



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/44024/2014**

THE IMMIGRATION ACTS

**Heard at Field House
On 24 November 2015**

**Decision and Reasons
Promulgated
On 30 November 2015**

Before

Deputy Upper Tribunal Judge MANUELL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

Mrs NGOZI BLESSING NWANKO

Respondent

Representation:

For the Appellant: Mr S Kandola, Home Office Presenting Officer

For the Respondent: Mr E Pipi, Counsel (instructed by JDS Solicitors)

DETERMINATION AND REASONS

1. The Appellant (the Secretary of State) appealed with permission granted on 10 August 2015 by First-tier Tribunal Judge Shimmin against the decision and reasons of First-tier Tribunal Judge Hunter promulgated on 29 May 2015. Judge Hunter had allowed the Respondent's appeal against the Secretary of State's decision to revoke her EEA residence card. The Respondent is a national of

Nigeria, born on 10 May 1967. She had denied that her marriage to a Polish national was one of convenience.

2. The Respondent's marriage was conducted by the Rev. Brian Shipsides on 21 February 2009 at All Saints and St. Edmunds Church, Forest Gate, London E11. The Rev. Shipsides was convicted on 22 February 2012 of conspiracy to facilitate the commission of breaches of immigration law, and sentenced to three years' imprisonment. It had not been disputed by the Rev. Shipsides that the majority of some 250 weddings conducted by him at his church between 29 December 2007 and 31 July 2010 had been shams, mainly between EEA nationals and Africans. The Respondent's EEA residence card issued on 22 February 2010 had been revoked by the Secretary of State on 25 February 2014 following the Rev. Shipsides' conviction. Despite the misgivings which he expressed, Judge Hunter found that the Respondent's marriage was genuine and allowed her appeal, it seems on the basis that she had a retained right of residence following her divorce. That is, however, far from clear from the decision and reasons.
3. Permission to appeal to the Secretary of State was granted by Judge Shimmin because he considered it arguable that the judge had failed to make a finding in respect of disputed material matter, and had failed to explain why he found that the Respondent met the Immigration (European Economic Area) Regulations 2006 and which regulation in particular.
4. Mr Kandola for the Appellant relied on the grant of permission to appeal and the grounds of onwards appeal earlier submitted. The judge had failed to resolve the conflict of fact as to the status of the Respondent's alleged spouse. Was he a qualified person within regulation 6? The evidence which the Secretary of State had placed before the judge strongly indicated that he was not. The judge had focussed on the sham marriage issue exclusively and had failed to identify why the appeal against revocation succeeded, given that the Respondent and her alleged spouse were divorced. The judge had failed to find that the spouse had been a qualified person at the critical date, i.e., the date of the divorce. The relevant regulations, i.e., regulation 10(5) and 10(6), had not been identified. The decision and reasons were wholly inadequate and should be set aside and the appeal reheard before another judge.
5. Mr Pipi for the Respondent relied on his skeleton argument and contended that the findings which the judge reached had been open to him. The determination contained no material error of law. The judge did not have to cite the regulations in detail and had made sufficient findings on which to allow the appeal. The substance of the appeal was against the decision to revoke and the Respondent had succeeded. The Secretary of State's onwards appeal should be dismissed.

6. At the conclusion of submissions the tribunal stated it found that there were material errors of law by First-tier Tribunal Judge Hunter in his decision and reasons. The Secretary of State's appeal succeeded. The errors were so material that the whole of the decision must be set aside and the appeal reheard before a differently constituted First-tier Tribunal. It was not possible to proceed to a rehearing in the Upper Tribunal because the Respondent's witnesses were not available. The tribunal reserved its decision which now follows.
7. The decision and reasons show that no Home Office Presenting Officer was present at the First-tier Tribunal hearing of the appeal, which appears to have been assigned to the hearing centre's "float" list. That is not the fault of Judge Hunter, but in the tribunal's view a sham marriage appeal with witnesses is not suitable to be heard as a float case, especially if (as here) no Home Office Presenting Officer was available. This was an appeal which demanded cross-examination to enable secure findings of fact to be made. In the tribunal's view the findings of fact which were made were not secure.
8. The suggested relevant factors for the assessment of sham marriages set out in Papajorgji (EEA spouse - marriage of convenience) Greece [2012] UKUT 00038 (IAC) were insufficiently followed by the judge. A strong *prima facie* case had been raised by the Secretary of State and in the tribunal's view the judge's analysis was deficient. The quality and brevity of the relationship were not addressed. There is no mention of the Respondent's United Kingdom immigration status prior to her marriage. Indeed, she was careful not to mention the subject in her witness statement. There were other relevant factors seemingly ignored in the assessment of the parties' intentions at the date of the marriage, such as the husband's financial situation. His failure to file tax returns was part of the evidence. The date of the marriage was the critical date for determining whether it was an abuse in order to gain an advantage in EEA law, but again that was not adequately addressed.
9. The judge noted a number of deficiencies in the documents produced, stating by way of comment on them at [59] of the decision and reasons: "I do see this as evidence for the proposition that this was an attempt by the Appellant to deceive the Respondent regarding her being in a subsisting relationship." On its face, that was a conclusion open to the judge because the documents produced were incomplete and inadequate. If the judge's finding stood, it sits uncomfortably if not illogically with his other findings in the Respondent's favour. It may also be that the word "not" is missing from the sentence quoted above. In either event, it is plain that the decision is inadequately reasoned and cannot stand.
10. A further serious problem in the judge's decision is his failure to identify and refer to the relevant Immigration (European Economic Area) Regulations 2006. It is essential to do so in every EEA appeal,

not least so that it is clear that the judge is working from the applicable version of these much-amended regulations. Had the judge considered the regulations properly in his decision and reasons, he might have been alert to the issue of whether or not the Respondent had produced sufficient evidence to show that her claimed ex-spouse had been a qualified person within regulation 6 as at the date of their divorce. The evidence produced by the Secretary of State (which followed the principles of cooperation set out in Amos [2011] EWCA Civ 552) showed that he was *not* qualified. The judge made no comprehensible finding on that point. It is doubtful on the face of the decision that there was sufficient evidence to show that the Respondent's ex-spouse was even in the United Kingdom at the date of the divorce.

11. For all of these reasons, the basis on which the judge allowed the Respondent's appeal was unsustainable.

DECISION

The Secretary of State's appeal to the Upper Tribunal is allowed.

There were material errors of law in the First-tier Tribunal's decision, such that the decision must be set aside in its entirety.

The appeal must be reheard at the Hatton Cross hearing centre by a judge other than First-tier Tribunal Judge Hunter, on a date to be fixed.

Signed

Dated

Deputy Upper Tribunal Judge Manuell