Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/08503/2015

THE IMMIGRATION ACTS

Heard at Glasgow	**Decision and Reasons Promulgated**
on 26 April 2018	**On 30 April 2018**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

SANA ABDULREHMAN AHMED NOUR
(anonymity direction not made)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:
For the Appellant: Ms N Loughran, of Loughran & Co, Solicitors, Glasgow
For the Respondent: Mrs M O'Brien, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Sudan, born on 8 April 1985.

2. This decision is to be read with:

   (i) The ECO's refusal of entry clearance, dated 21 September 2015.

(ii) The appellant's grounds of appeal to the FtT, filed on 16 October 2015: "The decision of the ECO is not in accordance with article 8 ECHR as the appellant enjoys family life with the sponsor and the UK is the only country [where] that family life can be enjoyed".

(iii) The determination by FtT Judge Mozolowski, promulgated on 2 June 2017, dismissing the appeal.

(iv) The appellant's application for permission to appeal filed with the FtT, dated 28 June 2017, part C, reasons for appealing - **grounds set out as 1 (i) – (xii)**.

(v) The refusal of permission by FtT Judge Keane, dated 22 November 2017.

(vi) The appellant's application for permission to appeal filed with the UT, dated 14 December 2017, on the same grounds.

(vii) The grant of permission by UTJ Plimmer, dated 29 January 2018.

3. Having heard the submissions, I reserved my decision.

4. One theme of the grounds is that the judge applied "a higher standard of proof" - (i), (iii), and (vi). However, there was not said to be anything wrong with the judge's self-direction at ¶12. There was no reference to any passage in her decision which might bear out the contention that she misunderstood such a basic matter.

5. This is only a way of dressing up disagreement on the facts as error on a point of law.

6. Another theme of the grounds is absence of reasons - (i), (v), (vi), (vii), (ix), and (x). This takes separate short passages out of context. Reasons are to be understood by reading decisions fairly and as a whole. Challenges must be framed within such a reading.

7. No general error of absence of reasoning is established.

8. Ground (xi) says that the judge should not have relied upon a US State Department report which was not lodged by either party, and in so doing "stepped into the shoes of the Home Office". Ms Loughran, rightly, did not advance this ground. The report is not the outcome of unauthorised internet research of a point of which parties should have been put on notice. The report is within the public domain and the common knowledge of representatives and judges. The matter taken from the report is that official documents may be obtained through corruption in Sudan. That is also well known. The ground does not suggest it to be wrong, or even contentious.

9. Ground (iv) is based on the judge at ¶27 observing that money would have had to be sent to the appellant to pay for visa applications. Mrs O'Brien accepted that this shows error of fact. Applications for refuge family reunion do not require a fee. She submitted that the matter was irrelevant, and did not translate into error of law.

10. The judge does appear at ¶27 to have given this some adverse significance. I find it difficult to see why. To assist the appellant with payment of a fee for her application rather than, or as well as, with her living expenses does not obviously yield anything adverse to the nature of the relationship. However, if this does translate into legal error it is plainly minor, because the judge goes on immediately to make it clear that what she finds significant is not this issue but the period over which remittances were made.

11. The greatest force to be found in the grounds is at (viii) and to a lesser extent at (ix), challenging the judge's view of the visit by the sponsor to Egypt in 2016 and of the extensive records of contact with the appellant, contributing to her finding of no genuine and subsisting relationship. She was not prepared to go further than that the appellant and sponsor might have known each other since 2014. She mentioned at ¶31 "some photographs" on which she placed "no particular reliance" and thought there was no indication who the sponsor was visiting in Egypt "apart from his own evidence". Ms Loughran pointed to clear documentary evidence (passports, visas, travel tickets, and so on) that the appellant and sponsor were both in Egypt at the same time and to a multitude of photographs showing them together in and near Cairo –evidence which the grounds contend that the judge failed to consider.

12. Mrs O'Brien countered on this branch of the case that the decision had to be read as a whole, and that the judge's good reasons for doubting whether there was a relationship at all prior to 2104 inevitably fed into and justified her findings about the later period.

13. Ms Loughran rightly recognised that grounds (i) and (ii), going to the judge's finding that no marriage took place between the appellant and the sponsor in 2007, were crucial. If the appellant was not the sponsor's wife prior to his departure from Sudan, her case fell.

14. The case advanced to the FtT was that the appellant and sponsor married formally in Sudan on 17 July 2007, but no documentation was issued on the day; he left Sudan in May 2008; travelled through Libya to Greece, where he spent 6 years; and arrived in the UK on 6 May 2014. In 2015 there were obtained the items copied and translated at items C and D of the appellant's inventory 1 in the FtT. His representatives have the originals. C is headed "document of marriage contract" dated 8 April 2015, attesting the marriage on 17 July 2007, issued by the clerk of the Personal Status Court in Khartoum. D is headed "contract of marriage", issued by the matrimonial clerk on 11 April 2015, referring to the marriage on 17 July 2007 and bearing to be a "certificate of marriage approved as an extract of the original".

15. In submissions it was suggested that the judge simply misunderstood the nature of the documents, and that although dated in 2015 they were clear evidence of a marriage taking place in 2007; or that the judge, as those grounds say, applied "a higher standard of proof", or speculated.

16. I am unable to find merit in these crucial grounds.

17. The judge clearly understood that although dating from 2015, these documents were intended as proof of a marriage formalised in 2007. I see in the decision the following reasons:

    (i) No photographs of the wedding.

    (ii) Absence of photographs was firstly said to be for cultural reasons, but later it was due to dire poverty. That was the sponsor's oral evidence.

    (iii) No good explanation for absence of photographs.

    (iv) No evidence of living together in Sudan in 2007 – 2008.

    (v) Sponsor said no marriage certificate was then needed, but the judge thought a family book would have been required for Sudanese government records in 2007, or some other indication of living together might exist.

    (vi) Official documents are available through bribery and corruption.

    (vii) The marriage was said to have been delayed from 2002 to 2007 for the appellant to complete her education, which was also incompatible with dire poverty.

    (viii) Evidence of remittances only from 2014.

    (ix) "Total silence" in confirming alleged contact, not only while the sponsor was *en route* for 7 years, but after arrival.

    (x) Explanations about lack of telephone history from Greece and of lost sim card in the UK not accepted.

    (xi) Reference in messages by sponsor to appellant as a prince, not as a princess.

    (xii) Having heard the sponsor give evidence, he was "not particularly credible" (¶31 and 33).

18. The judge had to decide whether a pre-flight relationship existed. The evidence entitled her to do so one way or the other. She had the advantage of hearing the sponsor's oral evidence, and was bound to take a view of it. The eventual finding of "lacking credibility" is not made in a vacuum. Some of her reasons for coming down on the side she did are obviously stronger than others; but taking them together, they are, at the least, legally adequate. The appellant has not shown that they have been arrived at through the making of any error on a point of law.

19. There was more obvious scope for finding a genuine and subsisting relationship since 2014; but the judge, although with a markedly lesser degree of certainty, found the evidence insufficient to reach a favourable finding for that period either. Taking the decision as a whole, that conclusion also shows no error of law. In any event, a different finding on that issue would not change the outcome.

20. The grounds and submissions do not disclose in terms of section 12 of the 2002 Act that the making of the decision of the FtT involved the making of an error on a point of law, such that it ought to be set aside. That decision shall stand.

21. No anonymity direction has been requested or made.

26 April 2018
Upper Tribunal Judge Macleman