



IAC-FH-CK-V2

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

Appeal Number: IA/22376/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 17 July 2015
Prepared 18 July 2015**

**Decision & Reasons Promulgated
On 18 August 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

**MR UFUOMA SYLVESTER INOKO
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In Person

For the Respondent: Mr P Duffy, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Nigeria, date of birth 16 May 1978, appealed against the Respondent's decision, dated 10 May 2014, to refuse a residence card with reference to Regulations 6, 7 and 8(5) of the Immigration (European Economic Area) Regulations 2006. The appeal of the Appellant was rejected by First-tier Tribunal Judge Majid (the judge) who on 6 November 2014 dismissed the appeal against the Secretary of State's decision.

2. The Appellant sought permission to appeal which was granted by First-tier Tribunal Judge Hollingworth on 16 December 2014. At a hearing on 3 March 2015 in a written decision subsequently promulgated I found that the judge had made a number of errors of law which meant that the Original Tribunal decision could not stand and the matter would have to be remade.
3. In the Notice of Immigration Decision, dated 10 May 2014, points taken by the Respondent were that the Appellant had failed to produce a valid marriage certificate and failed to produce evidence to prove he was in a durable relationship with an EEA national and failed to provide evidence that they were a qualified person. The decision did not assert that it was a marriage of convenience. In the extensive Reasons for Refusal Letter dated 8 May 2014 again the issues raised in relation to the validity of the marriage by proxy and the issue of there being a durable relationship as well as the evidence of the Sponsor being a qualified person but there was no suggestion by the Respondent that it was a marriage of convenience or a sham marriage. This appears to have been a new issue that was raised at the hearing by the Presenting Officer before First-tier Tribunal Judge Majid (D paragraph 12). At that stage it is clear that the judge although he expressed it in a somewhat ambiguous way was taking a view that the absence of the Appellant or his wife was evidence that there was a sham marriage.
4. The fact of the matter was that quite simply the evidence before him did not establish that there was a durable relationship but certainly the Appellant's and his wife's claim was that they were in a proper marriage attained by proxy and recognised in the Appellant's home country.
5. As I indicated in my directions the Appellant and Sponsor were to provide witness statements concerning the durability of the marriage and an explanation from the Sponsor of her being a qualified person exercising treaty rights as well as other evidence relating to the validity of the marriage. Further I directed that the Appellant and Sponsor should attend or absent of doing so for health or other reasons proper and adequate evidence should be filed to sustain the basis of their absence.
6. It was clear therefore that when I considered the error of law neither the Appellant nor the Sponsor were present. Whilst there may be an explanation for their absence, namely they were told by their Representatives that they did not need to attend, the fact was that the evidence was not before me to show that there was a durable relationship. Thus there was no such evidence before the First-tier Judge Majid nor before me. I made allowances therefore for what I regarded as ill-informed advice to enable them to provide such evidence.
7. At the hearing the EEA Sponsor did not attend and the Sponsor said in a statement, whose provenance was disputed by Mr Duffy,
“(6) I understand that I have been required to attend the hearing on 17 July 2015 I was looking forward to my attendance. Unfortunately, my

father was killed by armed robbers in Nigeria. I have therefore had to travel to Nigeria for the burial rites. It would have been insensitive on my part to request the family to stall the burial on account of my husband's pending appeal.

(7) I anticipate the entire burial ceremony shall take over two months. I am therefore appealing to the Tribunal to adjourn the hearing to any date in November so that I can attend the hearing in person."

8. At the hearing the Appellant said that his wife left on 15 July 2015 and although he did not know what her travel arrangements he thought that she would go to France by train and then by air to Nigeria. The Appellant did not know when his wife's father died. He did not know where it had happened or what was the reason for the claimed death by armed robbers. The Sponsor had not contacted him since she left and he did not know where she was. There was no evidence other than the statement of the EEA national as to the death of her father.
9. The Appellant did not wish for this matter to be adjourned, which I put to him as a consideration. The Appellant indicated he wished to proceed with the hearing come what may.
10. There was no new statement from the Appellant concerning their relationship, its length, durability and their respective intentions to wed each other.
11. The sworn statement of the Appellant originally provided, dated 23 July 2014, said nothing of that issue but simply asserts there was a valid marriage which should have been recognised in the UK.
12. The statement of the Sponsor which appeared to have been the first one in existence of 15 July 2015 again principally argued that there is a valid marriage and said nothing about the durability of the relationship, the nature of the relationship, their respective intentions one to another, their way of life together or any personal matters relating to that claimed relationship.
13. Thus even though there may be an explanation as to the EEA national's absence there was nothing provided pursuant to my directions addressing the issues. I find that failure to provide such information when the point has been so clearly raised from the outset persuaded me that the Appellant has failed to discharge the burden of proof that he is in the relationship claimed. It may be as a fact the Sponsor was working and would be a qualified person under the Rules. What the Appellant's and Sponsor's evidence does not show is that there was or is a durable relationship. There was no evidence from friends, acquaintances or persons speaking to their knowledge of the Appellant and Sponsor's relationship. There was no evidence from any third party about the matter. There were no photographs of the Appellant and Sponsor together. There is no evidence of them taking any holiday together or what their intentions are one to another. Accordingly even if they were as

ill-advised as Mr Ikie seems to have accepted the fact is that the opportunity was there for them to give and address evidence about their durable relationship but they have not done so. Accordingly even if the Appellant and EEA Sponsor really shared the same address that does not demonstrate of itself or by itself that they are in a durable relationship.

14. In the circumstances I find the Appellant had failed to discharge the burden of proof that the marriage met the relevant requirements. I find that the basis on which they continue to contend that they have undertaken a valid marriage remains open to concerns given their claimed relationship.

15. Accordingly I find that the EEA national is currently a qualified person but that the requirements of the Regulations 7 and 8(5) of the EEA Regulations 2006 has not been established.

NOTICE OF DECISION

In the circumstances the Appellant is not entitled to the residence card claimed.

ANONYMITY ORDER

No anonymity order was requested nor is one appropriate.

Signed

Date

Deputy Upper Tribunal Judge Davey

TO THE RESPONDENT **FEE AWARD**

The appeal has failed and therefore no fee award is appropriate.

Signed

Date

Deputy Upper Tribunal Judge Davey