



IAC-FH-AR-V1

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

Appeal Number: IA/08545/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 27 July 2015**

**Decision & Reasons Promulgated
On 5 August 2015**

Before

UPPER TRIBUNAL JUDGE BLUM

Between

**JOE FRANK IKECHUKWU ARALU
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Amgbah, of UK Law Associates

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

DECISION AND REASONS

1. This is an appeal against the decision of Judge of the First-tier Tribunal Dineen who, in a determination promulgated on 16 April 2015, dismissed the appellant's appeal against a refusal by the respondent to issue him with a residence card as confirmation of his right of residence as a result of his marriage to a qualified person as defined in the Immigration (European Economic Area) Regulations 2006. As a result of answers given by the appellant and his spouse in a marriage interview the Respondent was satisfied the appellant and his

spouse were in a marriage of convenience. The Judge reached the same conclusion.

Background

2. The appellant is a national of Nigeria, date of birth 15 August 1970. He claims that he entered the UK on 11 May 2006. He maintains that he met his spouse, Wanda Dyleswka, a Polish national who was 61 years of age, in a pub in early 2010, that their relationship developed and that they began to co-habit in 2011. They purportedly contracted a marriage by proxy in Ghana in May 2012. An application for a residence card on the basis of their relationship was made on 10 October 2012 but this was refused. The appellant and his spouse were validly married on 15 May 2013 in the UK. Two days later the appellant again applied for a residence card. The appellant and his spouse were interviewed in respect of their marriage on 19 November 2013. His application was refused on 02 December 2013.
3. In her decision refusing the application the respondent made reference to a large number of inconsistencies in the evidence between the appellant and the sponsor which the respondent believed demonstrated that the marriage was not genuine. The respondent referred, *inter alia*, to answers given by the spouse suggesting she was unaware of the proxy marriage.
4. Aggrieved at this decision the appellant availed himself of his in-country right of appeal and this was heard on 22nd December 2014 at Hatton Cross. The Judge had before him a bundle of documents from the appellant that included statements from him and his spouse. The Judge heard oral evidence and reserved his decision after recording the submissions of the representatives.
5. The Judge was not satisfied the appellant and his spouse were in a genuine marriage and dismissed the appeal. The Judge relied on, amongst other matters, some of the inconsistencies that were apparent from the marriage interview record. The Judge's decision was not promulgated until 16 April 2015, the decision having been signed by the Judge on 14 April 2015. This was some 3 months and 3 weeks after the appeal was heard.

The Grounds of Appeal

6. The Grounds argue that the Judge failed to make his decision within a reasonable time. This, it was said, rendered his decision unsafe as the Judge failed, as a result of the delay, to address oral and written evidence, including explanations contained in the statements, provided by the appellant and his spouse. It was submitted that the Judge only referred to inconsistencies that arose from the marriage interview and made no reference to the oral evidence at the hearing. The Judge was criticised for taking account of the language barrier between the

appellant and the sponsor and by drawing an adverse inference from the absence of statements or evidence from other witnesses to the marriage. The Judge was also criticised for finding that the documentary evidence adduced relating to co-habitation was of a restricted nature.

7. Permission was granted on all grounds, the First-tier Judge granting permission noting that it was arguable that the Judge's treatment of the evidence may have been affected by the nearly 4 month delay in promulgating the determination.

The hearing before the Upper Tribunal

8. The appellant provided a bundle of further evidence that, were I to identify a material error of law, would be presented on the appellant's behalf. In his oral submissions Mr Amgbah emphasised the delay in making the decision and the absence of any explanation for this delay. It was submitted that the delay suggested the Judge failed to take into account events that occurred after the respondent's decision. It was argued that the Judge focused entirely on the original marriage interview in rejecting the genuineness of the marriage.
9. In his response Mr Tufan submitted that there had to be a nexus between the delay and the unlawfulness of the Judge's decision. The appellant had failed to identify what specific oral and written evidence the Judge allegedly failed to take into account. The Judge did consider the explanations provided by the appellant and his wife, this was apparent from paragraph 29 of the Judge's determination. Nor was any adequate explanation given in the statements.
10. I indicated at the hearing that I was not satisfied the Judge erred in his assessment of the evidence before him and that I would provide a full explanation in my written decision.

Discussion

11. It is unfortunate that the decision did not come to be written until some 3 months and 3 weeks after the hearing, and that no explanation was provided by the Judge in respect of this delay. It is however clear from the authorities of **Secretary of State for the Home Department v RK (Algeria) [2007] EWCA Civ 868** and **Arusha and Demushi (deprivation of citizenship - delay) [2012] UKUT 00080 (IAC)** that there must be a nexus between the delay and the safety of the decision. It is therefore necessary to carefully identify and examine the evidence that the appellant contends was not considered by the Judge.
12. It is entirely apparent from a holistic reading of the determination that the Judge did take full account of the evidence contained in the appellants and his spouse's witness statements and of their oral evidence at the hearing. The Judge first noted at paragraph 10 that

both the appellant and his spouse provided statements and gave oral evidence, and indeed that they provide a bundle of documents in support of their appeal. No criticism has been made of the chronological account set out by the Judge under the section entitled 'The Appellant's Case'. In this section it is clear that the Judge did record the oral evidence of the appellant and his spouse. The Judge recorded the explanation provided by both the appellant and his spouse in respect of her apparent ignorance, during the marriage interview, of the Ghanaian proxy marriage (paragraphs 17 and 27). The Judge recorded oral evidence that was not dealt with in the statements, such as whether the appellant and his spouse intended to have children (paragraphs 20 and 28). The Judge noted that the appellant answered various questions put to him during the hearing concerning the time he and his spouse spent together in the weekend preceding the hearing, their birthdays and details of their residence (paragraph 21). The Judge recorded the spouse's evidence that she was able to work out the sense of what the appellant was saying to her because she could understand a certain amount of English. The Judge provided a summary of the explanations provided in respect of the inconsistencies arising from the marriage interview. This included misunderstandings, ambiguities in questions and inaccuracies in translations (paragraph 29).

13. Contrary to the Grounds of Appeal it is immediately apparent from the above analysis that the Judge did consider the oral evidence from the appellant and his spouse, and the explanations advanced by them in respect of the many inconsistencies contained in the marriage interviews.
14. In respect of his findings the Judge first indicated that it was understandable that people giving true and honest accounts may reply differently to the same question as a result of different but valid interpretations (paragraph 37). The Judge was not however satisfied that the explanation given by the spouse for her answers to questions put to her about the Ghanaian proxy marriage were plausible. The Judge noted at paragraph 41 that, in the marriage interview, the spouse denied having ever seen any documents relating to the Ghanaian marriage until the interview. This is entirely inconsistent with the written evidence of the appellant who claimed he had shown the Ghanaian marriage certificate to his spouse (paragraph 12 of his statement). The Judge was fully entitled to draw an adverse inference as a result of this significant inconsistency.
15. The Judge did not however confine his evidential assessment to the marriage interview. At paragraph 45 the Judge did not find it plausible that, in respect of his 61 year old wife, that having children was a possibility for them, a point that was, in any event, completely contradicted by the spouse. The Judge was entitled to rely on this evidence in drawing an adverse inference. The Judge was further entitled to draw an adverse inference based on inconsistent oral

evidence as to when the parties to the marriage first met (paragraph 46).

16. Contrary to the Grounds of Appeal I am entirely satisfied that the Judge was entitled to take into account the language barrier between the appellant and his spouse when assessing whether the marriage was one of convenience. The Judge was also entitled to take into account the absence of any evidence whatsoever of any witness to the genuineness of the relationship. Although there is no requirement of corroborative evidence in this jurisdiction a Judge may take account of the absence of evidence when that evidence would reasonably be expected to be available. If the relationship between the appellant and his spouse were genuine one would reasonably expect to find evidence from friends, colleagues or family confirming the same. Nor did the Judge err in his approach to the evidence of co-habitation. The documentary evidence before the Judge may have supported the claim by the appellant and his spouse that they resided at the same address but the documentary evidence was silent as to the actual living arrangements within the address.
17. The determination, read as a whole, does not disclose that the Judge omitted any significant explanation for the discrepancies in the evidence given at the marriage interview. The Judge fully engaged with the evidence before him. Although the delay in the promulgation of the determination is lamentable it did not render this particular decision unsafe.

Notice of Decision

The First-tier Tribunal Judge did not make a material error of law.

No anonymity direction is made.



Signed

31 July 2015
Date

Upper Tribunal Judge Blum