IAC-AH-KEW-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/09560/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 9th November 2015	**On 17th December 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

SKA
~~(ANONYMITY DIRECTION NOT MADE)~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: The Cardinal Hume Centre
For the Respondent: Ms S Sreeraman, Home Office Presenting Officer.

DECISION AND REASONS

The Appellant

1. The appellant is a citizen of Ethiopia born on 1st January 1978 and he made an application for settlement as the spouse of a person present and settled in the UK further to Paragraph 352A of the Immigration Rules. His application was dated 8th July 2014. This was refused in a notice of decision by the Entry Clearance Officer in Nairobi on 21st July 2014 under Paragraph 352A (i) and (ii).

2. The decision of the Entry Clearance Officer stated that the appellant had provided a handwritten marriage certificate and his wife's Home Office

interview records whereby she confirmed that she had been married to a person named AS who was now deceased. The sponsor previously provided a statement advising her claimed husband was dead. She then advised that she found out the appellant was alive in May 2014.

3. As evidence of the identity the appellant provided a photocopy of his Ugandan immigration certificate and this certificate confirmed he had applied for leave to remain in Uganda but there was no evidence to show what evidence he provided to the Ugandan immigration authorities to prove his identity. This certificate was issued on 22nd May 2014 just two months before he made his application and he had provided no further evidence to corroborate his identity.

4. There were also discrepancies between his sponsor's statement provided with his application and her own Home Office interview record. The sponsor provided the statement which clearly stated she found out her husband was deceased ***after*** she left prison. In her screening interview at 4.2 she effectively said that she discovered this whilst she was in prison. After her husband was killed she was ill and admitted to hospital. Her sponsor stated the following at question 84 of her Statement of Evidence Form interview

> "As I was actually being brought to see my husband for five minutes every fifteen days. From (illegible) as I expected to see him because it was the fifteenth day. When I asked the police (illegible) to get a glimpse of my husband he got curious and came over to me. One said 'your husband is killed, he's dead, you are to follow him'."

5. The sponsor stated during her Home Office interviews that she found out her husband was deceased before she left prison. This contradicted the statement provided with the application. This discrepancy coupled with the fact that the appellant had provided insufficient evidence of his identity left him to doubt that he was the person listed as his sponsor's husband in her Home Office interviews.

6. He had provided no evidence of the relationship such as photographs of himself and his wife prior to her departure from Ethiopia. All of the photographs provided appear to have been taken recently.

7. The Entry Clearance Officer was not satisfied that the sponsor was married as claimed and that they were part of the sponsor's family unit at the time of their departure from their country of habitual residence.

8. The matter was heard by First-tier Tribunal Judge Davidson who refused the appeal under the Immigration Rules and on human rights grounds.

Application for permission to appeal

9. An application for permission to appeal was made on the following grounds

(i) the judge had at paragraph 29 and 30 made findings in respect of plausibility of the sponsor. The sponsor had not found out for four years that her husband was alive not dead but the judge made assumptions about what the sponsor may or may not have been able to find out about the husband and what the Oromo Liberation Front would have been able to find out. Paragraphs 29 and 30 exhibited an unlawful reliance on the judge's own views in terms of what was reasonable to expect of the sponsor or obtain in Ethiopia.

See **MM (DRC – Plausibility) Democratic Republic of Congo [2005] UKIAT 00019**, **HK and the Secretary of State for the Home Department [2006] EWCA Civ 1037**, **Y and the Secretary of State for the Home Department [2006] EWCA Civ 1223**.

(ii) the judge indicated that he had been referred to the case of **The Chief Adjudication Officer and Bath** at paragraph 24 of his determination but deduced a wrong point of law from it. The marriage certificate had to be accepted as genuine unless the respondent provided some evidence to prove it was a forgery. The issue of whether or not the marriage certificate was a forgery was dealt with in ground 6. In that authority the presumption operated to show that the proper form was observed and could only be displaced by positive not merely clear evidence.

The judge failed to take into account the birth certificate of the child which indicated the names of both the appellant and the sponsor as the parents of the child.

(iii) the judge made findings in respect of the sponsor's 'creditability' (sic) in respect of discrepancies of her account but this was no way central to the issue of the case as to whether or not the appellant was in fact her husband or whether she was ever married to the appellant. The judge therefore placed weight on discrepancies that were not material. Further the judge at paragraph 16 of his determination wrongly identified this was a central issue in the case. This was not a central issue in the case.

(iv) at paragraph 25 of the determination the judge attached little weight to the letter from AM which testified as to the wedding of the appellant but the judge was in a position to take judicial notice as to how two calendar systems operate thereby resolving this issue.

(v) at paragraph 23 of the determination the judge made reference to the ID card of the appellant that had been translated into English commenting on the distinction between the address in the ID card and the address the sponsor gave as her address at her screening interview but there was no representative for the respondent at the hearing and it was incumbent on the judge

to raise this issue with the sponsor in live evidence. This did not take place contrary to the **Surendran** guidelines.

(vi) the judge failed to take into consideration the fact the respondent did not challenge the authenticity of the marriage certificate and that it should be accepted as a genuine document. He made no findings in respect of the certificate at all however his overall finding was that the appellant and the sponsor were not married would suggest that it was a forgery. In order for the judge to be persuaded of this it would have been incumbent on the respondent to present evidence proving the document was a forgery as per **RP (Proof of Forgery) Nigeria [2006] UKAIT 00086**.

10. Permission was granted by First-tier Tribunal Judge P J White. He found it was arguable that the respondent had not challenged the marriage certificate, had not taken into account the birth certificate of the child, improperly took against the evidence of two witnesses, adopted a procedural unfairness in highlighting a discrepancy in address which had not been raised at the hearing and was arguably wrong to make findings as to how the appellant may have obtained information as to how the appellant may have obtained information as to whether her husband was still alive.

The Hearing

11. At the hearing before me Miss Mellon submitted that the judge's assessment that the central issue as described at paragraph 16 was whether the appellant was dead was misconceived. She submitted that the marriage certificate was not properly considered and was not discussed in the findings and there was merely an assumption it was a forgery. The Home Office had not been represented at the hearing and the judge only asked three to four questions throughout the hearing. This was an issue of procedural fairness.

12. In relation to the witness evidence there were two statements and the judge dismissed these at paragraphs 25 and 26 purely on the basis of the failure to translate dates. Those dates were provided in the marriage certificate and there was a failure to translate dates. The judge should have explored any discrepancy with regard to dates with the appellant sponsor albeit that the witnesses themselves were in Ethiopia.

13. There was a birth certificate of the child which pre-dated the application by four years and there was no challenge on that that AS existed.

14. There were also discrepancies in the address which were cited at paragraph 23 but the evidence was that the appellant had subsequently moved to the last address and once again the sponsor could have explained this.

15. A further ground was put in relation to plausibility. The judge had erred at paragraph 30 and his reasons were not clear. There were no reasons as to why the sponsor should be lying albeit that I stated that it was possible the judge could have been criticised for speculation.

16. In addition there was a failure to consider evidence although this was not raised specifically in the application for permission to appeal. Miss Mellon referred to the photographs and the ID cards. She submitted it was not clear that identification was a core issue and it was not explored. It was accepted that the judge was on his own as there was no Home Office Presenting Officer but for the reasons given the appellant should succeed.

17. Miss Sreeranam submitted that the core of the appeal did lie with the identity of the appellant and was a primary point of conflict. There was a serious discrepancy in the appellant's own evidence which the judge had identified. The judge did consider the marriage certificate said to be issued on 15th February 2000 but this did not take the identification of the appellant further. Albeit that the judge granting permission had identified that the judge had made an error in the dates there was a discrepancy between the dates on the marriage certificate which was stated to be on 23rd April 1992 and the date given by AM for the wedding which was said to be on 23rd December 1992, there was a conflict in the facts and with regards to the second witness it was clear that that witness was not even listed as a witness on the certificate.

18. The issue with regards to addresses was not a sustainable point. The appellant and the sponsor had not established an address they had co-habited at and if the appellant had moved into the sponsor's claimed address there was no explanation provided as to why he was still giving an address residing at number 390 as opposed to 1012. In her screening interview and asylum interview the sponsor gave the address she lived at as permanent accommodation. The marriage certificate did not resolve the central issue of the identity of the appellant.

19. Miss Mellon countered that the marriage contract identified the names of the witnesses on the contract. If there was an adverse credibility point that was a procedural issue which should have been taken. At the top of page 28 on the marriage contract the two addresses appeared. If the judge was wishing to say this was an entirely different man he was making an opportunistic application to join the sponsor in the UK the judge had not specifically found so. There was evidence which he had not explored and my attention was specifically drawn to the Ugandan ID card for the appellant which was at page 40 of the appellant's bundle which included the letter from the Aromo community in Uganda dated 10th April 2015 and the family registration dated 19th August 1996.

20. In conclusion Ms Sreeranam submitted that there was no DNA evidence which had been presented to the judge.

Conclusions

21. I have no doubt that the central issue in this matter is indeed the identity of the appellant. The question is whether this appellant is who he says he is. The identity of the appellant is of fundamental importance to this appeal. The Entry Clearance Officer rejected the application on the basis of Paragraph 352A (i) that is the applicant is married to or the civil partner of a person who is currently a refugee status as such under the immigration rules in the United Kingdom. It was always clearly the case that the identity of the appellant was in issue and it was put in issue by the Entry Clearance Officer. It is not contested that the sponsor has refugee status. What is contested is that the sponsor is who he says he is and whether the appellant is the person named in the marriage certificate and the birth certificate.

22. The judge identified the question of whether in fact the appellant was dead as the sponsor had claimed on arrival into the UK and throughout her asylum claim and/or whether she had an honest belief that her husband was dead. The credibility of the sponsor was evidently an issue.

23. I do not think that the judge can have been more clear in setting out that he thought the issue which was relevant was whether the person who claimed to be SKA was in fact that person. Indeed the judge cited at paragraph 13 that "the appellant's claimed identity and claimed marriage to the sponsor are disputed by the respondent." This was the opening paragraph in the findings of credibility, fact and law of the judge and he went on to explain why the Entry Clearance Officer had refused that application. The question of the marriage relates and centres on whether the person is who he is says he is.

24. The judge recorded that "in response the appellant claims he submitted the same documentation to the Ugandan authorities in the course of his asylum claim in Uganda as the sponsor submitted to the UK authorities." At paragraph 17 the judge's decision rested squarely on the differing accounts that the sponsor herself had given in relation to her husband's claimed death. In her screening interview she stated as the judge recorded "*She was in prison for 2 years and six months without sentence and her husband was killed after two years [SCR 4.2]. She said that after her husband was killed she was ill and admitted to hospital and she was able to escape from the hospital with the help of a nurse and her family in mid-2008 screening interview 4.2. When asked about her marital status she replied that her husband was 'AS and was deceased [SCR 6.5]"*

25. However the judge recorded at paragraph 18 that in her substantive asylum interview conducted on 27th July 2010 ten days after the screening interview held on 17th July 2010, when asked when her marriage ended, the sponsor stated that at some time in summer 2008 she asked to glimpse her husband as usual and was told that he was dead SAI 84.

26. At paragraph 22 and the judge states as follows

> "In her SAI the sponsor said that she was told in prison that her husband had been killed [SAI: 84]. She repeated exactly the same account before

> me in oral evidence. This was repeated by the sponsor in her witness statement dated 7.5.15 [WS: 6 & 16]. However in her witness statement dated 8.7.14 at paragraph 6 the sponsor says, "For 6 years of the last six years, I believed that my husband was dead. We had both been detained at the same prison in Ethiopia for over two years. I was able to escape from the prison in 2008. After I left prison, I made enquiries about my husband. That was when I was told that he was dead. I never saw his body'. **This last statement is a clear contradiction of what she has maintained in every other circumstance.** When I asked her about it she said "I remember this was with my social Worker." I then asked her if the statement of 8.7.14 had been drafted by solicitors and she replied, "The social worker asked me questions I thought I understood everything I was told by the guards in prison". Her answers to my questions were obviously non sequiturs. They did not in any way explain a glaring discrepancy between her previous accounts of being told about her husband in prison and then saying it was by making enquiries after she left prison, as she stated in her statement of 8.7.14**. This detracts from her credibility**."

27. The judge gave sound reasons for finding the sponsor lacked credibility in that the sponsor *changed* her evidence between her screening interview and her asylum interview and her statement that she gave on 8th July 2014 at paragraph 6 and as the judge found, her answers did not in any way explain a glaring discrepancy between her accounts. It was the judge's view, regardless of when or how she could find out or the findings regarding the Oromo Liberation Front, that the change in evidence undermined the sponsor's evidence.

28. I find that the judge gave a perfectly reasonable assessment of the evidence in relation to the addresses at paragraph 23. It was argued that the parties could have moved but even if the address is such that the appellant had moved that does not undermine the cumulative nature of the findings the judge made with regard the remainder of the evidence.

29. I do not agree with the submission that the judge misdirected himself in relation to the marriage certificate. The judge did not have to accept the marriage certificate and it was a matter for him as to what weight he placed upon it in relation to this particular appellant. In that regard the judge did address the issue of the marriage certificate at paragraph 24. It is not the case that the respondent needed to show that the marriage certificate was a forgery for the judge to place no reliance on the marriage certificate. Even if the marriage certificate is genuine it does not address the fundamental issue of the identity of the appellant. Is the person named in the certificate the appellant? The judge did not believe so. The objection in relation to the birth certificate falls away for the same reason.

30. In particular the judge found that neither AM nor Mr G attended to give oral testimony or be cross examined as to their evidence and as a result the judge placed less weight on their evidence. Indeed they could not because they were in Ethiopia. I fail how to see how the appellant's sponsor could supplement answers on their behalf. What is quite clear is that AM was not one of the signatory witnesses and AM does not in fact

assist in identifying who AS was. The judge states "there is no evidence inherent in the letter of AM that identifies the parties as the appellant and the sponsor." That is a fundamental point in this appeal.

31. As a further point it should be added that this witness gave entirely the wrong date for the wedding being 23rd December 1992 EC and further that he was not a signatory witness as claimed in his witness statement. The judge was not given a translation of the dates from the Ethiopian calendar into the Gregorian calendar and I do not find that he can be criticised for his own challenge to the evidence on that basis. These letters were presented by the appellant's representative and this matter should have been addressed.

32. In relation to the letter of Mr G, which was addressed at paragraph 26, the judge quite clearly stated that the letter had confused the western calendar with the Ethiopian calendar. I find that the judge would have been criticised had he made an attempt to translate this calendar incorrectly and no such translation was given.

33. The application for permission to appeal was not based on the failure of the judge to address the evidence from the senior OLF representatives but the judge at [28] makes further findings that Bersisa Berri claimed to have known the appellant since teenage years and detailed all his activities but made no mention of his imprisonment. This adds to the lack of credibility of the evidence.

34. The judge also found that the period of ignorance which struck him as inherently implausible. I was referred to **MM (DRC - Plausibility) Democratic Republic of Congo [2005] UKIAT 00019**. I am not persuaded that this case assists the appellant and I cite from the relevant paragraphs to underline my point bearing in mind the change in the sponsor's, the key witness' evidence.

35. Paragraph 17 of that decision refers to "*an absence of evasion or a sequence of changing answers and the converse can be usefully and explicitly referred to. This is an element in the assessment of credibility*" and further at paragraph 19 "*it is the total content of the evidence including consistency on essentials or major inconsistencies, omissions and details improbabilities or reasonableness which does and should found the decision*."

36. Further at paragraph 20

> "We also need to say something about the submission that there were alternative possibilities which could explain away satisfactorily what the Adjudicator found to be wholly improbable. This is not uncommon approach on appeal, even where that appeal is only on a point of law. First it is for the appellant to put forward all the evidence which he can as to what happened**. If there are inconsistencies and improbabilities it is for the appellant to recognise them and deal with them so far as he can**. Usually, and as here, the appellant will know that his credibility is in issue even though not all the points relied on by the Adjudicator may feature in

> the refusal letter. Such points may arise from an appellant's evidence to the Adjudicator."

37. And further at paragraph 21 second,

> "If it is said that there was an alternative explanation unfairly overlooked by an Adjudicator because the relevant point was unfairly not raised**, it is for the appellant to provide evidence as to what it was.** There is a world of difference between an appellant's evidence and the speculations of an advocate."

38. And paragraph 22

> "Third it is a fallacy to suppose that where an Adjudicator has concluded that a story is too improbable to satisfy the lower standard of proof the conclusion can be shown to be legally erroneous by pointing to alternative inferences even if they may be possible even reasonable. A conclusion is not legally erroneous because it may fail to contemplate or to traverse possibilities not raised for the Adjudicator's consideration. It would need to be a point so obvious that any Adjudicator would reasonably have had it in mind as a reasonable alternative which needed to be dealt with even though not proffered by the appellant in order for the contention even to be arguable."

39. I am not persuaded in these circumstances that **MM** assists the appellant. The burden of proof rests with the appellant and the standard of proof is on the balance of probabilities. The judge gave reasons for his finding that the period of ignorance of each other's existence was implausible because he said

> "Two OLF officials Berri and Alishe both claimed to have known the parties and knew about their activities and yet there is no evidence of the sponsor asking them if they had any knowledge of the fate of her husband. In view of the relative ease with which the sponsor claims to have escaped and the account given by the appellant of the conditions in which he was detained, it would have been relatively easy for him to get word out of prison to his and his wife's family about his whereabouts and situation. Alternatively it would have been comparatively easy for the Aromo Liberation Front to have made enquiries of sympathisers and prisoners to discover the fate of the appellant. It is beyond belief that no attempt was made by anyone over four years to find out what actually happened to the appellant or that no information leaked out to the families who could have then informed the sponsor."

40. The judge is not obliged to give reasons for reasons and it is not the case that the appellant was unrepresented. I was also referred to the **Surendran** guidelines which it was submitted that the judge failed to apply. I find that in the refusal letter the challenge to the appellant's case was clearly set out and as I note that he was represented at the hearing. As stated at paragraph 4 of the **Surendran** guidelines

> "Where matters of credibility are raised in the letter of refusal a Special Adjudicator should request the representative to address these matters particularly in his examination of the appellant or if the appellant is not giving evidence in his submissions. **Whether or not these matters are**

> **addressed by the representative and whether or not the Special Adjudicator has himself expressed any particulars concern he is entitled to form his own view as to credibility on the basis of the material before him**."

41. There was clearly an issue in relation to the credibility of the appellant's case and as stated in the **Surendran** guidelines at paragraph 6

> "It is not the function of the Special Adjudicator to adopt an inquisitorial role in cases of this nature. The system pertaining at present is essentially an adversarial system and the Special Adjudicator is an impartial judge and assessor of the evidence before him."

42. Finally, I was asked to extend grounds to include a challenge to the failure of the judge to consider the ID card and the photographs. Even if I allowed that application, which I do not, it would not assist the appellant's case for these reasons. The photographs are blurred and those taken of the appellant with the sponsor do not appear to be the same person as that on the ID card. Secondly, it may be that the sponsor married somebody by the name of ASK who is recorded on the Addis Ababa city council identification document as having a date of birth on 8th May 1972 EC (January 16th 1980). This document was submitted at the hearing and was translated by Daniela Languages a translator adopted by the appellant's representatives and stamped as such. In his application for entry clearance, however, the appellant gave his date of birth as 1st January 1978. There were therefore two different dates of birth given by the appellant. There was a failure by the judge to have identified that the identity document showed a different date of birth but, that said, I note that he was handed this documentation at the hearing. This is a serious flaw in the evidence and only further underlines that the judge made no error of law in his assessment of credibility and the deficiencies in the evidence.

43. Reading the decision as a whole, the judge gave adequate reasoning for his decision and his assessment displayed neither irrationality nor procedural error and therefore I find that there is no material error of law and the decision shall stand.

~~No anonymity direction is made.~~

Signed Date 4th December 2015

Deputy Upper Tribunal Judge Rimington