



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2023-004819

First-tier Tribunal No: EA/11878/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

22<sup>nd</sup> February 2024

**Before**

**UPPER TRIBUNAL JUDGE GLEESON**  
**DEPUTY UPPER TRIBUNAL JUDGE BLACK**

**Between**

**ODUNUGA BABATUNDE OSHOKE**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: In person

For the Respondent: Mr Tony Melvin, a Senior Home Office Presenting Officer

**Heard at Field House on 14 February 2024**

**DECISION AND REASONS**

1. The appellant, a citizen of Nigeria, appeals with permission from the decision of First-tier Tribunal Judge Rothwell (“the Judge”) dismissing his appeal against the respondent’s decision on 7 November 2022 to refuse his application for settled status pursuant to the EU Settlement Scheme (EUSS).

**Background**

2. The respondent refused the EUSS application because there was no evidence to show that the appellant was divorced from his former spouse and free to marry the EEA national.
3. The appellant exercised his right of appeal, opting to have his appeal considered on the papers, rather than at an oral hearing. He relied on documentary evidence of his freedom to marry, of a divorce certificate from the

West Area Customary Court in Edo State, Nigeria (“the divorce certificate”). The divorce certificate recorded the divorce as issued on Wednesday 9 November 2020 whereas 9 November 2020 was in fact a Monday. The appellant having opted for a paper hearing, he was not able to help the Judge with that factual inaccuracy.

### **First-tier Tribunal decision**

4. The Judge found the divorce certificate to be unreliable, applying *Tanveer Ahmed*: he did not accept that the Customary Court would have made such an error [7]. The Judge placed no weight on this document and in dismissing the appeal found that this evidence was not reliable. He was not satisfied that the appellant had been free to remarry and he dismissed the appeal.
5. The appellant appealed to the Upper Tribunal.

### **Permission to appeal**

6. Permission to appeal was granted on the following basis:

“2. The Judge has dismissed the appellant’s appeal against refusal of his application for status under the EU Settlement Scheme, on the basis of his marriage to a Spanish national residing in the UK under that scheme. The sole basis of the respondent’s refusal appears to have been that the appellant had not proven that his marriage to his Spanish wife was valid, given that he had failed to provide evidence of the dissolution of his previous marriage.

3. The appellant opted to have his appeal heard on the papers, and he submitted a bundle of evidence which included a copy of a divorce certificate said to have been issued by a court in Nigeria on ‘Wednesday 9th November 2020’. The Judge has concluded that this document is not reliable, on the single basis that there is an error in the date as 09/11/2020 was in fact a Monday.

4. The grounds for permission to appeal contend that the Judge has erred in law through procedural unfairness, as she has dismissed the appeal on a point that had not been put to the appellant, and to which he had therefore been unable to respond. Reliance is placed on the case of *Shen* (Paper appeals; proving dishonesty) [2014] UKUT 236 (IAC) to argue that the Judge, on noticing this point, ought to have adjourned and invited further written submissions, or even to have listed the appeal for an oral hearing so as to hear live evidence.

5. I find that the challenge raises an arguable error of law in the Judge’s decision, for the reasons given in the grounds. Permission to appeal is therefore granted.”

### **Error of law**

7. This matter comes before us following an adjourned hearing on 22 December 2023 at which the appellant sought to rely on a different version of the divorce certificate, on which the erroneous day and date had been corrected. He said that his solicitors had noticed the error immediately and obtained the corrected certificate, but that he had inadvertently submitted the erroneous version with his appeal papers.
8. Upper Tribunal Judge Gleeson adjourned the hearing, giving directions for the appellant to serve his application under Rule 15(2A) (The Tribunal Procedure (Upper Tribunal) Rules 2008) to adduce evidence of an amended divorce

certificate, (“the amended certificate”) together with an explanatory letter from his Nigerian solicitor, and for the respondent to submit his response to that application.

### **Rule 15(2A) application**

9. We considered the appellant’s written application dated 22 December 2023 and the respondent’s written response dated 4 January 2024. We admit the new documents pursuant to rule 15(2A), but for the reasons we now give, we do not consider that they establish an error of law by the First-tier Tribunal.
10. The corrected divorce certificate was attached to a letter dated 20 November 2023 from Hector Ehiaguina Esq of Hector Ehiaguina & Co, described on its headed notepaper as Barristers & Solicitors, Corperate (sic) and Property Consultants. The misspelling of ‘corperate’ on the notepaper concerned us but is not determinative in this context.
11. Mr Ehiaguina’s letter confirmed that the appellant’s marriage was dissolved on Monday 9 November 2020 according to Benin Native Law and Custom. It continued:

“Our law firm thereafter proceeded to collect the enrolment of judgment which was found to have an error due to the day of the week made by the court and *same was already sent to our client.*

Upon noticing this error, we immediately proceeded to the court for an amendment of same and this was carried out and the corrected judgment was thereafter sent.

*Our client informed us and we verily believe him that he had previously submitted the one with error, to your good self/office. We urge you sir to accept the corrected judgment and accept our greatest assurances as always.”*

*[Emphasis added]*

### **Error of law decision**

12. We proceeded to consider the error of law, having explained to the appellant the two-stage process whereby an error of law had to be found before we could consider remaking the decision substantively. We heard oral submissions from the appellant, but did not find it necessary to call on Mr Melvin for the Secretary of State.
13. In this appeal, we are in the same position as the First-tier Judge, as we have before us the same evidence, plus the appellant’s speaking note, which we have considered, and the evidence about the misdated divorce certificate. The appellant confirmed that he had submitted the divorce certificate containing the date error, not the amended one, and that it was the erroneous certificate which was before the Judge in the First-tier Tribunal.
14. We bear in mind the constraints on an appellate Tribunal interfering with conclusions on fact and credibility reached by a First-tier Judge on the basis of the evidence before him: see *Volpi v Volpi* [2022] EWCA Civ 464, as set out at [2] in the judgment of Lewison LJ, with whom Males LJ and Snowden LJ agreed. We may interfere with a First-tier Judge’s finding of fact only where it is ‘plainly wrong’ or ‘rationally insupportable’. We have considered whether *Shen* assists us but as it was a decision about the burden of proof where the Secretary of State asserts deception, it is not relevant to, or determinative of, this appeal.

15. The appellant had the opportunity to have elected for an oral hearing but instead decided on a paper hearing. The burden was upon him to produce all relevant evidence in support of his appeal. The appellant accepted that he submitted a divorce certificate containing the wrong date and that the document was not reliable in that form.
16. The Judge was not required to seek an explanation for the error on the face of the document, nor would he have been able to guess that the appellant had submitted the wrong document or that another document had come into existence subsequently with a different date on it. There was therefore no reason for the Judge to consider that an adjournment was necessary.
17. It was not until the appellant had received the Judge's decision dismissing his appeal that he became aware of the mistake in the certificate and sought to submit the second version. That cannot possibly constitute a legal or factual error by the First-tier Judge, because the second version was not before him.
18. We do not consider that the *Volpi* standard of showing that the Judge's assessment of fact and credibility was 'plainly wrong' or 'rationally insupportable' is reached. On the contrary, the First-tier Judge's conclusions were properly, intelligibly and adequately reasoned and, based on the divorce certificate before him, were unarguably open to him. We are satisfied that the Judge considered the appeal properly on the papers before him when dismissing the appeal. There was no procedural or substantive unfairness to the appellant in his decision.
19. The appellant's appeal must therefore fail. We explained our reasons for that to him at the hearing, which he accepted.

### **Notice of Decision**

20. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law. The decision shall stand.

**G A Black**

Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber

Date: 15 February 2024

