these documents having considered the principles in Tanveer Ahmed [2002] UKIAT 00439, which confirmed that if an individual produces documents, he or she must show that the document on which reliance is to be placed, can be relied on. A decision maker should consider whether a document is one on which reliance should properly be placed after looking at all the evidence in the round.
35. The Appellant submitted a photograph with his Visa Application Form and the Appellant's photograph is attached to the Asylum Seeker Certificate dated 8th October 2013, issued by the Office of the Ugandan Prime Minister. The copy that has been produced has been certified by the Prime Minister's Office, and I accept that the original has not been produced, as the Appellant would require this in Uganda. I accept the point made in the refusal decision, that it is not clear what evidence the Appellant produced to the Ugandan authorities to prove his identity.
36. However I am satisfied that the photographs on the Visa Application Form, the Eritrean identity card, the academic transcript, and the Asylum Seeker Certificate are of the same person.
37. I have also seen the photographs produced of the Sponsor and Appellant attending a friend's wedding in Eritrea on 14th July 2007. This was shortly before the Appellant had to return to undertake National Service. I am satisfied that both the Sponsor and Appellant can be identified in these photographs. I am satisfied that the Appellant is the same person whose photograph appears on the documents mentioned earlier.
38. I am satisfied, on a balance of probabilities, that a combination of the documentary and photographic evidence, and the Sponsor's credible oral evidence, proves that the Appellant is Robel Ghermay who married the Sponsor in Eritrea before the Sponsor left that country to claim asylum in the United Kingdom.
39. I therefore conclude that the Appellant is married to the Sponsor who has refugee status in the United Kingdom, and the marriage took place before the Sponsor left Eritrea to claim asylum. The requirements of paragraph 352A(i) and (ii) are satisfied and the appeal succeeds under the Immigration Rules.
40. Because I allow the appeal under the Immigration Rules, it is not necessary to go on and consider Article 8 of the 1950 Convention.

Notice of Decision

The decision of the First-tier Tribunal contained an error of law and was set aside. I substitute a fresh decision.

The appeal is allowed under the Immigration Rules.

Anonymity

The First-tier Tribunal made no anonymity direction. There has been no request for anonymity and I see no reason why an anonymity order should be made.

Signed

Date: 6th May 2015

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT
FEE AWARD**

Because the appeal is allowed I have considered whether to make a fee award. I take the view that the appeal has been allowed because of additional evidence placed before the Tribunal, which was not before the original decision maker. I therefore do not make a fee award.

Signed

Date: 6th May 2015

Deputy Upper Tribunal Judge M A Hall