



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: HU/15563/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 19 April 2018**

**Decision & Reasons
Promulgated
On 24 April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

**EDWARD OLABODE MAJEKODUNMI
(NO ANONYMITY ORDER MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER - LAGOS

Respondent

Representation:

For the Appellant: Mr Jafferji of Counsel

For the Respondent: Miss Z Ahmed a Home Office Presenting Officer

DECISION AND REASONS

1. The brevity of this decision is due to the commendable focus of the Representatives and narrowness of the issue.

Background

2. The Respondent refused the application for leave to enter as a spouse on 25 May 2016. His appeal against this was dismissed by First-tier Tribunal Judge Housego (“the Judge”) following a hearing on 3 August 2017.

The grant of permission

3. Judge Brunnen granted permission to appeal (7 February 2018) as it is arguable that the Judge materially erred in failing to consider Lycamobile records, photographs, and greeting cards that had been adduced when considering whether there was a subsisting relationship or genuine marriage, and noted that it was asserted that other electronic communication was said to have been produced but also not referred to.

Respondent’s position

4. No rule 24 notice was issued. Miss Ahmed submitted that regarding the issue of the subsistence of the relationship the Judge did not have to deal with every piece of evidence submitted and that there was adequate consideration of the evidence. Regarding the issue of the genuineness of the marriage, not every point had to be put. The reasoning for both issues was brief but adequate.

Discussion

5. The judgement is extremely long. It runs to 22 pages. However almost 8 pages of that is recitation and detailed extracts of case law none of which is necessary to include providing the relevant principles are applied.
6. Consideration of the relevant issues begins on page 11 at [27] where the Judge identifies that he/she had received a bundle of 239 pages of evidence including
“evidence of various communications and screenshots, 2017 flight tickets, various birthday cards, ...and copy telephone records.”
7. It is recorded at [30.7] that there is daily communication through phone, video, and WhatsApp. Within the submissions it was noted [45] that
“there was in the bundle a wealth of evidence of continuous communication and affection.”
8. In relation to the validity of the marriage, the evidence turned on consideration of the Appellant’s previous divorce certificate. The Judge was not satisfied that the Appellant had divorced his first wife [49] given discrepancies within the documents regarding references,

hearing dates, evidential challenges, stamps, and date recording [53], and concerns regarding their receipt [54]. The Judge said that the Sponsors explanation that she had got a copy rather than a new original

“does not convince” [55].

9. That is not that standard of proof. It is balance of probabilities. The Judge materially erred in applying the wrong standard of proof on that issue.

10. In relation to the genuineness of the current relationship, the Judge considers this at [58-63] although [58-62] relates to other matters that are not relevant to the complaint about the lack of consideration of the documents produced. All the Judge says in relation to this issue is [63]

“I note the documentation set out in the bundle. There appears to be a paternal connection (though given the issues of credibility I make no finding of fact), but the appellant and the sponsor have not met the burden of proof, on the balance of probabilities, that there is a genuine and subsisting relationship between them, and without such a finding of fact this appeal cannot succeed.”

11. I am not satisfied that this is an adequate consideration of the documents produced as he/she does not explain why the documents carry no weight and which was required to be undertaken as part of the holistic assessment of the evidence. This amounts to a material error of law on that issue.

12. I agree with the representatives that it is appropriate to remit the matter for a new hearing with no findings being preserved, as the errors go beyond those contained within the Presidential Guidance for retention in the Upper Tribunal.

Decision:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision.

I remit the matter to the First-tier Tribunal for a de novo hearing, but not before Judge Housego.

Deputy Upper Tribunal Judge Saffier
23 April 2018

