



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000571
First-tier Tribunal No:
EA/08766/2022

Extempore

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 16 July 2023

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

AHMED MOHAMED ABDI
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms K Turner, Counsel, instructed Local Solicitors Ltd
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

Heard at Field House on 2 June 2023

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge O'Garro promulgated, it appears, on 29 November 2022 dismissing the appellant's appeal under Appendix EU of the Immigration Rules.
2. The application in this case was for a family permit to allow the appellant to join his wife, a Swedish national, who lives and works in the United Kingdom. They had undergone an Islamic marriage in Mogadishu on 1 September 2020. The appellant maintains that marriage is lawful as shown by the marriage certificate submitted was issued according to the

Somali Family Code. He had also submitted a written verification document certainly at the appeal but not when the application was refused. The Entry Clearance Officer refused the application on the basis that she was not satisfied by the document produced that the appellant and his wife were lawfully married.

3. For reasons best known to the parties there was no oral hearing of this matter and the judge decided the application simply on the basis of the material before her. The judge directed herself correctly that the appellant had the burden of proving validity of his marriage and had produced a copy of the marriage certificate which had been translated into English. She also noted that he had submitted a document which purports to verify the marriage was duly registered in accordance with the marriage laws of the Federal Republic of Somali but she said this and I quote:

“However what is noted is that the verification document the appellant relies on is not in the Somalian language, which I would expect it to be, alongside a certified translation of the document in English. I find the failure to provide the verification document in the language of the country it comes from, with the certified English translation of the document, raises a doubt about the document and without an explanation as to why the verification document was written in English and not in the language of the country, I am not prepared to place any weight on the document. I find the appellant has failed to show that his marriage was properly conducted and satisfies the requirements of the laws of Somalia”.

4. The appellant sought permission to appeal against that decision on two principal grounds. First, that the judge had irrationally concluded that no weight could be placed on the document due to it being in English although English is spoken in Somali as noted in the Home Office CPIN document. The second submission is that there is a procedural unfairness in that the matter raised about the language of the document was not raised during the course of the refusal and the appellant had not been on notice of these concerns. It is also put that the respondent had had sight of the document and considered it in the refusal letter without refusing such issues.
5. Permission was granted by Upper Tribunal Judge Jackson on 27 April 2003.
6. Subsequent to that the Secretary of State produced a letter pursuant to Rule 24 of the Tribunal Procedure Rules pointing out there are only two official languages in Somalia, that is Somali and Arabic, where it is accepted English is taught in schools and is frequently spoken, that the Entry Clearance Officer was unaware of what documents were submitted to the Tribunal and had made no comments on them, and the judge was entitled to reach the conclusions she did with regard to the document.
7. Since the appeal the appellant has produced an additional document dated 12 December 2022 which states that it is regarding the confirmation of the validity and the liability of the marriage certificate between the

appellant and his wife. That letter was not before the judge and thus cannot properly be taken into account at this stage in the proceedings.

8. Ms Turner submits that the judge erred in her approach and that she had gone beyond what was permissible in dealing with an appeal on the papers and that she failed to note the CPIN shows English is widely used when it might be expected that a document from the Ministry of Foreign Affairs seeking to verify the document be produced in English and that in reality her decision is flawed both in terms of procedure and overall.
9. Mr Melvin for the Secretary of State submits relying on the Rule 24 response that the judge was entitled to make the comments she did about the language of the document and drew attention also to the poor quality of the English in the document which has been subsequently produced, indicating that doubts were cast on the reliability of the other documents and that had this document been in front of the judge it would have caused her further doubt.
10. The judge in her decision has focused on the verification document. What the judge has not in effect considered is the document which it appears to verify, or is said to verify, which is the certificate that a marriage took place. If the judge had simply said that she was not satisfied by the documents that would have been one thing, but she has gone on to make points about the language which require some degree of nuance. She has not explained why she would expect it to be in English given that it purports to be issued by the Ministry of Foreign Affairs, that is clearly indicated for use in the United Kingdom and it is not improbable that the document contents would be drafted in English for that purpose.
11. But, more to the point, it is difficult to see what conclusions the judge actually came to about the authenticity of the marriage certificate. It has been translated and it is a certificate from a court. The judge has in effect accepted the Secretary of State's case regarding the weight that can be attached to the marriage certificate without explaining why she does so or why it needs a verification certificate. That is clearly something which informs the judge's assessment and I consider that in this case the judge's assessment of the verification document is flawed and that has fed into the ultimate question which is, was the marriage valid?
12. I consider that accordingly the error was in this case both procedural and substantive in that the judge has failed properly to explain why she did not accept the parties were married lawfully according to the requirements of the law in Somalia. I note as an aside that the judge simply ignores any of the other evidence regarding the marriage having taken place.
13. For these reasons I find that the decision of the First-tier Tribunal involved the making of an error of law and I set it aside. None of the findings are preserved.
14. Having had regard to the relevant guidance, I am satisfied that there will now need to be an oral hearing, at which all the relevant facts will need to

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be found, that it is appropriate to remit the case to the First-tier Tribunal for a fresh hearing de novo.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law and I set it aside. None of the findings are preserved.

I remit the appeal to the First-tier Tribunal for a fresh hearing.

Signed

Date: 13 July 2023

Jeremy K H Rintoul
Judge of the Upper Tribunal