Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/34702/2014**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 20th May 2016	**On 31st May 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MR EBENEZER LAWRENCE ADEBISI
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E Oremuyiwa (LR)
For the Respondent: Mr E Tufan (HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Dean, promulgated on 15th October 2015, following a hearing at Taylor House on 29th September 2015. In the determination, the judge dismissed the appeal of Ebenezer Lawrence Adebisi, whereupon the Appellant applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

© CROWN COPYRIGHT 2016

2. The Appellant is a male, a citizen of Nigeria, who was born on 8th February 1981. He appealed against the decision of the Respondent Secretary of State dated 18th August 2014, refusing his application for a residence card as a spouse of an EEA national exercising treaty rights in the United Kingdom under the Immigration (European Economic Area) Regulations 2006. The person in question is Ms Akalonu Sussey, and she is Dutch national. Whereas the Appellant was born on 8th February 1981 (and was 34 years of age), his partner, was born on 26th December 1960, and was 54 years of age.

3. The Appellant's claim is that he is entitled to a residence card on the basis of his marriage with an EEA national, and that the marriage is genuine and subsisting, and the two of them have been cohabiting at [ ].

The Judge's Findings

4. The judge found the marriage not to be a genuine one, but to be a "marriage of convenience" such that the refusal of the residence card was entirely justified by the Respondent Secretary of State. A primary issue in the legal proceedings was the absence of a marriage interview record, on the basis of which the Respondent had formed the conclusion that the marriage was one of convenience, and not a genuine and subsisting one. This marriage interview record had not been produced for inspection by the Appellant, despite repeated requests to do so. At the same time, there was the leading Tribunal determination of **Papajorgji [2012] UKUT 00038**, which had established that the burden does not lie on the claimant at the outset of an application to demonstrate that his marriage to an EEA national is not one of convenience. It is for the Secretary of State, as the maker of the allegation, to carry that burden.

5. The judge stated that the issue of the marriage being one of convenience was "The sole issue to be determined in this appeal because Regulation 2 of the 2006 Regulations states that a 'spouse' does not include a party to a marriage of convenience" (see paragraph 10).

6. With respect to the absence of the marriage interview record, at the hearing before the judge, the Appellant's representative, Mr Oremuyiwa, had indicated that there had still been no disclosure of the interview record. At this point, the judge recorded that, "In view of the submission the Respondent's representative stated he was content to make it available for consideration". The judge then went on to say that, "Accordingly, having examined the marriage interview I was satisfied that the RFRL accurately reflected the answers given by the Appellant and his wife in the interview" (paragraph 8). The judge went on to dismiss the appeal and to uphold the decision of the Secretary of State.

Grounds of Application

7. The grounds of application state that the Respondent did not make a record of the marriage interview available after the interview and as such its contents ought to have been disregarded.

8. On 12th April 2016, permission to appeal was granted.

Submissions

9. At the hearing before me on 20th May 2016, Mr Oremuyiwa submitted that I should set aside the decision of Judge Dean because he had relied upon a marriage interview record, which had not been disclosed to the Appellant in the Respondent’s bundle, by the time that the hearing had commenced before Judge Dean. He explained that a letter had been written by the Appellant himself to the Respondent requesting the interview transcript. It had not been responded to. Yet, the Secretary of State relied upon this very document and the judge used it as a basis for his decision to refuse. He submitted that he still did not have a copy of the transcript of the interview.

10. Given that Mr Oremuyiwa had attended the hearing before Judge Dean, I asked him to explain further what happened given that the judge had recorded (at paragraph 8) that, because the marriage interview had not been served in the Respondent’s bundle, “The Respondent’s representative stated he was content to make it available for consideration” (paragraph 8). Mr Oremuyiwa explained that, “We had no time to sit and go through the transcript interview if it was being handed up on the day of the hearing”. He submitted that he also did not apply for an adjournment so as to prepare further on the basis of what was disclosed in the interview transcript. Instead, Mr Oremuyiwa submitted that he was under express instructions from his client to proceed with the hearing as things stood.

11. For his part, Mr Tufan submitted that the substance of the interview record had already been included in the refusal letter and it was well-known that the main issue was that of a “marriage of convenience” in this case.

12. Second, at the hearing itself the Presenting Officer was all too prepared to hand up a copy of the interview transcript but it was declined by Mr Oremuyiwa himself, who was under express instructions to proceed with the hearing. No opportunity was even taken to adjourn for a few moments to look at what was included in the interview transcript to see whether it was at loggerheads with the refusal letter. Instead, the parties themselves chose to proceed with the hearing. Therefore there could be no prejudice.

13. Third, the judge did not just base his decision to refuse the appeal on the basis of what transpired in the interview transcript. If one looks at the determination, the judge throughout demonstrates why the marriage is one of convenience on the basis of the discrepancies that exist between the answers given by both parties. For example, there were no photographs of the wedding ceremony which took place on 28th October 2013 at Greenwich and no photographs of the Appellant and his wife together “on any other occasion in this country” (paragraph 13). In oral evidence the Appellant was asked if he had a new tenancy agreement and he stated “Not here” whereas his wife, when asked the same question,

stated that “She did not have the tenancy agreement and that the Appellant signed the new agreement” (paragraph 14).

14. A witness by the name of Mr Agbana turned up, and despite his alleged closeness and regularity of contact with the parties, “Did not know the family name used by the Appellant’s wife, neither did he know where she works or what her job is” (paragraph 15). Furthermore, the Appellant stated in oral evidence that “He pays the council tax and that this goes out of his bank account” whereas the Appellant’s wife stated that “She gives him money to pay, although the account is in her name” (paragraph 17). These are all matters that lay outside the interview transcript, that the judge was properly able to take into account, in coming to the decision that he did. There was no error of law.

Reply

15. In reply, Mr Oremuyiwa submitted that the Appellant’s wife was not in attendance today because she was out of the country but she would like the opportunity to give evidence again. He submitted that the marriage has not been attacked as such and it was a genuine marriage. He stated that the marriage interview transcript had prejudged the veracity of the Appellant’s oral evidence together with the evidence of his wife. Therefore, its inclusion in the determination by the judge was an error of law.

No Error of Law

16. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows. First, whilst it is true that the interview transcript had not been produced before the hearing, so that Mr Oremuyiwa could discuss its contents with the Appellant and his partner, the fact was that it was produced at the hearing itself and the Presenting Officer was all too keen to disclose it to Mr Oremuyiwa so that he could see for himself why the refusal letter was in the terms that it was.

17. At that stage, Mr Oremuyiwa himself took instructions directly from his client, the Appellant, and they decided to proceed with the hearing. They did not even ask for a short adjournment so that they could have a perusal of the interview transcript. In fact, they did not even request a copy so that by the time they that arrived at this hearing, they still did not have the interview transcript at all.

18. Second, both the Appellant and his partner, Akalonu Sussy, gave evidence, and the judge found there to be significant discrepancies in the evidence given by three witnesses on the day of the hearing. These discrepancies are set out above and they show that the decision arrived at by the judge was entirely one that was open to him. Indeed, the approach taken by the judge was to say that,

> "When taken in the round I found that the evidence of the Appellant and his wife contains material inconsistencies and discrepancies which do not dispel the doubts and concerns that the marriage was entered into for the sole purpose of securing residence rights" (paragraph 19).

That was a decision that the judge was entitled to come to. All in all, the fact that the marriage interview transcript had not been disclosed to the Appellant's side prior to the date of the hearing was not a matter that caused the Appellant's side any material prejudice in the manner that is now being contended for by Mr Oremuyiwa.

Notice of Decision

There is no material error of law in the original judge's decision. The determination shall stand.

No anonymity direction is made.

Signed Dated

Deputy Upper Tribunal Judge Juss 28th May 2016