



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

Appeal Number: HU/02470/2015

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 30 October 2017**

**Decision & Reasons  
Promulgated**

**On 09 November 2017**

**Before**

**UPPER TRIBUNAL JUDGE KING TD**

**Between**

**MR SAMSON KIBROM OKBAY  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms A Boyle, Counsel instructed by Duncan Lewis Solicitors  
For the Respondent: Mr P Duffy, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Eritrea, born on 8 September 1991. He appeals against the decision of the respondent on 14 September 2015 refusing him leave to enter the United Kingdom to join his wife, the sponsor, who has limited leave to remain in the United Kingdom as a refugee.

2. The application was refused because the respondent was not satisfied that the appellant and the sponsor were married prior to her leaving Eritrea. It is submitted that the appellant had not provided a marriage certificate or photographs of the wedding at the time.
3. The appeal against the decision came for hearing before First-tier Tribunal Judge Grimmett on 3 January 2017. In a determination promulgated on 9 January 2017 the appeal was dismissed.
4. Challenge is made to the decision on the basis of procedural unfairness and of a failure to take into account all the evidence.
5. Permission to appeal to the Upper Tribunal was granted on that basis and the matter comes before me to determine the merits of the appeal.
6. In terms of chronology it is the evidence, particularly of the sponsor, that she married the appellant on 1 March 2012, a marriage arranged by the families and conducted in the Pentecostal way by a Pentecostal pastor. It was the case for the sponsor that she was arrested by the Eritrean authorities in December 2012, having been caught practising her Pentecostal faith. She managed to escape with the assistance of an agent arranged by her husband's brothers. She left Eritrea on 26 May 2013. She says that she last saw the appellant on 30 April 2013 when he visited her in Asmara.
7. Her asylum claim was granted on 13 August 2013.
8. The appellant in his statement indicated that he too fled Eritrea and claimed asylum in Uganda. He managed to obtain the sponsor's telephone number through a mutual friend and contacted her in March 2014. Thereafter she visited him in Uganda between 17 April 2014 and 28 April 2014, since when they have been in continuous contact via telephone, through viber and by post and that there has also been a money transfer from her to him.
9. As was noted by the respondent in the Reasons for Refusal Letter and by the Judge, there were inconsistencies between the evidence of the sponsor and that of the appellant.
10. The appellant in his statement of 31 March 2015, to be found at pages 45 to 47 of the appeal bundle, indicated that the pastor who had conducted the marriage ceremony retained the marriage certificate. Thereafter, they did not have any contact with the pastor as "we do not know his whereabouts or situation". It also stated that they did not have any contact with their families because it would be dangerous for them to contact them and therefore were unable to produce the document. He also said there were no photographs taken of the wedding.

11. The sponsor in her statement of 14 December 2016, to be found at pages 4 to 12 of the bundle, said at paragraph 13 that the Eritrean authorities had confiscated their identity documents and any marriage documents which they had. Thus they were unable to provide evidence to prove the marriage on the basis that both she and he fled Eritrea illegally without having the chance to collect their belongings.
12. At paragraph 12 it was stated that soon after she fled Eritrea she was informed by some of her neighbours who fled Eritrea after her that the Eritrean authorities went “to my family’s house and my husband’s family house and all our family photographs and all the written documents were confiscated by the Eritrean authorities on 30 May 2013”.
13. Significantly there is no reference to that matter made by the appellant, notwithstanding seemingly that the raid was conducted also at his home.
14. At paragraph 24 the sponsor indicated as follows:

“Therefore the ECO should have been aware that our wedding photographs and marriage contract were confiscated by the Eritrean authorities following my illegal exit from the country so they cannot be produced.”
15. It is entirely understandable therefore that the Judge focuses particularly on those matters.
16. It is said that the Judge failed to put matters of concern to the sponsor. It is clear however from paragraph 9 of the determination that the sponsor was given an opportunity to deal with the discrepancy between her account of having wedding photographs and the appellant’s account that there were none. The explanation was that she had made a mistake in her witness statement. The Judge did not accept that explanation, given that she had adopted her statement at the start of her evidence and did not indicate that there were any errors in it until the inconsistency was pointed out to her.
17. It is clearly difficult to reconcile the statement of the appellant that the marriage certificate was retained by the pastor, who could not be found, with the account given by the sponsor that the marriage documents had been seized by the authorities. It clearly was a significant event, if indeed it had happened in the way that the sponsor had described. She had obtained that information from neighbours of hers in Eritrea, who were now in the United Kingdom. There was however no evidence from those neighbours presented.
18. Ms Boyle who represents the appellant today and indeed represented him at the hearing, contends that it was unreasonable of the Judge to expect other evidence. I fail to see what was unreasonable as to the approach taken by the Judge on that matter when the central challenge that is made

by the respondent is the lack of documentation. That was a matter that should have been properly addressed in evidence if relied upon.

19. The clear conflict of account is highlighted by the Judge in paragraph 7 of the determination.
20. The appellant, in his witness statement, sought to indicate that the marriage certificate was with the Pentecostal priest and gives very little detail as to what steps, if any, had been taken to try and trace him down or indeed to obtain a copy of the marriage certificate from the Pentecostal Church. The explanation offered by the appellant in his statement was of course that they had no contact with their families as it would put them in danger with the Eritrean authorities to do so. However, it has been noted that the sponsor in her witness statement, at paragraph 27, indicated that despite the lack of contact with family members, the appellant was able to gather some further evidence of identity from his brother who was still in Eritrea, contact being made through people trading between Uganda and Eritrea. In such circumstances the question clearly arises as to why the brother, having obtained some documents, could not have obtained others. It is perhaps in that context that remarks in paragraph 6 of the determination are made.
21. The Judge recognised that contact had been made as between the sponsor and appellant in Uganda, highlighting certain matters as raising a question as to the nature of that relationship. Although contact had been made in 2014 the application for entry clearance was not made until 2015. The appellant in the interview was unaware as to whether or not the sponsor was working. The Judge comments that it is surprising in the circumstances, with the prolonged communication between them, that such would be a factor which he did not know. Once again the explanation given by the sponsor is noted in paragraph 11 of the determination that she had not told him she was not working as she did not want to worry him. That is not an explanation that is accepted by the Judge as explaining a lack of his knowledge of her circumstances. Although contact between the sponsor and the appellant was not in doubt, the frequency of it was a relevant matter. In the interview the appellant had indicated that his last contact had been by email some three or four weeks before the date of interview which was conducted on 4 May 2015. No email was presented. Indeed the evidence of the sponsor was that the contact was more frequent than that.
22. Ms Boyle submits that it is notoriously difficult for those who have fled Eritrea to make contact with family members or obtain documentation and that that was something that the Judge ought to have borne in mind before making that criticism in the determination. Whilst there may be some merit in the contention that perhaps the Judge should have been a little bit more understanding of the difficulties of contacting the family that of course was not the focus of enquiry or of concern. The central issue was the inconsistent evidence given as between the appellant and

the sponsor as to the absence of the documentation and/or the inability to obtain it.

23. The issue of family contact and identification were, in the circumstances, perhaps more peripheral. Contrary to the contentions made in the grounds of appeal it is clear that the Judge had paid careful regard to the statements that had been submitted and raised certain matters with the sponsor.
24. It is difficult to understand what further matters could or should have been put before the sponsor for her comment. As indicated the statements submitted contain obvious inconsistencies, highlighted by the respondent both in the original decision of refusal and in the managerial review on the matters that should have been dealt with more fully by those instructed to represent the appellant. The appellant was represented at the hearing and in those circumstances it is entirely reasonable for the Judge to expect that those matters be fully and properly dealt with in evidential terms.
25. I can find no unfairness in the manner in which the hearing was conducted nor in the conclusions come to by the Judge. The fact that an explanation is offered either by the appellant or by the sponsor does not oblige the Judge to accept it. It is clear that the Judge had regard to the overall context and of the evidence that was presented. In the perspective of the Judge the inconsistencies were not satisfactorily explained. It is entirely understandable therefore why the appeal was dismissed.
26. In those circumstances the appellant's appeal before the Upper Tribunal is dismissed. The decision of the First-tier Tribunal Judge shall stand, namely that the application for entry clearance be dismissed.

**Notice of Decision**

The appeal is dismissed under the Immigration Rules and human rights

No anonymity direction is made.



Signed

Date 8 November 2017

Upper Tribunal Judge King TD