IN THE UPPER TRIBUNAL

IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-005149

First-tier Tribunal No:
HU/58436/2022
LH/02743/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 1st October 2024

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

AISHA MOHAMED ABDALLA ABDALSALAM

(NO ANONYMITY ORDER MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

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Representation:

For the appellant: Mr D Forbes, legal representative from Lifeline Options

For the respondent: Ms S Nwachuku, Senior Presenting Officer

Heard at Field House on 24 September 2024

DECISION AND REASONS

Introduction

1. This is the re-making of the decision in the appellant's appeal against the respondent's refusal of her human rights claim. This follows an error of law decision made by a differently constituted panel of the Upper Tribunal (Upper Tribunal Judge Norton-Taylor and Deputy Upper Tribunal Judge Lewis), sent out on 24 July 2024 and annexed to this re-making decision. Our decision must be read in light of the error of law decision.

2. The appellant is a citizen of Sudan born in 1994. On 13 December 2021 she made an application for entry clearance as the spouse of Mr N ("the sponsor"). The sponsor is also a citizen of Sudan; at the date of the application he was a recognised refugee in the UK; he has since been granted indefinite leave to remain. It is now common ground that the appellant was married to the sponsor on 7 July 2013 in a ceremony in Khartoum.

3. The appellant's application was refused on 3 November 2022. The reasons for refusing the appellant's application are summarised at [4] of the decision of the First-tier Tribunal: in short, the respondent did not accept that the claimed marital relationship had been proven, whether as a relationship that existed prior to the sponsor's flight from his country of

origin, or at all; the decision-maker was not satisfied in respect of any of paragraph 352A(i), (ii), (iii), or (v) of the Immigration Rules (deleted on 12 April 2023 and the relevant provisions now being included in Appendix Family Reunion (Protection) by virtue of HC 1160), and did not otherwise consider that there was any case under Article 8.

The error of law decision

4. In brief terms, the previous panel concluded that the judge had materially erred in law by proceeding on a misapprehension as to a relevant fact, namely the apparent absence of any photographic evidence relating to visit made by the sponsor to Juba in South Sudan in 2023. The panel was satisfied that there had been photographic evidence before the judge and indeed the respondent accepted this to be so: [6]-[9] of the error of law decision. The misapprehension went to the question of whether the sponsor had seen the appellant in Juba in 2023, as claimed. Although that was not the sole reason for dismissing the appellant's appeal, it had clearly played a material part in the judge's overall assessment.

5. The previous panel expressly preserved a specific findings made by the judge, namely that a marriage of the appellant to the sponsor had taken place and that this had occurred before the latter left Sudan.

The issues

6. The overarching issue for us to decide is whether the respondent's refusal of the appellant's human rights claim constitutes a disproportionate interference with family life. Within that there are the following constituent issues:

    (a) whether there is family life between the appellant and the sponsor: specifically, whether the appellant's relationship with the sponsor is genuine and subsisting?

(b) if there is, whether the substantive provisions of Appendix Family Reunion (Protection) to the Immigration Rules are satisfied.

(c) if they are, the impact of this on the appellant's Article 8 claim in light of, for example, TZ (Pakistan) v SSHD [2017] EWCA Civ 1109;

(d) if the Rules are not satisfied, whether there are any other exceptional circumstances which permit the appellant's to succeed.

7. In addition to the preserved finding referred to at [5], above, during the course of the hearing before us, Ms Nwachuku accepted (in our view, entirely fairly) that the sponsor had in fact travelled to Juba in South Sudan in 2023 and spent time with the appellant there. We record here that this did not amount to a concession that the relationship was, at that time or thereafter, genuine and subsisting.

Legal framework

8. The appellant made her human rights claim in the context of an application for entry clearance under what was then the Family Reunion provisions within the main body of the Immigration Rules, specifically paragraph 352A. Since then, the relevant provisions have been transferred into Appendix Family Reunion (Protection), as alluded to previously. For our purposes, the relevant substantive provisions which call for consideration in this case are as follows:

> "FRP4.1. The applicant must:
> (a) be the partner of a person (P) who has protection status; and
> (b) have formed part of the family unit of P before P left the country of their habitual residence in order to seek protection; and

(c) where the applicant is not married or in a civil partnership with P they must also have been living with P for at least 2 years before P left the country of their former habitual residence in order to seek protection; and
(d) be in a genuine and subsisting relationship with P; and
(e) not be within the prohibited degree of relationship with P which means they could not marry in the UK as set out in Appendix Relationship with Partner."

9. As regards relevant case-law, we note the recent reported decision of the Upper Tribunal in Al Hassan and Others (Article 8; entry clearance; *KF (Syria)*) [2024] UKUT 234 (IAC), the judicial headnote of which states:

1. The jurisdiction of the Human Rights Convention is primarily territorial, but as observed in SSHD v Abbas [2017] EWCA Civ 1393, family life is unitary in nature with the consequence that the interference with the family life of one is an interference with the rights of all those within the ambit of the family whose rights are engaged.

2. Properly interpreted, KF and others (entry clearance, relatives of refugees) Syria [2019] UKUT 413 is not authority for the proposition that it is only a UK based sponsor whose rights are engaged. while the rights of the person or persons in the United Kingdom may well be a starting point, and that there must be an intensive fact-sensitive exercise to decide whether there would be disproportionate interference, it is not correct law to focus exclusively on the sponsor's rights; to do so risks a failure properly to focus on the family unit as a whole and the rights of all of those concerned, contrary to SSHD v Abbas."

10. Whilst not referred to us by the parties, we deem it appropriate to bear in mind what was said by the Upper Tribunal in Goudey (subsisting marriage - evidence) Sudan [2012] UKUT 00041 (IAC), as it highlights both the importance of a fact-sensitive assessment in cases concerning the question of whether a marriage is subsisting and that no particular

form of evidence is required in order for an individual to make out their case:

i) GA (“Subsisting” marriage) Ghana * [2006] UKAIT 00046 means that the matrimonial relationship must continue at the relevant time rather than just the formality of a marriage, but it does not require the production of particular evidence of mutual devotion before entry clearance can be granted.

ii) Evidence of telephone cards is capable of being corroborative of the contention of the parties that they communicate by telephone, even if such data cannot confirm the particular number the sponsor was calling in the country in question. It is not a requirement that the parties also write or text each other.

iii) Where there are no countervailing factors generating suspicion as to the intentions of the parties, such evidence may be sufficient to discharge the burden of proof on the claimant.

The documentary evidence

11. By way of documentary evidence, we have a consolidated bundle containing both the materials included in the error of law bundle and new evidence at pages 212-320. The new evidence comprises screenshots of messages exchanged in 2024, together with money transfer receipts for this same year and further photographs relating to the 2023 trip to Juba.

The oral evidence

12. The sponsor attended the hearing and gave oral evidence with the assistance of an Arabic interpreter. There were no apparent difficulties with interpretation and we were entirely satisfied that the sponsor understood the questions put and was able to present his evidence effectively.

13. The oral evidence is of course a matter of record and we do not propose to set out in great detail here. In evidence-in-chief, he adopted

his witness statement, dated 21 July 2023. He was then asked a number of questions by Ms Nwachuku. These related to the commencement of communications between the sponsor and the appellant after the former had left Sudan in 2013, the methods of communication used, the lack of documentary evidence of such communications and the absence of translations for certain social media messages. There was no re-examination and we had no questions or own.

The parties' submissions

14. Ms Nwachuku relied on the respondent's reasons for refusal letter, dated 3 November 2022 (one aspect of that decision has fallen away in light of the preserved finding on the appellant's marriage to the sponsor). She submitted that the appellant's evidence was limited in a number of respects, and that, overall it did not been proven that the marriage was genuine and subsisting. Much of the evidence relating to communications and remittances came about in the lead up to the 2021 entry clearance application. There had been a significant gap in communications between 2017 and 2021. The remittances had been sporadic. Photographic evidence related only to either the wedding itself or the 2023 trip to Juba and this did not take the appellant's case very much further. Almost all of the WhatsApp messages were in Arabic and did not been translated; they were of little value. There had been no itemised telephone bills to support the assertion that the sponsor had called the appellant before starting to use WhatsApp.

15. As to Appendix Family Reunion (Protection), Ms Nwachuku confirmed that the only issue of significant in this appeal was 4.1(d) (the genuine and subsisting relationship requirement).

16. Mr Forbes relied on a skeleton argument provided in the First-tier Tribunal. He submitted that the respondent was effectively asking us to apply too high threshold to the question of whether the marriage was

genuine and subsisting. There had been a gap in communications, but contact had then been maintained for years afterwards. The fact that the marriage was itself of evidential value. The trip to Juba was significant. The photographs and evidence appeared to show a genuine relationship. Money had been sent, and the sponsor had explained that the appellant did not need funds or at the time. This case was not contrived and there was no “plot” to smuggle the appellant into the United Kingdom.

17. At the end of the hearing we reserved our decision.

Findings and conclusions

18. It is for the appellant to make out her case under Article 8 on the balance of probabilities. We have assessed all of the relevant evidence before us with care and in accordance with that standard of proof. We recognise that the assessment is highly fact-sensitive and that no particular forms of evidence are required to demonstrate, in particular, that the appellant’s undisputed marriage to the sponsor was and is genuine and subsisting.

19. For the avoidance of any doubt, we re-confirm the preserved finding to the effect that the appellant did marry the sponsor in July 2013, prior to the latter leaving Sudan in that same year.

20. Following on from the preserved finding, the fact of the marriage does not, of itself, go to show that the relationship thereafter has been genuine and subsisting. Having said that, the marriage is of relevance to our assessment. It has not been expressly submitted by the respondent that the marriage itself was nothing more than a contrivance. In any event, to our mind, the photographs of the wedding appear to show a loving couple, insofar as the particular occasion was concerned. Overall, we place some weight on the fact of the marriage when going on to

consider whether the relationship continued in a meaningful sense thereafter.

21. The sponsor is a refugee. His asylum claim has been accepted previously and we have no reason to go behind that. Further, there has been no suggestion that his asylum account was found to be incredible, notwithstanding the grant of status. It has been his case all along that he was detained in Sudan only about a week after his marriage to the appellant. On this basis, the short post-wedding cohabitation is reasonably explained by a forced separation.

22. We find that there was no contact between the couple following the sponsor's departure from Sudan in 2013 and early 2017, some two or three months after he arrived in United Kingdom. In the context of the sponsor's protracted journey between those two countries, we see nothing problematic about that gap in contact.

23. It is the case that the sponsor informed the respondent about the appellant when providing details in his own asylum claim (which had been made on arrival in this country). Whilst not of great significance, it at least indicates consistency in the sponsor asserting that he was in a genuine and subsisting marriage during the asylum process in 2017.

24. On his evidence, the sponsor re-established contact with the appellant through Facebook and with the assistance of an uncle. He claims that they have been in frequent, if not constant, contact ever since. We acknowledge the absence of a witness statement from the uncle in question, but do not regard this as being of any real significance in the context of the evidence as a whole.

25. What is of potentially more importance is the absence of supporting documentary evidence relating to the claimed contact between early 2017 and October 2021, when the earliest WhatsApp

message print-outs appear. There is some inconsistency in the evidence relating to when and/or how often the sponsor and appellant changed telephones and/or telephone numbers, but we do not regard this as being materially damaging: these matters are now going back some years and it is not unreasonable that there has been some differences in recollection on this issue.

26. In terms of the documentary evidence of contact, the sponsor told us that prior to using WhatsApp, he would call the appellant using his mobile telephone and he did this by putting credit onto it. As we understood the evidence, he was not using what used to be described as the “phone cards” method whereby a third party company would be used to facilitate cheap international calls. In theory it might have been possible for the sponsor to have requested itemised telephone bills from his mobile provider and to have also tried to obtain evidence linking numbers called by him to the appellant’s own mobile telephone. That could have been the best corroborative evidence. When this point was, in effect, put to the sponsor, he candidly responded by confirming that he had not thought about seeking that type of evidence for the period when he claims to have been calling the appellant on his mobile telephone. We take the absence of this evidence into account. There has not been a strong explanation for that absence. Although the passage of time might make it more difficult to obtain such evidence, it would presumably have been easier at the time of the entry clearance application. Taken in isolation, this would be materially damaging to the appellant’s overall case and, on a cumulative view, it is still relevant to our overall assessment. However, when this factor is taken together with the rest of the evidence as a whole, we find that it does not carry the significance urged upon us by the respondent.

27. There is fair amount of evidence relating to WhatsApp and/or shared photographs communications covering the period October 2021 to August 2024. Many, if not all of the photographs relate to the 2023

Juba trip, which we will address, below. Some of the WhatsApp messages confirm voice calls having been made. It is of course impossible for us to ascertain whether in fact the calls were between the appellant and the sponsor and, if they were, what was said. Having said that, there is a photograph of the sponsor under “Contact Info” and he is described as “My Dear Husband” with a heart symbol next to this. It seems to us rather unlikely that a third party’s WhatsApp account would have been adopted for the purposes of fabricated case. The messages were sent using a mobile network in the Sudan, which is consistent with where the appellant has been living. There is no evidence that the sponsor and other family members or friends residing in Sudan with whom he was in contact.

28. Other WhatsApp messages are in Arabic and there are no English translations. The obvious point here is that we cannot tell what was said in the messages and Ms Nwachuku’s submission on this was fairly made. We do note the inclusion of emojis containing hearts and the appellant’s name at the top of the message screen. We do not presume to guess at what was or was not said in the messages. However, if this entire claim was nothing more than a fabrication, it is likely that the meaning of the messages would have been contrived to suit that purpose. Thus, even if we did have English translations, a concern could have been raised by the respondent.

29. As to the shared photographs, they quite clearly show the appellant and the sponsor. It is in our view really rather unlikely that those photographs had not been shared by either one of the couple, but instead by an unidentified third party. Again, it is possible that this was all part of an untruthful claim contrived by the couple. On the other hand, it is clearly capable of supporting an assertion that the marriage has been subsisting over the course of time.

30. We have considered the money transfer receipts provided. We find them all to be reliable in terms of the content, there being no suggestion (or evidence) that they are forged. We find that the sponsor began sending money to the appellant in late 2020. The gap between the sponsor been recognised as a refugee in April 2017 and the first remittance does not cause us concern: we accept that he was probably in the process of establishing himself financially in United Kingdom. The sponsor appeared to accept Ms Nwachuku's calculation that he had sent no more than about ten remittances to the appellant over the course of approximately four years. That would appear to be correct. The amounts have varied considerably, ranging from £660 down to £57. On the face of it, that might not seem to seem to amount to much by way of regular financial support. Yet, we take account of the sponsor's evidence as to the appellant's circumstances. He told us that she does not have children to support and she has been working in a shop at which the sponsor himself previously worked when in Sudan. There is no reason to disbelieve this evidence and it places the amount of financial support in context: there was not as great a need as might otherwise have been the case. The provision of financial support over the course of time is supportive of the existence of a genuine and subsisting marriage.

31. We turn now to the important issue of the undisputed 2023 trip to Juba. Ms Nwachuku submitted that, when viewed with the rest of the evidence, this particular issue did not take the appellant's case much further. For the following reasons, we disagree.

32. First, the trip took place some 7 ½ years after the marriage and the sponsor's departure from Sudan. It may be nothing more than a renewed attempt at contriving a situation to support what was then an ongoing appeal before the First-tier Tribunal. Conversely, it might well be indicative of the couple's commitment to one another despite the passage of time (what used to be called "intervening devotion") and their willingness to overcome logistical difficulties in order to spend time

together. The sponsor could not have gone to Sudan to visit (being a refugee from that country) and both had to obtain permission to enter South Sudan. We note the sponsor's response to a question in cross-examination when asked about the Juba trip: "I have been waiting since 2021 [when the entry clearance application was made], if she was not my wife why would I still be waiting". In our view, that answer has some force to it in the context of the 2023 trip.

33. Secondly, it is not now disputed by the respondent, and we find in any event, that the appellant and sponsor in fact met and spent time together in Juba. Their evidence has been consistent and it is supported by photographs (which had previously been overlooked by the judge below). The photographs show a couple who appear to be in a genuine relationship as at that point in time. As with other evidence, these could all have been contrived to create a false impression, but on balance we find they were not. Rather, they reflect what we would consider to be, for want of a better word, a "normal" couple taking photographs of themselves similar to any which those in a genuine and subsisting relationship might have done.

34. Thirdly, we are satisfied that the couple spent a considerable period of time together in Juba. The evidence as a whole demonstrates that this was approximately 5 ½ months with interruptions due to the death of the appellant's mother and the war in Sudan (which had begun in April 2023). The fact that these occurrences did not prevent a reunion is indicative of a real commitment by the appellant and sponsor to their relationship.

35. Contrary to the respondent's position, we find that the Juba trip adds considerable weight to the appellant's case.

36. Finally, we address Ms Nwachuku's submission that much of the supporting evidence relates to the period leading up to the 2021 entry

clearance application and that this casts doubt on its overall value. As a matter of fact, it is right that some of the evidence does fall within that timeframe, although perhaps not as much as suggested. We take account of the fact that further evidence has been provided since the respondent's refusal decision of 2022 and Ms Nwachuku suggested that this was done to sure-up a contrived claim during the appeal process. That is indeed a possibility. The contrary argument, implicitly put forward on the appellant's behalf, is that the further evidence simply reflects the continuing devotion between the couple over the course of several years. We take this into account as well.

37. We now bring all of our considerations of the evidence together. We recognise that there are some omissions in the evidence and that some of the evidence which has been provided could have been better presented (for example, translating WhatsApp messages). We acknowledge that there was a good deal less evidence before the Entry Clearance Officer then there has been before the First-tier Tribunal and now us. Having said that, on the balance of probabilities, we are satisfied that the appellant's marriage to the sponsor was undertaken in good faith and that the marital relationship has been genuine and subsisting ever since. Accordingly, we find that there is now, and has been since 2013, family life between the appellant and the sponsor.

38. It follows from the above that the core disputed issue in this case is resolved in the appellant's favour. She is able to satisfy the substantive provisions of paragraph 4.1, and in particular 4.1(d) of Appendix Family Reunion (Protection) to the Immigration Rules.

39. Ms Nwachuku did not concede that the satisfaction of those provisions would permit the appellant to succeed in her appeal. We conclude that, having regard to all the circumstances, the appellant does succeed. First, on our findings, the provisions of what was paragraph 352A of the Immigration Rules were satisfied as at the date of the

respondent's 2022 refusal decision. Secondly, the provisions of paragraph 4.1 of the relevant Appendix are satisfied as at the date of the hearing before us. Thirdly, the sponsor cannot go to Sudan and reside with the appellant in that country. Fourthly, there has been no suggestion that the couple could reside together on a long-term basis in South Sudan, or indeed any other country. Fifthly, we have considered the relevant matters under section 117B of the NIAA 2002 and conclude that there are no significant countervailing factors in this case relating to the public interest, particularly in the context of a family reunion scenario such as the present.

40. We conclude that the respondent's refusal of the appellant's human rights claim constituted, and continues to constitute, a disproportionate interference with her family life with the sponsor.

41. This appeal is allowed on that basis.

42. Given the passage of time in this case, we would urge the respondent to implement our decision as quickly as possible.

Anonymity

43. There was no anonymity direction made by the judge. The question of anonymity was canvassed at the error of law hearing and the previous panel concluded that a direction was not necessary: [16] of the error of law decision. Nothing further has been put to us which justify a change in that position. We make no direction.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law and that decision has been set aside.

The decision in this appeal is re-made and the appeal is allowed on Article 8 ECHR grounds.

H Norton-Taylor

Judge of the Upper Tribunal

Immigration and Asylum Chamber

Dated: 25 September 2024

ANNEX: THE ERROR OF LAW DECISION

IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-005149

First-tier Tribunal No: HU/58436/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

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Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR
DEPUTY UPPER TRIBUNAL JUDGE LEWIS

Between

Aisha Mohamed Abdalla ABDALSALAM
(NO ANONYMITY ORDER MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:
For the Appellant: Mr D Forbes of Lifeline Options CIC (by CVP link)
For the Respondent: Mr M Parvar, Senior Presenting Officer

Heard at Field House on 4 July 2024

DECISION AND REASONS

Error of Law

1. This is an appeal against a decision of First-tier Tribunal Judge Robertson dated 14 August 2023 dismissing an appeal on human rights grounds against a decision of the Respondent dated 3 November 2022 refusing a human rights claim.

2. The Appellant is a citizen of Sudan whose date of birth is given as 1 January 1994._On 13 December 2021 she made an application for entry clearance as the spouse of Mr AN (d.o.b. 24 May 1982) ('the Sponsor'). The Sponsor is also a citizen of Sudan; at the date of the application he was a recognised refugee in the UK; he has since been granted indefinite leave to remain. It is the Appellant's case that she was married to the Sponsor on 7 July 2013 in a ceremony in Khartoum.

3. The Appellant's application was refused on 3 November 2022.

4. The reasons for refusing the Appellant's application are summarised at paragraph 4 of the Decision of the First-tier Tribunal: in short, the Respondent did not accept that the claimed marital relationship had been proven, whether as a relationship that existed prior to the Sponsor's flight from his country of origin, or at all; the decision-maker was not satisfied in respect of any of paragraph 352A(i), (ii), (iii), or (v) of the Immigration Rules, and did not otherwise consider that there was any case under Article 8.

5. In what is for the main part a careful and nuanced decision the First-tier Tribunal Judge found that the Appellant and the Sponsor had married before the Sponsor left Sudan (paragraph 23). However, the Judge did not accept that it had been shown that the Appellant and the Sponsor were in a genuine and subsisting relationship and intended to live together permanently. As such the Judge found that the requirements of the Rules were not met, and moreover and in any event Article 8 was not engaged.

6. It is plain – as was in due course acknowledged by Mr Parvar on behalf of the Respondent - from paragraphs 29 and 30 that a material part of the Judge's evaluation of the issue of subsistence of the relationship was the perception that there was no photographic evidence of the Appellant and the Sponsor together during a visit made by the Sponsor to Juba in South Sudan in 2023: "*… I do not have… photographic evidence of the places they visited together*"; "*…lack of evidence, photographic or otherwise, to establish that they were together undermines their assertion that they met in Juba, and that their relationship is genuine and subsisting*"; "*Evidence of being together in Juba is particularly important…*".

7. However, it is apparent that the Judge proceeded on a factual misconception in this regard. The Appellant had submitted in support of the application photographs of herself with the Sponsor in Sudan prior to his departure to seek asylum. These were reproduced in the Respondent's bundle. They were also included in the Appellant's bundle with the word 'Sudan' printed on them (pages 18-30). Some further photographs were included in the Appellant's bundle with the words 'South Sudan 2023' printed on them (pages 31-41). The nature and quality of these latter photographs are markedly different from the photographs submitted with the application, as is the appearance of each of the Appellant and the Sponsor commensurate with the passage of time.

8. The Judge did not distinguish between the different sets of photographs. On the face of the 'Decision and Reasons' this would appear to be because the Judge had understood the Sponsor to confirm "*that the photographs at pp 18-45 of AB were the photographs that were taken at the wedding*" (paragraph 20, and see further paragraph 29 referring to pages 18-44). The Grounds of Appeal deny that the Sponsor was referring to all of the photographs in this context; Mr Parvar, having had sight of the notes of the Respondent's representative before the First-tier, acknowledged that

there was substance to this. Be that as it may, even the most cursory glance of the photographs demonstrates that it cannot be the case that they all relate to the same period; in any event pages 42-45 are not photographs at all.

9. Mr Parvar acknowledged that the Judge had seemingly misunderstood the nature of the photographic evidence. Although his initial position was that this did not amount to a material error of law, upon further reflection – and with particular reference to the passages cited at paragraph 6 above – he conceded that the error was material.

10. In such circumstances we are satisfied that the First-tier Tribunal proceeded on a misconception of fact amounting to an error of law, and that such error was material because the Judge placed reliance on the misconception that there was no photographic evidence in relation to the visit to Juba in 2023.

11. This is sufficient to require that the decision of the First-tier Tribunal be set aside.

12. However, it was common ground before us that the finding expressed at paragraph 23(III) – "*... I find, on the balance of probabilities, that the marriage took place before the Sponsor left Sudan*" – should be preserved.

13. In circumstances where the substance of Ground 1 of the pleaded challenge is essentially conceded by the Respondent, it is not necessary for us to determine Grounds 2 and 3. Suffice to note: Ground 2 - that in substance the First-tier Tribunal had imposed too high a standard of proof and/or had erroneously proceeded on the basis that supporting documentary evidence was required – was contested; Ground 3 is essentially contingent upon Ground 1 but did not add anything of substance.

Remaking the Decision in the Appeal

14. We invited the representatives' observations as to future management of the appeal with regard to remaking the decision. Mr Forbes suggested that the Upper Tribunal could remake the decision forthwith on the basis of the available materials without more. Mr Parvar also suggested that the Upper Tribunal could retain the appeal to remake the decision, but argued that there should be a further hearing because the decision of the First-tier Tribunal had not only been informed by the misconception in respect of photographic evidence – the First-tier Tribunal Judge also having highlighted significant gaps in the documentary evidence in respect of communication and financial remittances; there was otherwise no clear finding on the credibility of the Sponsor's oral testimony.

15. We agree that the latter approach is the more prudent and ensures fairness between the parties. In the circumstances we issue the following Directions for further management of the appeal which will be retained in the Upper Tribunal.

Directions

(i) The appeal will be listed at Field House for a face-to-face hearing on **24 September 2024** with a time estimate of 3 hours: it is expected that the Sponsor, the Appellant's representative, and the Respondent's representative will all attend in person.

(ii) The clerk to the Tribunal will arrange an interpreter in Sudanese Arabic.

(iii) The Appellant may file and serve any further evidence upon which she wishes to rely in the appeal. If she wishes to do so, she should incorporate such evidence in to a revised consolidated bundle which should be filed by uploading on to the CE-File system, and served on the Respondent by email, by **27 August 2024**.

(iv) The Respondent may file and serve any further evidence (by the same methods) by no later than **9 September 2024**.

(v) No later than 7 days before the resumed hearing, the Appellant shall file and serve (by the same methods) a concise Skeleton Argument addressing the relevant issues in the appeal.

(vi) The Respondent may file and serve a Skeleton Argument no later than 3 days before the resumed hearing.

(vii) The parties are at liberty to apply to vary these Directions.

Anonymity

16. In circumstances where the Sponsor has been recognised as a refugee, we invited the observations of Mr Forbes as to whether or not we should make an anonymity order in these proceedings. Mr Forbes was able to take instructions from the Sponsor (who also attended the hearing by way of a CVP link) and it was his indication that the Sponsor did not require, and did not seek, an anonymity order. No such order has previously been made in these proceedings, and in the circumstances we do not make one now.

Notice of Decision

17. The decision of the First-tier Tribunal contained a material error of law, and is set aside (save for the preservation of the finding of fact at paragraph 23(III) identified above).

18. The decision in the appeal is to be remade by the Upper Tribunal further to the Directions set out above.

I Lewis
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

4 July 2024