



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

Appeal Number: HU/01216/2015

THE IMMIGRATION ACTS

Heard at Field House

On 23rd May 2017

Determination

Promulgated

On 6th July 2017

Before

**Mr Justice Nicol
Deputy Upper Tribunal Judge V.L. Mandalia**

Between

MRS NEJAT MOHAMMED ISSHAG SALIH

and

Entry Clearance Officer Pretoria

Appellant

Respondent

Representation:

For the Appellant: A. Chohan instructed by Citadel Immigration Lawyers Ltd.

For the Respondent: Ms J. Isherwood, HOPO

DECISION AND REASONS

1. This is an appeal against the decision of FtTJ Row who, by a decision dated 27th October 2016, dismissed the Appellant's appeal under the Immigration Rules and dismissed her appeal on human rights grounds. The Appellant had appealed to the FtT against the decision of the Entry Clearance Officer in Pretoria ('ECO') to refuse her entry clearance to join her spouse and sponsor in the UK, Mr Ezaidian Hasham Adam. Mr Adam, like the Appellant, is a citizen of Sudan and has been recognised as a refugee in the UK by the Secretary of State for the Home Department ('SSHD').

2. Permission to appeal to the Upper Tribunal was granted by FtTJ Row on 5th April 2017.
3. At the conclusion of the hearing we announced that we agreed with the Appellant that there was a material error of law in the decision FtTJ Row. Since it was not possible for the Upper Tribunal to decide the appeal against the ECO's refusal, it was necessary for the appeal against that decision to be remitted to the First-tier Tribunal (sitting in Birmingham) to be heard *de novo* by another FtTJ. We said that we would give the reasons for our decision in writing. This we now do.
4. The Appellant was born in 1987. She says that the sponsor is her cousin and she married him in Sudan on 2nd March 2008. The Appellant produced to the ECO a marriage certificate testifying to the fact. The certificate was in Arabic but it had been translated into English by the University of Khatoum.
5. In his screening interview, Mr Adam said that he left Sudan on 15th June 2008. He went first to Libya where he stayed until August 2010. He then travelled to Greece where he arrived on 10th September 2010. From Greece, he travelled through Europe and got to the UK on 20th November 2010. He applied for asylum very shortly afterwards. In the same screening interview he said that in March 2008 he had married Negat Mohammed Isshaq who was currently in Sudan and who was 23. He said he had last seen her on 15th June 2008. Mr Adam was granted asylum on 11th February 2011.
6. In their covering letter of 23rd March 2015 with the application for entry clearance, Citadel Immigration Lawyers said that the couple had lost contact with each other from the time that Mr Adam left Sudan in 2008 until sometime in 2013. They had been in contact with each other by telephone since then.
7. The ECO refused the application for entry clearance because, apart from the wedding certificate, there was no evidence that the sponsor and Appellant had met, nor was the ECO satisfied that the marriage was genuine and subsisting or that they intended to live together permanently in the UK.
8. In the course of his decision, FtTJ Row said as follows:
 - '14. On behalf of the appellant it is suggested that it would be a remarkable coincidence if the sponsor had given the name and age of his wife in an interview in 2011 and a person with the same name and age appeared in 2015.
 15. On the other hand, people will pay large amounts of money to gain illegal entry into the United Kingdom. They will tell lies, commit criminal offences, and produce false documents in order to do so. The sponsor paid in order to enter the United Kingdom illegally. He is no

great respecter of immigration laws. He regards paying money to gain illegal entry as a legitimate means to gain an end. Such a person might be expected to recoup some of his expenditure by bringing another person into the UK illegally. I am entitled to regard the sponsor's evidence in relation to immigration matters with circumspection.'

9. Mr Chohan, on the Appellant's behalf, submits that in these remarks the FtTJ has erred in law. It is a common place for asylum applicants to make payments to agents in order to travel to a safe country. Lies may also be told to achieve the same purpose. While such activities may not be praiseworthy, they are sometimes the only way by which those fleeing persecution can achieve the asylum to which they are entitled. Critically in this case, the sponsor has been recognised as a refugee. The flaw in FtTJ Zukcer's reasoning was to generalise from the means which the sponsor used to gain asylum to reach a conclusion about his attitude towards immigration matters more generally.
10. On behalf of the ECO, Ms Isherwood observes that the Judge had not overlooked the fact that the sponsor was a recognised refugee - he referred to that in the first paragraph of his decision. I accept that is correct. However, in my view it does not detract from Mr Chohan's criticism of the decision, namely that the extrapolation from what the sponsor did to achieve his own safety to his attitude towards the generality of immigration matters was unwarranted.
11. We agree with Mr Chohan that this was an error of law on the part of the FtTJ. Was it a material error of law? Ms Isherwood accepted that it would be material unless the decision of the Judge would inevitably have been the same in the absence of that error.
12. We cannot accept that the decision would inevitably have been the same. There was some delay in the sponsor making contact with the Appellant, even after he had been granted asylum in the UK. There were some other gaps in the evidence as to the relationship between the couple. However, it is not possible to conclude that these, on their own would inevitably have led to the dismissal of the appeal if the FtTJ had not treated the sponsor's evidence with circumspection because of the error of law which we have identified.
13. Having reached that decision, it was unnecessary for us to consider the other criticisms made by Mr Chohan of the FtTJ's decision.
14. In those circumstances, the decision of the FtTJ had to be quashed. It is not possible to separate out findings of fact which are unaffected by the error of law. For this reason, the only way forward was to remit the appeal to be heard *de novo* by another FtTJ in Birmingham.

Signed

Date: 26/05/2017

Mr Justice **Nicol**