Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/07581/2017

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 19 December 2018	**On 04 March 2019**

Before

UPPER TRIBUNAL JUDGE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ZAHARA [I]
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Mr Diwnycz, Senior Home Office Presenting Officer
For the Respondent: Mr Barri, Chapeltowns Citizen Advice

DECISION AND REASONS

1. I shall refer to the appellant as the 'respondent' and to the respondent as the 'appellant' as they respectively appeared before the First-tier Tribunal. The appellant is a female citizen of Sudan and was born on 1 January 1995. She appealed against the decision of the Entry Clearance Officer dated 23 April 2017 refusing her application for entry clearance for settlement under the family reunion rules. The First-tier Tribunal, in a decision promulgated on 19 March 2018, purported to allow the appeal under the Immigration Rules. The Secretary of State, with permission, now appeals to the Upper Tribunal.

2. The relevant rule in HC 395 (as amended) is Paragraph 352A:

> '**Family Reunion Requirements for leave to enter or remain as the partner of a refugee**
>
> 352A. The requirements to be met by a person seeking leave to enter or remain in the United Kingdom as the partner of a person granted refugee status are that:
>
> (i) the applicant is the partner of a person who currently has refugee status granted under the Immigration Rules in the United Kingdom; and
>
> (ii) the marriage or civil partnership did not take place after the person granted refugee status left the country of their former habitual residence in order to seek asylum or the parties have been living together in a relationship akin to marriage or a civil partnership which has subsisted for two years or more before the person granted refugee status left the country of their former habitual residence in order to seek asylum; and
>
> (iii) the relationship existed before the person granted refugee status left the country of their former habitual residence in order to seek asylum; and
>
> (iv) the applicant would not be excluded from protection by virtue of paragraph 334(iii) or (iv) of these Rules or Article 1F of the Refugee Convention if they were to seek asylum in their own right; and
>
> (v) each of the parties intends to live permanently with the other as their partner and the relationship is genuine and subsisting
>
> (vi) the applicant and their partner must not be within the prohibited degree of relationship; and
>
> (vii) if seeking leave to enter, the applicant holds a valid United Kingdom entry clearance for entry in this capacity.'

3. The appeal was brought on human rights grounds (Article 8 ECHR) only. The Respondent challenged the authenticity of a marriage certificate upon which the appellant relies. The Respondent was also concerned that, although the marriage appeared to have taken place on 2 August 2013, it had not been registered until 20 March 2014, some seven months later. Respondent also considered that there was no evidence that the appellant and sponsor had lived together as a pre-flight family in Sudan.

4. I find that the decision of the judge to be problematic. First, the refusal notice made it clear that the respondent was not satisfied that the appellant and sponsor were married as claimed. Despite this, the judge [19] refused to consider challenge to the marriage made by the presenting officer at the hearing, apparently because the respondent had not challenged a stamp on the marriage certificate. Consequently, the judge did not properly address the concerns of the respondent as articulated in the refusal notice. Secondly, though he appears to acknowledge the relevance of paragraph 276ADE and Appendix FM of HC 395 (as amended) [8], the judge purports to allow the appeal under the immigration rules; the appeal was brought on human rights grounds only and there was no

appeal possible on the grounds that the decision was not in accordance with the Immigration Rules . Thirdly, at [30] the judge refers to various items of evidence which he finds prove, on the balance of probabilities, that the appellant and sponsor have a genuine and subsisting marriage. As grounds of appeal point out, the issue was not whether the couple are currently in a subsisting relationship but whether they had contracted a pre-flight marriage, an issue which the judge has failed to address adequately. Fourthly, the judge appears to find that compliance with paragraph 352A was entirely synonymous with proving that the decision of the entry clearance officer amounted to a disproportionate breach of Article 8 ECHR. Not only should the judge have considered each of the sub- paragraphs of paragraph 352 and considered whether these were met by the appellant on the evidence, but he should also have carried out a proper analysis of the Article 8 ECHR appeal and stated clearly why the decision was disproportionate. Compliance with the rule was a relevant consideration but was not the beginning and end of the necessary analysis. Fifthly, the judge declares that he was satisfied that the sponsor was a truthful and credible witness [29] but it is not clear what the sponsor's evidence was capable of proving given the very limited assistance he provided to the tribunal as recorded by the judge at [21].

5. In the light of what I say above, I am satisfied that the decision of the judge is flawed in law and should be set aside. The appeal is returned to the First-tier Tribunal for that tribunal to remake the decision following a hearing.

Notice of Decision

6. The decision of the First-tier Tribunal which was promulgated on 19 March 2018 is set-aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal (not Judge Head-Rapson) for that Tribunal to remake the decision.

Signed Date 2 February 2019

Upper Tribunal Judge Lane