



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/15634/2016

THE IMMIGRATION ACTS

Heard at Field House  
On 8 May 2018

Decision & Reasons Promulgated  
On 17 May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

RUTH GHIRMAY FRAY  
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr I Jarvis

For the Respondent: Ms M Malhotra, Counsel instructed by Mr Daniel Ghebrekirstos  
Abraha

DECISION AND REASONS

1. This is an appeal from the decision of First-tier Tribunal Judge R Sullivan, promulgated on 26 September 2017. The appellant, whose date of birth is 5 April 1985, is an Eritrean national.
2. At paragraph 26 of the decision the judge says:

“I am satisfied from the screening interview and the sponsor’s evidence that in 2009 he left a wife and child in Eritrea. The question is whether the appellant is that wife or has the appellant visited, supported, funded and communicated with an imposter? Taking all the evidence together I am satisfied that the appellant married the sponsor in 2004, was living with him

in Eritrea before he fled in 2009 and that they intend to live together permanently in the United Kingdom.”

3. The judge found, at paragraph 27, (i) that the relationship between husband and wife amounts to family life for the purposes of Article 8 of the European Convention on Human Rights; (ii) that the sponsor cannot return to Eritrea and (iii) there is nothing to show that he would be permitted to reside in Sudan with the appellant.
4. The judge found that the appellant satisfied the requirements at paragraph 352A of the Immigration Rules and, in the circumstances, the appeal was allowed.
5. The Secretary of State issued an application for permission to appeal the decision relying on two substantive matters. Mr Jarvis, who appears for the Secretary of State, has made his primary focus the first of those two grounds.
6. The thrust of Mr Jarvis’ submission relates to the alleged failure on the judge’s part to give adequate reasons for her findings, in particular the correct identity of the appellant. It centres on paragraphs 19 and 20 of the First-tier Tribunal decision.

“19. At the hearing the respondent’s representatives submitted that the photograph on the marriage certificate dated 25 January 2004 showed an older woman than the lady shown in photograph number fifteen (said to be the appellant) holding a baby (said to be the appellant’s daughter). The appellant’s daughter is reported to have been born on 30 October 2004. The baby in the photograph does not look to me like a new born appearing awake, alert and able to hold up her own head. The photograph on the marriage certificate and that showing the baby must have been taken more than nine months apart. The appellant’s representative submitted that appearances can change and that differences in health, dress, hairstyle, lighting and other matters may all change appearance.

20. In my view the woman shown on the marriage certificate photograph does not have the same appearance as the woman shown at photograph 15 or as the woman shown in the 2017 visit photographs. The woman holding the baby does not have the same appearance as the woman shown in the 2017 visit photographs. I agree that at first glance the woman shown on the marriage certificate looks older than the woman holding the baby. However I am no expert in aging or in facial analysis and I cannot say with any degree of confidence whether the same woman is shown in all of the photographs or not.”

7. Mr Jarvis submits that the judge abrogated her responsibility by not making express findings on identity. He suggests there is something approaching a half-finding that the adults whose images are on the photographs are not the same person. Whilst I agree with Mr Jarvis that the wording at paragraphs 19 and 20 is not as clear and explicit as it might be, the judge has come to the only conclusion

that she could. In the absence of any expert evidence in ageing or facial analysis all she could do is in effect say the cards lie where they fall. There is a presumption of regularity and the burden of proof has not been discharged to demonstrate something fraudulent or deceitful in the way the appellant brought this application.

8. The statement in paragraph 26 (cited above) was sufficient to be dispositive of the appeal. The judge was charged with making the factual decision as to whether the photograph showed the genuine wife or an imposter. The judge came to the conclusion that it was an image of the wife.
9. Reading the judgment holistically, it properly draws attention to all features which weigh in favour and against the appellant. It is not for the reviewing function of the Upper Tribunal to analyse the decision the judge came to provided it was made within the four corners of the law. Other judges may have come to a different conclusion but I cannot fault this judge's fact-finding. There is no error of law and I dismiss the appeal.

**Notice of Decision**

Appeal dismissed.

Signed *Mark Hill*

Date 15 May 2018

Deputy Upper Tribunal Judge Hill QC