



**Upper Tribunal  
(Immigration and Asylum Chamber)** Appeal Number:  
HU/11240/2018

**THE IMMIGRATION ACTS**

**Heard at North Shields**

**On 10 May 2019**

**Decision & Reasons  
Promulgated**

**On 14 May 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES**

**Between**

**M. A.  
(ANONYMITY DIRECTION MADE)**

Appellant

**And**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Sponsor

For the Respondent: Mr Stainthorpe, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant, a Sudanese national, applied for entry clearance as the spouse of one who had been recognised as a refugee, pursuant to the refugee family reunion provisions set out in paragraph 352A of the Immigration Rules. That application was refused on 17 April 2018 on

the basis the Respondent was not satisfied the Appellant and sponsor were married prior to his departure from Sudan.

2. The Appellant's Article 8 appeal against that decision was heard on 4 February 2019, and it was dismissed by First Tier Tribunal Judge Arullendran in a decision promulgated on 8 February 2019.
3. The Appellant was granted permission to appeal by decision of 19 March 2019 of First tier Tribunal Judge Garratt because it was considered arguable that the Judge's approach to the content of the sponsor's screening interview, and to whether the Appellant had "family life" with the sponsor, was flawed.
4. No Rule 24 Notice has been lodged in response to the grant of permission to appeal. Neither party has applied pursuant to Rule 15(2A) for permission to rely upon further evidence. Thus the matter came before me.

#### The hearing

5. The sponsor attended the hearing and confirmed that the Appellant was no longer legally represented, but wished to proceed with the appeal. He relied upon the grounds that had been professionally drafted.

#### The Appellant's challenge

6. The central issue of fact before the Judge was whether the Appellant and the sponsor had married on 5 June 2009 in Sudan as they claimed in the course of this appeal, or whether the sponsor was unmarried when he first arrived in the UK, as he was recorded as having declared himself to be when subject to his screening interview. In addressing herself to that issue the Judge considered the evidence before her concerning when, and in what circumstances, the screening interview was conducted. She also looked at the other available evidence that was said to be relevant to the existence and formation of the relationship between the Appellant and the sponsor, in the form of photographs, a marriage certificate, and, the sponsor's travel to Egypt. It is clear when the decision is read as a whole that the Judge did not fall into the trap of treating the record of the screening interview as determinative of what was said on that occasion.
7. The Judge considered she was required to resolve a dispute as to whether this interview was conducted immediately after the sponsor was removed from the underside of a lorry having spent two or more days in hiding there without food or water. She concluded, that even if he had travelled in that way to the UK, there had upon his own admission to her been a three day gap

between arrival and the screening interview. Thus the interview was not conducted in circumstances which might explain a basic mistake over marital status [30]. That finding was well open to her on the evidence, and was adequately reasoned. Although paragraph 4 of the professionally drafted grounds asserts that no such claim was made by the sponsor in evidence, but the author's notes of the hearing have not been produced with the grounds as they suggest will occur, and nor has the author offered evidence in the form of a witness statement to confirm their accuracy. Nothing turns on this however, since it is plain that the sponsor's case before me is that he arrived on the 21<sup>st</sup> and was interviewed on the 24<sup>th</sup> - as the Judge concluded was the position. Thus, as she identified, he was not interviewed when in an exhausted hungry and dehydrated condition.

8. The Judge also noted the sponsor's ability to recall detail, and to converse with the interpreter provided, so as to accurately provide the names and years of birth of each of his parents and five siblings [31]. Thus she rejected his claim to have been unable to understand the interpreter. The grounds offer no challenge to this finding.
9. The Judge also noted the absence of evidence to explain how the Appellant had been able to obtain the issue to her of a marriage certificate in 2016, in relation to a ceremony that was said to have taken place in 2009, and concluded that she could place little weight upon its existence and content. She also noted the wedding photographs, and concluded, for the reasons given, that they were taken in 2017 when the sponsor told her he had visited Egypt. Again the grounds offer no challenge to these findings.
10. In these circumstances the guidance to be found in JA (Afghanistan) v SSHD [2014] EWCA Civ 450 offers the Appellant little assistance. The Tribunal is not obliged to place no weight upon the record of a screening interview, as the grounds appear to assert. The guidance is to the effect that a careful consideration is required of the weight that can be given to the recorded answer to any specific question; that is in my judgement precisely what occurred in this case. The grounds disclose no arguable error of law in the Judge's approach to the assessment of the weight to be given to this evidence.
11. The second limb to the grounds is the complaint that the Judge should not have made the finding that the Appellant and sponsor do not enjoy "family life" together. The grounds do not however identify any error of law that infect this finding - they merely complain that in the face of it the Appellant will find it very difficult to succeed in any future application made pursuant to Appendix FM.

12. In any event, the Judge made findings in the alternative, on the hypothesis that “family life” did exist at the date of the hearing, albeit it had been created after the sponsor’s departure from Sudan [38-39]. She concluded that the balance lay firmly in the Respondent’s favour, and the grounds offer no challenge to that.
13. In the circumstances the grounds disclose no material error of law in the Judge’s approach to the separate questions of whether Article 8(1) was engaged by the decision under appeal, and if it was, where the balance of proportionality lay under Article 8(2). The Appellant was only able to avoid the need to satisfy the requirements set out in Appendix FM (which include the minimum income threshold and other requirements), if she could establish that the sponsor was her spouse prior to his departure from Sudan. If he was not, then she offered no reason why she should be placed in a better position than the spouse/partner of a British citizen. Thus she offered no reason why she should not be expected to make an application for entry clearance in due course, paying the requisite fee, that demonstrated she satisfied the provisions of the Immigration Rules that applied to her. There were on the evidence placed before the Judge no special circumstances relating to either herself or the sponsor that would have meant the public interest in obliging her to do so was lessened or absent.
14. In the circumstances, and as set out above, I am satisfied that the Judge did not fall into any material error of law when she dismissed the Article 8 appeal, notwithstanding the terms in which permission to appeal was granted. In my judgement the grounds fail to disclose any material error of law in the approach taken by the Judge to the public interest that requires her decision to be set aside and remade.

## **DECISION**

The Determination of the First Tier Tribunal which was promulgated on 8 February 2019 contained no material error of law in the decision to dismiss the Appellant’s human rights appeal which requires that decision to be set aside and remade, and it is accordingly confirmed.

### Direction regarding anonymity - Rule 14 Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until the Tribunal directs otherwise the Appellant is granted anonymity throughout these proceedings. No report of these proceedings shall directly or indirectly identify her or the

sponsor. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.

**Signed**

Deputy Upper Tribunal Judge JM Holmes  
Dated 10 May 2019