Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/07465/2020

THE IMMIGRATION ACTS

Heard at : Manchester Civil Justice Centre	**Decision & Reasons Promulgated**
On : 20 January 2022	**On 04 February 2022**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

RABEEA ISHAQ AHMED KHALIL

Respondent

Representation:
For the Appellant: Mr A McVeety, Senior Home Office Presenting Officer
For the Respondent: Mr M Reyaz of Rasools Law

DECISION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department against the decision of the First-tier Tribunal allowing Ms Khalil's appeal against the decision to refuse her human rights claim.

2. For the purposes of this decision, I shall hereinafter refer to the Secretary of State as the respondent and Ms Khalil as the appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal.

3. The appellant is a citizen of Sudan whose date of birth is given as 1 January 1995. She applied, on 26 January 2020, for entry clearance to the UK under the

family reunion provisions in the immigration rules, to settle with the sponsor, her spouse, a Sudanese national who had been granted refugee status in the UK. Her application was refused on 17 August 2020 under paragraph 320(7A) of the immigration rules on the basis that she had submitted a non-genuine document with her application. The appellant had provided, as evidence of her ongoing relationship with the sponsor, to show that he was supporting her, a number of money transfer receipts from Dahabshiil. The receipts had been recorded in a document verification report (DVR) as not genuine. As a result, the respondent did not accept that any relationship existed before the sponsor left the country of his former habitual residence in order to seek asylum, and did not believe that the appellant's relationship with her sponsor was genuine and subsisting and that she intended to live permanently with him. The application was also refused under paragraph 352A(iii) and (v). The respondent did not consider there to be any exceptional circumstances justifying a grant of leave outside the rules or that the decision was in breach of Article 8.

4. The appellant appealed against that decision. In her grounds of appeal it was stated that the allegations were denied and that, in any event, the respondent had not produced a copy of the DVR to support the allegations. It was asserted that the respondent had not otherwise disputed the genuineness of the marriage and it had been accepted that the sponsor had named the appellant as his wife in his asylum interview. The grounds asserted further that the sponsor was a recognised refugee in the UK and that the refusal to reunite the family caused a grave interference with his rights to a family life pursuant to Article 8.

5. The appellant's appeal was initially heard by First-tier Tribunal Judge Malik on 17 June 2021 and was allowed in a decision promulgated on 23 June 2021. The sponsor, Mohammed Abdule Rahman Ahmed, appeared before the judge and gave oral evidence. His evidence was that he had married the appellant on 9 September 2013 in Sudan and that they had lived together until he left on 15 December 2014. He had arrived in the UK on 2 July 2015 and claimed asylum, giving the appellant's name, date of birth and the date of their marriage in his asylum interview, and had been granted refugee status from 15 October 2015 until 15 October 2020. He had learned English, obtained a stable income and found accommodation and had then applied for the appellant to join him. With regard to the Dahabshiil money remittance receipts, he had spoken to the agent he had used to send the money who had assured him that the respondent was mistaken. However after liaising with members of the Sudanese community he had been told that some agents purported to be working for Dahabshiil and used their logo, but they were not actually part of Dahabshiil. He had contacted the main Dahabshiil office in Leicester who had in turn contacted the London office and they advised him to refrain from using Dahabshiil agents working from small shops and to use the main branch only. They had refused to confirm that in writing. He had then made his remittances only through the main branch.

6. The respondent at the hearing relied on the DVR and also submitted that the fact that the exchange rate remained the same in the money transfer receipts

from 2016 to 2019 also showed that they were not genuine. The respondent relied on the fact that there was no evidence from Dahabshiil confirming the enquiry made by the sponsor and no receipts from the appellant when she collected the money in Sudan nor any statement from her. The respondent noted further that the evidence of What's App communication between the appellant and sponsor only dated from 2020 and it was not accepted that there was a genuine relationship.

7. The judge noted that paragraph 320(7A) had since been deleted but noted in any event that it required there to be an element of deception or dishonesty to prove the allegation. She found there to be various issues with the DVR, namely that the Dahabshiil spreadsheet which was referred to in an email attached to the report had not been provided, that the DRV referred to only three receipts yet several other receipts had been provided to which the DVR did not refer and which therefore appeared not to have been verified by Dahabshiil, and that the DVR did not indicate who, at Dahabshiil, had conducted the check on the receipts and what position they held in the organisation. The judge noted that the sponsor had provided further money transfer receipts from Western Union which post-dated the refusal decision and which had not been challenged by the respondent and accepted the sponsor's explanation about the Dahabshiil agent as plausible. She concluded that the sponsor had not acted dishonestly and had not used deception. The judge accepted the sponsor's explanation as to why he was unable to produce evidence of earlier What's App communication and accepted his explanation as to why he had waited to make an application for the appellant to join him in the UK. She was satisfied that the appellant and sponsor were married, that they formed part of the same household prior to the sponsor coming to the UK, that they continued to be in a genuine and subsisting relationship and that they intended to live together permanently in the UK. She accepted that the requirements of the immigration rules were met and she allowed the appeal under Article 8.

8. The Secretary of State sought permission to appeal Judge Malik's decision on two grounds: firstly that the judge had made a material misdirection of law in relation to paragraph 320(7A) and fraudulent documents; and secondly that she had failed to give adequate reasons for findings on a material matter, namely on the fact that it was not credible that the exchange rate on the money transfer receipts remained constant.

9. Permission to appeal was granted in the First-tier Tribunal on both grounds. The appellant resisted the appeal in a rule 24 response, submitting that the judge correctly identified that paragraph 320(7A) had been withdrawn and that the new paragraph 9 of the immigration rules did not automatically attract a mandatory refusal unless deception was established and properly found there to be no deception. The judge was entitled to find limitations in the DVR and to conclude that the respondent had failed to discharge the burden of proof. The judge was entitled to make the findings that she did.

10. The matter then came before me for a hearing.

11. Mr McVeety submitted that, whilst the judge was right to say that paragraph 320(7A) had been withdrawn, it was the relevant rule at the time of the decision and was a mandatory rule and she was therefore wrong to find that it did not apply. In any event the judge erred by failing to make findings on the additional grounds relied on by the ECO, namely that the exchange rate did not fluctuate on the documents and that they were therefore not genuine documents. Mr McVeety confirmed that there was otherwise no challenge to the finding that the relationship was a genuine and subsisting one.

12. Mr Reyaz submitted that the judge had not misunderstood the law and the immigration rules and was entitled to find that there had been no deception. Paragraph 320(7A) was limited to applications before the ECO and not appeals. The judge was entitled to find that the quality of the respondent's evidence was such that the burden of proof was not met. The judge was of the opinion that the relationship was genuine and she was entitled to allow the appeal for the reasons that she did.

Discussion

13. I am not in agreement Mr Reyaz's submission in relation to the judge's application of paragraph 320(7A) and consider that she erred in law in her findings at [23]. She plainly misunderstood the decision in AA (Nigeria) v Secretary of State for the Home Department [2010] EWCA Civ 773, which made it clear that whether or not deception was employed, the use of a false document would always give rise to a mandatory refusal, as found at [67] of that judgment:

> "…It is plain that a false document is one that tells a lie about itself…The mere fact that a dishonest document has been used for such an important application is understandably a sufficient reason for a mandatory refusal. That is why the rule expressly emphasises that it applies "whether or not to the applicant's knowledge".

14. Further, as Mr McVeety submitted, the fact that paragraph 320(7A) had been withdrawn by the time of the hearing did not detract from the fact that it was the relevant immigration rule at the time of the respondent's refusal decision and was therefore applicable. Whilst it is Mr Reyaz's case that the judge had concerns about the quality of the respondent's evidence in the DVR, it does not appear to be in dispute that the documents were false. It seems to me that the sponsor accepted, from his enquiries with Dahabshiil, that there were problems with the remittance receipts. Accordingly, if the money transfer receipts were false, the judge erred in finding that paragraph 320(7A) did not apply to the appellant.

15. However, I do not consider that that is ultimately fatal to the judge's decision, considering her other findings, and given that this was a human rights appeal to be decided at the date of the hearing. In refusing the appellant's entry clearance application, the respondent's doubts about the appellant's relationship with the sponsor arose from the fact that he had submitted money

remittance receipts which were not genuine. However, Judge Malik was satisfied, despite the false receipts, that the appellant's relationship with the sponsor existed before the sponsor left Sudan and that the relationship was a genuine and subsisting one. She gave various cogent reasons for concluding as such. She accepted the sponsor's explanation about the money transfer receipts and accepted that he had not exercised deception and was not dishonest. She therefore did not find him to be a dishonest person. She noted that the sponsor had mentioned the appellant in his asylum interview and took into account the evidence of communication between the appellant and sponsor, accepting the sponsor's explanation for the lack of earlier evidence and for the delay in applying for the appellant to join him in the UK. None of those findings were challenged by Mr McVeety, who accepted that the relationship was a genuine and subsisting one.

16. Accordingly, even if the appellant was unable to meet the requirements of the immigration rules at the time of the decision to refuse entry clearance, the situation by the date of the hearing was that the appellant was able to meet the requirements of the rules, and the judge was entitled to find that the public interest did not require that the application be refused. Even if I am wrong and the judge's error in relation to paragraph 320(7A) was sufficiently material to require her decision to be set aside, both parties were content that I re-make the decision myself on the basis of the same evidence, and it seems to me to be inevitable that the outcome would and should be the same. The appellant and sponsor have a genuine and subsisting relationship and family life is thus engaged for the purposes of Article 8. The sponsor, as a recognised refugee, cannot be expected to continue his family life in Sudan and accordingly the refusal of entry clearance has the effect of severing the relationship. As already stated, given the change in the immigration rules and the accepted findings on the relationship, the public interest does not require entry to be refused to the appellant. The refusal of entry clearance is therefore a disproportionate interference with the appellant's and sponsor's family life and is in breach of Article 8.

DECISION

17. The making of the decision of the First-tier Tribunal did not involve an error on a point of law requiring the decision to be set aside and the decision allowing the appellant's appeal therefore stands. Alternatively, if the decision is set aside, it is re-made by the appeal being allowed.

Signed: S Kebede

Upper Tribunal Judge Kebede Dated: 21 January 2022