



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/48796/2013

THE IMMIGRATION ACTS

Heard at: Manchester

**Determination
Promulgated**

On: 5th March 2015

On 11th March 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE BRUCE

Between

**Victoria Mojisola Stephen
(no anonymity direction made)**

Appellant

And

Secretary of State for the Home Department

Respondent

Representation

For the Appellant: Mr Timson, Counsel instructed by Adonai Beulah Solicitors

For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Nigeria date of birth 10th December 1965. She appeals with permission the decision of the First-tier Tribunal (Judge DN Harris) to dismiss her appeal against the Respondent's decision to refuse to issue her with a residence card confirming her right of residence as a family member (spouse) of an EEA national exercising treaty rights¹.
2. The Appellant claimed to be the wife of Mr Rafael Abey Davidson Davidson, a Portuguese national exercising treaty rights. The Appellant relied upon a marriage certificate issued in Nigeria showing

¹ Decision dated 4th November 2014

that Mr Davidson had been present but the Appellant had been represented by proxy. The Respondent accepted that a proxy marriage can be regarded as valid in UK law as long as it is legally recognised in the country in which it is contracted. In this case the registration requirements of Nigerian law had not been complied with and for that reason the marriage could not be recognised as valid. The Respondent considered whether the Appellant could nevertheless be given a residence permit as the unmarried partner of Mr Davidson. To this end both parties were interviewed and as a result of discrepancies that emerged in their evidence the application was refused on the ground that this is not a genuine and subsisting relationship.

3. When the matter came before the First-tier Tribunal the parties submitted that their marriage was valid, and in the alternative that this was a genuine relationship. As to the first submission it was rejected for lack of evidence. As to the second Judge Harris agreed with the Respondent that the evidence of the parties contains a considerable number of discrepancies, including the eight or so that are identified in the refusal notice as arising from the interview record. On that basis he was not satisfied that the Appellant had discharged the burden of proof and dismissed the appeal.

Error of Law

4. Permission to appeal was granted on the 17th October 2014 by Upper Tribunal Judge Grubb on the sole ground that the determination had not been promulgated until 4 months after the hearing and as such the credibility findings therein may be regarded as unsafe. For reasons which shall become apparent, I need not now deal with that matter.
5. At a hearing before me on the 9th December 2014 Mr Harrison, who that day appeared for the Respondent, and Mr Timson were in agreement that this decision is one affected by the Presidential guidance offered in Miah (interviewer's comments: disclosure: fairness) [2014] UKUT 00515 (IAC). The Respondent had relied on selective reading of the interview notes, and it was on the basis of those notes that Judge Harris had agreed there to be discrepancies. In Miah the President McCloskey J found that fairness required that parties criticised for their performance in such interviews are provided not only with a complete transcript of any interview, but with the notes taken by the interviewer, and subsequently conveyed to the decision-maker. Those notes are contained in a document entitled ICV.4605 and an appellant's right to a fair hearing dictates that this form, and the entire interview must be disclosed "as a matter of course". Mr Harrison agreed that in this case neither the interview notes or the ICV.4605 had never been disclosed and in those circumstances the decision could not stand. The decision of the First-

tier Tribunal was accordingly set aside.

The Re-Making

6. Following the hearing on the 9th December 2014 the matter was set down for a case management review to enable the Home Office to produce the relevant documents. At that case management review hearing, before me today, Mr McVeety was able to produce the interview notes but not the ICD.4605. That's because at the date that this interview was conducted, these forms did not exist and so were never used. The parties agree that now that the Appellant has had full disclosure of her interview record there is nothing to prevent the matter being listed for full re-hearing in the First-tier Tribunal.

Decisions

7. The decision contains an error of law and is set aside.
8. The matter is to be re-made in the First-tier Tribunal.

Deputy Upper Tribunal Judge Bruce
5th March

2015