Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number
OA/08428/2013

THE IMMIGRATION ACTS

Heard at Sheldon Court
On 2nd July 2014
Prepared 4th July 2014

Determination Promulgated
On 4th July 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

YOSEIF GEBRE HAFTU
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mrs Y Haftu (Sponsor)
For the Respondent: Mr N Smart (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant applied to enter the UK under the provisions relating to family reunion for refugees, the Sponsor having been granted refugee status in the UK. The application was refused as it was not accepted that it had been shown that they had married and in any event the marriage had taken place in 2008 when the Appellant and Sponsor had left Eritrea in July 2008.

2. The Appellant's appeal was heard by First-tier Tribunal Judge Pacey at Sheldon court on the 14th of March 2014. The Judge allowed the appeal on family reunification grounds finding that the Appellant and Sponsor had married in Sudan after leaving Eritrea. The Judge made a reference to the Appellant's Sudanese refugee card and the absence of his Eritrean passport.

3. The Respondent sought permission to appeal in grounds of the 31st of March 2014. There were 2 grounds of appeal the first was that the Judge erred in the approach to the marriage as the parties had married after leaving Eritrea, it had not been found that Sudan was country of habitual residence and the requirements of paragraph 352A(ii) had not been met. It was also asserted that the Judge erred on the issue of whether the relationship had been shown to be subsisting. Permission was granted by Judge Page on the 1st of May 2014.

4. The Sponsor attended the Upper Tribunal hearing. The nature of the Home Office's case was explained to her. She confirmed that they had married in November 2008 after leaving Eritrea and that they had not returned to the country.

5. I indicated to the Sponsor that to qualify for family reunion as a refugee under the rules it would have had to have been shown that the Appellant and Sponsor had married before they had left Eritrea. Nowhere in the determination is this addressed and there is no suggestion or finding that the couple were fleeing persecution from Sudan. A suggestion that Sudan could not be considered safe without explaining the dangers or why such a finding was made was clearly insufficient.

6. The determination contains a clear error of law in relation to whether the Appellant and Sponsor had married before fleeing Eritrea as they had married months later in Sudan. Accordingly whatever the state of their relationship they could not succeed under the Immigration Rules. In setting aside the determination on this basis I make no observation on the other issue which will have to be considered as part of any future application. As the Appellant cannot meet the requirements of the Immigration Rules the appeal must be dismissed.

CONCLUSIONS

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

I set aside the decision.

I re-make the decision in the appeal dismissing the appeal of Yoseif Gebre Haftu.

Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I make no order.

Fee Award

In dismissing this appeal I make no fee award.

Signed:

Deputy Judge of the Upper Tribunal (IAC)

Dated: 4th July 2014