



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000206
FtT No: EA/09808/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 16 December 2024

Before

UPPER TRIBUNAL JUDGE LANE

Between

Secretary of State for the Home Department

Appellant

and

AISHA HASSAN MOHAMUD

Respondent

Representation:

For the Appellant: Mr Diwnycz, Senior Presenting Officer
For the Respondent: Ms Coen

Heard at Phoenix House (Bradford) on 16 September 2024

DECISION AND REASONS

1. I shall refer to the appellant as the respondent and to the respondent as the appellant as they respectively appeared before the First-tier Tribunal. The appellant, a citizen of Somalia, applied on 20 December 2021 applied for status under the European Settlement Scheme (EUSS) as the spouse of an EEA Citizen. That application was refused by a decision dated the 7 September 2022. The appellant appealed to the First-tier Tribunal which in a decision promulgated on 30 May 2023 allowed the appeal. The Secretary of State now appeals with permission to the Upper Tribunal.
2. Granting permission to appeal, Judge Brannan summaries the grounds of appeal as follow: 'a. Refusing an application to adjourn b. Suggesting to the appellant's counsel that the matter proceed on submissions only because the respondent had failed to discharge the burden of proof on her regarding the appellant being a party to a marriage of convenience

thereby denying the respondent the opportunity to cross-examine the sponsor.'

3. Ms Coen made oral submissions at the initial hearing and provided a helpful Rule 24 response. Mr Diwnycz, Senior Presenting Officer for the Secretary of State, made no submissions beyond relying on the grounds of appeal.
4. First, the respondent's appeal turns on the fairness of the refusal of the judge to adjourn the First-tier Tribunal hearing so that a full transcript of the appellant's marriage interview could be obtained. Whilst the judge [8] did not (as Judge Brannan, who granted permission to appeal, noted) record that he found it fair/in the interests of justice to proceed without an adjournment, I consider that matters of fairness were in the forefront of the judge's mind when considering whether to adjourn. I agree with Ms Coen that it was, in an appeal of this kind, incumbent upon the respondent to disclose a full copy of the marriage interview at the earliest possible opportunity. That the respondent now feels aggrieved by own failure to do so does not constitute a valid reason for finding that the judge's refusal to adjourn constituted an error of law.
5. Secondly, I agree with Ms Coen that there is nothing in the judge's decision to suggest that the judge 'advised' the respondent's representative to cross examine or not do so. It was wholly a matter for the respondent to decide how to present her own case, including whether that would or would not involve cross examination of witnesses.
6. Thirdly, it was for the judge, having fairly refused an adjournment, to decide the appeal on the best evidence available; the judge was not required to take account of evidence which, for whatever reason, was not before him. Ultimately, it was entirely open to the judge to prefer the witness evidence of the sponsor as the nature and validity of the marriage. As the Rule 24 statement of Ms Coen states, neither ground identifies a met error of law on the part of the judge. Accordingly, the Secretary of State's appeal is dismissed.

Notice of Decision

The Secretary of State's appeal is dismissed.

C. N. Lane

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 22 November 2024