Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: OA/17556/2012

THE IMMIGRATION ACTS

Heard at Laganside Courts Centre, Belfast	**Determination Promulgated**
On 10 January 2014	**On 3 February 2014**
	………………………………

Before

The Hon. Mr Justice McCloskey, President

Between

ABDIRAHMAN ISMAIL MO ALLIM OMAR

Appellant

and

ENTRY CLEARANCE OFFICER – ADDIS ABABA

Respondent

Representation:

Appellant: Mr McTaggart (of Counsel), instructed by R P Crawford & Co., Solicitors

Respondent: Mrs O'Brien, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This written determination both summarises and supplements the *ex tempore* Judgment of the Upper Tribunal pronounced at the conclusion of the appeal hearing conducted on 10 January 2014.

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2. The Appellant is a national of Somalia, aged 29 years. His appeal originates in a decision of the Entry Clearance Officer for Addis Ababa (the "*ECO*"), dated 15 August 2012, whereby the Appellant's application for entry clearance for family reunion in the United Kingdom was refused. The ECO reasoned, firstly, that "*little weight*" could be attributed to the photocopied marriage certificate submitted, purporting to establish the Appellant's marriage to his sponsor in Somalia. The ECO noted further the absence of any supporting witness statements or wedding photographs. He pronounced himself not satisfied about the asserted marriage. He further recorded the absence of sufficient "evidence" of asserted regular telephone and email contact between the Appellant and his sponsor. He cast doubt on the photocopied documents purporting to demonstrate money transfers from the United Kingdom to the Appellant in January, February and March 2012. He considered the two emails provided insufficient. He further noted that the sponsor had not sought to visit the Appellant in Ethiopia since at least February 2012, the sponsor having obtained limited leave to remain in the United Kingdom with effect from 16 August 2011. Finally, the ECO concluded that there was no family life between the Appellant and the sponsor, with the result that Article 8 ECHR was engaged.

3. Fundamentally, the ECO refused to accept the Appellant's claim that he and the sponsor were married in Somalia in 2009 and lived there as husband and wife until the latter fled in 2011, securing refugee status in the United Kingdom on 16 August 2011.

4. In order to secure family reunion entry clearance, the Appellant had to satisfy the requirements of paragraph 352A of the Immigration Rules which are that one of the parties to the marriage has been granted refugee status; the applicant must be married to the refugee; they must intend to live permanently together; and the marriage must be subsisting. Thus the validity of the asserted marriage was a crucial issue.

5. In its Determination, the First-tier Tribunal ("FtT") noted that the evidence available to it included an original certificate purporting to record the marriage of the parties on 13 April 2009; an expert report attesting to the authenticity of this document; the aforementioned money transfer records; and several photographs said to depict husband and wife. Evidence was given by the sponsor (the wife) and her sister. The Judge conducted an intricate analysis of the marriage certificate document. This exercise occupied a substantial part of his determination. It commenced with the following statement:

> *"Dr. Bekakalo does not analyse the contents and format of the marriage certificate in sufficient detail. I will do that now".*

Having enunciated this intention, the Judge proceed to analyse and dissect the document in extensive detail, concluding:

> *"The marriage certificate shows on its face that it is patently the product of a digital computer printer easily produced on a personal computer. I find it to be a fake".*

This was followed by a finding that the photographs were either not authentic or not descriptive of their alleged content. This incorporated a discrete finding that photographic studios could not have been functioning in a particular area of Somali in 2007. Finally, the Judge purported to consider the documentary evidence of money transfers from the sponsor to the Appellant. However, he made no findings of any kind concerning this issue.

6. The grant of permission to appeal was based on concerns about the exercise which the Judge had conducted regarding the marriage certificate. The submissions of the parties' representatives to this Tribunal confirmed that, at the first instance hearing, the Secretary of State had not made the case that any of the Appellant's evidence was fabricated. Ultimately, there was little dispute between the parties about the shortcomings in the FtT's determination. These may be summarised thus:

   (a) the propriety of the exercise undertaken by the Judge concerning the marriage certificate.

   (b) the inadequately reasoned rejection of expert evidence affirming that the certificate was authentic.

   (c) an absence of findings relating to the sponsor's evidence about the marriage and the evidence relating to money transfers and Lycamobile contact between Appellant and spouse (sponsor).

   (d) the outright failure to address and determine the Appellant's case under Article 8 ECHR.

7. The importance of making all necessary findings supported by appropriate reasoning was highlighted in the recent decision of the Upper Tribunal in MK -v- Secretary of State for the Home Department [2013] UK UT. This decision has particular application to cases of the present kind. As the decision in MK makes clear, errors of this kind can have the effect of depriving the losing party of its right to a fair hearing. I consider that this occurred in the present case. In the espects set out above, I consider that there were material shortcomings in relation to both findings and reasoning of the FtT.

DECISION

8. For the reasons elaborated above, the decision of the FtT cannot stand. It must be set aside and remade.

9. The appeal is allowed to the extent that the decision of the FtT is set aside and will be remade before a differently constituted FtT.

10. Given the overall history, in particular the elapse of almost two years since the settlement application was made, it is highly desirable that the re-listing of this case for a fresh hearing at first instance be undertaken without undue delay.

Bernard McCloskey.

THE HON. MR JUSTICE MCCLOSKEY
PRESIDENT OF THE
UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Date: 31 January 2014