Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: OA/20116/2013**

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 9 October 2014	**On 9 October 2014**

Before

Deputy Upper Tribunal Judge MANUELL

Between

Mr LAWRENCE OBASI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M A Hay, Counsel
(instructed by Samuel Louis Solicitors)
For the Respondent: Mr N Bramble, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The Appellant appealed with permission granted by First-tier Tribunal Judge Nicholson on 12 August 2014 against the determination of First-tier Tribunal Judge Oliver who had dismissed the Appellant's appeal against the refusal of his application for entry clearance as a spouse in a determination promulgated on 11 July 2014.

2. The Appellant is a national of Nigeria, born on 10 September 1979. His history is involved. It is set out fully at [3] to [9] of Judge Oliver's determination so need no be repeated here. The Appellant had most recently applied for entry clearance under Appendix FM of the Immigration Rules as the husband of Mrs Kathleen Lewis ("Mrs Lewis"), a British Citizen, on 2 July 2013. The Entry Clearance Officer had doubted the subsistence of the marriage and decided that the income and accommodation requirements had not been met.

3. Permission to appeal to the Upper Tribunal as sought by the Secretary of State was granted because it was considered arguable that the judge had erred in his credibility assessment by referring to section 8 of Asylum and Immigration (Treatment of Claimants, etc) Act 2004 at [26] of his determination, when it was an entry clearance appeal, not an asylum appeal. The other grounds raised by the Appellant were considered to have little merit.

4. A rule 24 notice in letter form was served by the Secretary of State, indicating that the onwards appeal was opposed.

5. Directions were made by the Upper Tribunal in standard form. It was directed that the appeal would be reheard immediately in the event that a material error of law was found.

Submissions – error of law

6. Mr Hay for the Appellant relied on the grounds and the grant of permission to appeal. The credibility assessment made by the judge was erroneous. The judge had

concentrated on background matters such as the past unfounded asylum claims made in Austria and in the United Kingdom, rather than the marital relationship. The judge had given too much weight to irrelevant matters. As to income, the judge had wrongly excluded post decision evidence such as the form P60. Nor had the judge adequately considered the accommodation issue, providing sparse reasons for finding that local authority approval was needed for the husband to join the Appellant in her flat. The determination should be set aside and the decision remade, allowing the appeal.

7. Mr Bramble indicated that he wished to add nothing to the rule 24 notice. There was no material error of law in the determination.

The no error of law finding

8. The tribunal gave its decision at the hearing that the Appellant's appeal would be dismissed and briefly explained its reasons and stated that detailed reasons would be given which now follow.

9. There was nothing of substance in any of the grounds of appeal. On a fair reading of [26] of the determination, the judge's reference to section 8 of Asylum and Immigration (Treatment of Claimants, etc) Act 2004 was at least partly correct. The context shows that judge was there referring to the Appellant's unfounded asylum application in the United Kingdom, made after a similarly unfounded application in Austria. Section 8 obviously did not apply to the Appellant's intention to live permanently with his wife, but that was a minor and peripheral slip. At [25] the judge had directed himself to the relevant law, GA ("subsisting" marriage Ghana* [2006] UKAIT 00046, which he then applied. He gave detailed reasons at [25] for finding that the marriage was not subsisting, which included the lack of attention which had been given to the assembly of elementary supporting evidence for the entry clearance application, such as providing a letter of consent from the Appellant's wife's local authority landlord to the husband's occupation. That point had been taken by the Entry Clearance Officer, so it was for the Appellant to address it, and also required the judges' attention. It was not a matter which was open to some form of judicial notice or

inference, since practice varies from authority to authority. The judge thus gave sufficient reasons for his findings as to accommodation.

10. The terms of Appendix FM-SE to which the judge referred at [27] required him to disregard the specified documents, such as the sponsor's P60, which as the judge recorded, were produced only at the hearing. That was too late. The reason why the specified documents have to be provided with the entry clearance application is to enable them to be checked by the Entry Clearance Officer. The failure to provide the specified documents with the entry clearance application was in itself fatal to the appeal.

11. The judge's consideration of Article 8 ECHR was also challenged, albeit weakly, in the grounds of appeal. The judge's Article 8 ECHR findings at [27] were inevitable and were adequate.

12. Accordingly the tribunal finds that the determination contains no material error of law. The Appellant's appeal to the Upper Tribunal is dismissed.

DECISION

The making of the previous decision did not involve the making of an error on a point of law. The original determination stands unchanged.

Signed **Dated**

Deputy Upper Tribunal Judge Manuell