



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/15736/2016

THE IMMIGRATION ACTS

Heard at Field House  
On 4 June 2018

Decision & Reasons Promulgated  
On 7 June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

MR VINCENT IJESUOSEMWEN OMIGIE  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Omoniruube, Solicitor, from Church Street Solicitors  
For the Respondent: Ms K Pal, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is a challenge by the Appellant against a decision of First-tier Tribunal Judge Housego (the judge), promulgated on 14 August 2017, in which he dismissed the appeal on human rights grounds. That appeal had been against the Respondent's decision of 26 May 2016, refusing entry clearance to the Appellant as the spouse of a British citizen. The refusal had been on three bases; first, that suitability grounds applied, specifically S-EC.1.5 of Appendix FM; second, that the Appellant's marriage was not valid with reference to E-ECP.2.7 of Appendix FM; third, that the financial requirements under Appendix FM and Appendix FM-SE had not been met, with reference to E-ECP.3.1.

### **The judge's decision**

2. Despite the fact that the first page of the decision states that there was no Home Office Presenting Officer, one was indeed present (as confirmed by the Record of Proceedings and the relevant Officer's case note which is on the Respondent's file). Having set out lengthy passages from case law, the evidence, and submissions of the representatives, the judge states his findings of fact at [70]-[81]. He concludes the Respondent's evidence did not establish that the Appellant had ever used an alias whilst last in the United Kingdom, or that he had married an EEA national ([72]). The judge concludes that the Appellant's marriage to the Sponsor was one of "convenience", but goes on to also state that the relationship was also not genuine. In respect of the suitability issue the judge concludes that paragraph 320(11) of the Rules did apply in this case with particular reference to not only the Appellant's previous overstaying in the United Kingdom, but the multiple EEA applications made over the course of time. In respect of the financial requirements the judge agrees with the Respondent's refusal notice and concludes that provisions of Appendix FM-SE were not met in numerous respects. Finally, the judge considers Article 8 in its wider context and concludes that the Sponsor could go and live with the Appellant in Nigeria and that refusal of entry clearance was in no way disproportionate.

### **The grounds of appeal and grant of permission**

3. The very short grounds refer to the judge's conclusion that the Appellant's marriage was one of "convenience" and asserts that this was erroneous. Permission was granted by First-tier Tribunal Judge Foudy.

### **The hearing before me**

4. The Sponsor did not attend the hearing but Mr Omoniruube was content to proceed in any event. He accepted that the issue of whether the relationship was genuine and subsisting had been a live issue before the judge. Although it had not been initially raised in the refusal notice, it was clear from the typed Record of Proceedings that the matter had been raised by the Presenting Officer at the hearing. He submitted that the judge had been wrong to conclude that the marriage was one of convenience. In respect of the suitability issue he submitted that there were no aggravating circumstances in this case. He acknowledged that the Respondent's guidance had not been referred to the judge at the hearing. On the financial issue he accepted that no challenge had been made to the judge's conclusions in the grounds of appeal. He then informed me that this issue had in fact been agreed between him and the Presenting Officer at the hearing and that the judge had also accepted that this requirement was no longer in issue. I pointed out that nothing about this was stated in either the decision itself or the Record of Proceedings. Ms Pal confirmed that there was no question of a concession having been made in the Presenting Officer's file note. Finally, Mr Omoniruube accepted that the judge's conclusion on Article 8 in its wider context and had been open to him.
5. Ms Pal re-confirmed that no concession about the financial requirements had been made and she referred me to [75] and [82] of the judge's decision in which he agreed

with the Respondent to the extent that the financial requirements had in fact not been met by the Appellant. On the relationship issue Ms Pal submitted that one could strike out the reference to “marriage of convenience” and still be left with a sustainable conclusion by the judge that the relationship was not genuine and subsisting. She referred me in particular to [70]-[71] and [76]. In terms of the suitability issue the judge is entitled to rely on the multiple unsuccessful EEA applications when considering S-EC.1.5.

### **Decision on error of law**

6. As I announced to the parties at the hearing I conclude that there are no material errors of law in the judge’s decision. My reasons for this are as follows.
7. I start with the relationship issue. It is right that the actual validity of the marriage (raised by the Respondent in the original refusal notice) was resolved by the judge in the Appellant’s favour ([72]). However, I am satisfied that the issue of whether the Appellant’s relationship with the Sponsor was genuine and subsisting was in fact raised by the Presenting Officer at the hearing before the judge and was live, as it were. This is clear not only on the face of the decision itself but also from the typed Record of Proceedings (the nature of which I made very clear to the representatives at the hearing). I note that there had been no application for adjournment by the Appellant’s representative once this issue had been raised before the judge. It is right that the judge was wrong to refer to the existence of “a marriage of convenience”: that is a concept specific to EU law and not Appendix FM. Notwithstanding that, in my view Ms Pal was right to submit that this error could be “struck out” and there remains a sustainable finding that the relationship was not genuine and subsisting. Once this issue had been raised at the hearing the usual burden applied, namely that the Appellant has to prove that his case. The judge was clearly very unimpressed with the evidence relating to the relationship, as stated in [70]-[71] and [76]. None of this has been specifically challenged in the grounds of appeal. The judge’s finding on this issue was open to him and was sufficient to preclude satisfaction of Appendix FM.
8. Turning to the suitability issue, although repeated reference is made to paragraph 320(11) of the Rules, this provision is in precisely the same terms as S-EC.1.5 and so there is no error in the failure to cite the correct Rule. It is right that the judge found the Appellant did not use an alias and so that could not have been an aggravating feature of the Appellant’s immigration history. It is right also that the previous overstaying in and of itself would not have been sufficient for the suitability provision to bite. However, in my view the judge was entitled to rely on the multiple (at least six) unsuccessful EEA applications made by the Appellant when he was last in the United Kingdom. Quite apart from the fact that this reliance has not in fact been challenged in the grounds of appeal, it was a matter that is consistent with the Respondent’s guidance and could not be described and in any way irrational. In light of this second issue, the Appellant could not satisfy the Appendix FM framework.
9. There is then the issue of the financial requirements. With all due respect to Mr Omoniruube, I do not accept that any agreement was reached with the Presenting

Officer, or indeed the judge, as to the satisfaction of the financial requirements. What he told me at the hearing is not supported by the Record of Proceedings, the face of the decision itself, the Presenting Officer's file note, or indeed any witness statement from Mr Omoniruube himself. In fact it is evident from the decision that the judge agreed with the Respondent's view of the financial requirements issue and concluded that these had quite clearly not been met (see [75] and [82]). Again, the Appellant was clearly unable to meet the requirements of Appendix FM.

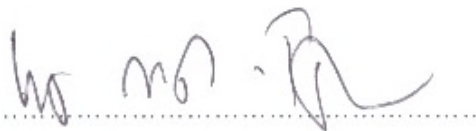
10. Finally, Mr Omoniruube has accepted that the judge was fully entitled to conclude as he did in relation to Article 8 outside the context of the Rules. He was right to have done so: what the judge says in [78] to [83] is entirely sustainable in light of all the circumstances.

### **Notice of Decision**

**The decision of the First-tier Tribunal does not contain errors of law.**

**That decision shall stand.**

No anonymity direction is made.



Signed

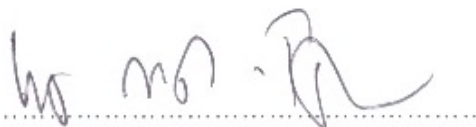
Date: 7 June 2018

Deputy Upper Tribunal Judge Norton-Taylor

### **TO THE RESPONDENT**

#### **FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.



Signed

Date: 7 June 2018

Deputy Upper Tribunal Judge Norton-Taylor