



IAC-PE-AW-V1

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

Appeal Number: OA/11824/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 7<sup>th</sup> October 2015**

**Decision & Reasons Promulgated  
On 29<sup>th</sup> October 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE BAIRD**

**Between**

**MRS AZEEZAT ABIODUN FASINRO  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Jibowu - Counsel

For the Respondent: Mr C Avery - Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal by Mrs Azeezat Abiodun Fasinro, a citizen of Nigeria born 1<sup>st</sup> July 1990.
2. She appeals against the determination of First-tier Tribunal Judge A A Wilson issued on 22<sup>nd</sup> May 2015 dismissing under the Immigration Rules and on human rights grounds her appeal against the decision of the Respondent made on 23<sup>rd</sup> August 2014 to refuse leave to enter the United Kingdom as a partner under Appendix FM of the Immigration Rules.

3. On 1<sup>st</sup> September 2015 First-tier Tribunal Judge Cox granted permission to appeal. He said:
  - “2. I have carefully considered the decision in relation to the grounds. The grounds in essence contend that the Judge made inconsistent findings in his decision and also erred in his finding on the English language requirements.
  3. On consideration, I do find the decision read as a whole somewhat confused and confusing. It is also worrying that the Judge at [9] referred to cross-examination by the Presenting Officer when no such Officer was in attendance (as the Record of Proceedings confirms). The losing party is always entitled to a clear indication why he or she has lost and, altogether, it is arguable that the decision is deficient in that respect and accordingly unsafe.”
4. In a response to the grounds the Secretary of State submits that Judge Wilson directed himself appropriately and made reasonable, sustainable findings that were properly open to him on the evidence. It is submitted that the grounds advanced by the Appellant are nothing more than a disagreement with the negative outcome of his appeal. The grant of permission for leave is on the basis that the determination of the Judge was confusing and contained inconsistencies when cross-referenced with the Record of Proceedings.
5. However, given that the Respondent does not have access to the Record of Proceedings the Respondent is not in a position to respond to these grounds nor to concede any error in this regard. The Respondent further submits that the determination does not on the face of it disclose any material arguable errors of law.
6. The Respondent gave three reasons for dismissing the Appellant’s application. Firstly the Entry Clearance Officer (ECO) was not satisfied that the relationship is genuine and subsisting; secondly he was not satisfied that the Sponsor’s income was £33,000 per annum as claimed because the bank statements and payslips did not carry a complete sequence and there was no employment letter; thirdly there was nothing to confirm that the Appellant could be adequately accommodated without recourse to public funds; the final reason was the failure to submit an English language certificate.
7. Judge Wilson concluded that the marriage was genuine. He looked very thoroughly at the payslips and the bank statements and he gave the Appellant the benefit of some doubt and accepted that on the balance of probabilities the appropriate documents relative to the Sponsor’s earnings had been submitted to the ECO by the date of decision. He found that the financial requirements had been met. He was not however satisfied that the degree certificate, the evidence that the English language requirement was met, had been submitted to the ECO at that time. The Sponsor had indeed accepted that it was later than that because the award ceremony had not been until July 2014.
8. One of the requirements relative to the language requirements is that the course has to be taught in English. The Appellant had belatedly provided a degree certificate from Nigeria. Judge Wilson clearly had some difficulty with this because he had formed the view that the language requirement was met but that the necessary evidence had not been before the ECO at the requisite date. He said at paragraph 17:

“In short, whilst I have very considerable sympathy for the Appellant and her husband and I am satisfied that the appropriate evidence could now be lodged, overall I find the appeal cannot succeed under the Immigration Rules.”

9. He went on to consider Article 8. He relied on **Secretary of State v SS (Congo) and Others [2015] EWCA Civ 387** in concluding with regard to Article 8 ECHR that there was no justification for dealing with the appeal outwith the Immigration Rules. He gave sound reasons for this.
10. Much was made in the grounds seeking permission of a submission that the Judge was contradictory in that he found that the Appellant did meet the English language requirements and then found that she did not meet the requirements of the Rules because all the relevant evidence was not with the ECO at the date of decision. There was little dispute at the hearing before me about this finding. It seemed to be accepted that evidence that the English language requirements were met was not with the ECO when he made the decision. It does appear to be the case that the Judge does refer in paragraph 9 to cross-examination by the Home Office Presenting Officer when no Home Office Presenting Officer apparently attended. He does give the name of a Presenting Officer on the front page of his decision under “Representation”.

#### **Findings on error of law**

11. I do not accept that there was an inconsistency in what the Judge said about the English language certificate. There was nothing contradictory in saying that clearly the Appellant can meet the requirement but that at the date of decision she had not established by the required evidence that she did, thus failing to comply with the Immigration Rules.
12. In the Record of Proceedings for the hearing on 11<sup>th</sup> May 2015 it does indicate that there was no Presenting Officer. It was clearly therefore an error for the Judge to say that the Appellant was cross-examined but I do not consider this to be material. In essence Judge Wilson found that the Appellant did not meet the requirements of the Rules. It seems that this decision was correct. He then had to decide whether or not, having considered **SS (Congo)**, it was appropriate to consider the appeal outwith the Rules. He found that it was not and he gave proper and reasonable reasons for this.

#### **Decision**

I find therefore that there is no material error of law in the determination of the First-tier Tribunal and that decision shall stand.

No anonymity direction is made.

Signed

Date: 28<sup>th</sup> October 2015

N A Baird  
Deputy Judge of the Upper Tribunal