



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

Appeal Numbers: IA/33864/2015
EA/05926/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 26th November 2018**

**Decision & Reasons Promulgated
On 06th February 2019**

Before

UPPER TRIBUNAL JUDGE KING TD

Between

**MS STELLA [T]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: The Appellant appears in Person

For the Respondent: Ms J Isherwood, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Nigeria born on 7th February 1962. On 10th February 2015 she applied for a residence card on the basis of retained right of residence after divorce from an EEA citizen, one [JS]. It was refused on 26th October 2015.
2. The appellant then applied for a permanent residence card on the same basis as before. That application was refused on 5th May 2016.

3. In terms of the reasons for refusal in the first decision, it noted that the appellant's former spouse sponsored three different applicants all claiming to be his spouse. These applications dated 22nd February 2012, 24th May 2012 and 4th February 2014. It was not accepted that there was a genuine and subsisting relationship with the EEA sponsor but rather that the marriage was solely for immigration purposes.
4. In terms of the documentation that was provided, such it was said provided little or no evidence of any joint financial commitments during the marriage or indeed provided credible evidence of cohabitation.
5. The provisions relating to family and private life and Article 8 were also considered.
6. In terms of the second decision, it was recounted that the appellant was encountered in Ireland during September 2008 when she claimed that her name was a Lizzy Rose Benson with a date of birth of 13th June 1978. Mr [EW] claimed that she was living with him and that he was a cousin. It is only in 2008, it is said, when the appellant made and supplied evidence of her identity and the name that she uses and the date of birth that she claims. For the reasons which had been advanced on the previous occasion, the application was refused. The appellant sought to appeal against both decisions, which appeals came before the First-tier Tribunal for hearing. The appeals were dismissed. For a number of reasons errors of law were found in those decisions which were set aside to be remade. Thus the matters came before First-tier Tribunal Judge Freer for hearing on 7 February 2018. In a determination dated 16 February 2018 the two appeals were dismissed.
7. The appellant sought to challenge those decisions and permission to do so before the Upper Tribunal was granted, primarily on the basis of the appellant's poor mental health and the Judge's potential failure to recognise her vulnerability in the course of weighing up the evidence which she gave. It is also said that in certain parts of the determination the Judge has engaged in speculation.
8. The matter of concern was that the appellant arrived unrepresented at the hearing before me when she indicated that she had been unable to afford the services of a legal representative. I indicated that I was prepared to adjourn matters in order for her to be represented, particularly given the concerns as to her vulnerable position. She indicated that she wished the matter to proceed. It is to be noted that throughout the hearing, albeit a hearing on error of law, the appellant was able to articulate her concerns and respond to the relevant issues. I did not detect that her ability to communicate and understand the arguments raised were significantly undermined by any mental health condition which she may or may not have.
9. She relied upon the grounds of appeal and a statement of 18th November 2018. In summary it is her case that she submitted cogent evidence of

cohabitation, in particular a joint HSBC bank account from 2011 to 2014 and various payslips for herself and for her spouse for the same period.

10. She maintained that she had been a victim of domestic violence and produced a number of medical documents and reports.
11. She denied that she had travelled or lived in Ireland for more than one day of a visit and maintained her denial of using a false identity of another. Seemingly there had been a mistake in an IS96 which had been issued to her when she was returned to London. Such a mistake was pointed out and corrected in her residence card of September 2010.
12. She maintains that throughout her residence she has used her proper name and birth date.
13. A number of issues fell for consideration in the course of the appeal. The first and central issue was the context and circumstances of the appellant's marriage to the sponsor. Her evidence, as set out in the determination, was that she met the sponsor at a party in 2007 and they married on 25th June 2009. At the date of the marriage the appellant was unaware of the other relationships that seemingly the sponsor had with other females. After the marriage they moved together to Clayton Road and lived there for some time and had a tenancy agreement. It was a studio flat run by [GL]. They then moved to Dallas Road in 2010 and then at another tenancy.
14. It was when she commented upon lipstick upon his shirt that he would beat her up, she moved out to Friary Road but was still going to Clayton Arms. She filed for divorce and suffered further violence. She moved out of Dallas Road because of problems with the sponsor, which began in 2011.
15. In the determination, the Judge highlights in paragraphs 48 and 49, the nature of the respondent's evidence relating to the activities of the sponsor. It noted that a Miss D was refused a certificate of approval of marriage to the sponsor on 9th July 2009, such being very close in time to the appellant's wedding. The sponsor is shown as having a current French nationality and a previous nationality of the Cote d'Ivoire. Ms I was refused a residence card on 13th March 2012, a bigamous marriage sought with the sponsor. Ms N was likewise refused on 16th March 2013 and a Ms J was refused on 19th June 2014.
16. The Judge found that the appellant was part of a series of women who were being helped to marry to gain EEA nationality in sham weddings. The Judge did not accept it credible that the appellant would have been unaware of the activity of the sponsor e to enter in the sham marriages or seek to arrange them as a business and not as a hobby. Such was found to be significant evidence falling into question for genuineness of the marriage.

17. Linked to that issue was the use by the appellant of a false identity. It was said that the appellant was confronted by the authorities in Ireland and gave a particular identity and date of birth. She was communicated to in that identity for some time and it was not until 2010 that she sought to correct her identity.
18. In that connection it is important to note the content at paragraphs 55 and 56 of the determination where reference is made to the precise records which the respondent has adduced at the course of the hearing.
19. Of particular importance is the illegal entry record of 4th September 2008 which is summarised in full in paragraph 56 of the determination. The Republic of Ireland alerted the Immigration Officer to the fact that the subject had not been granted access through Dunleary Port. The Immigration Officer and another attended the port to apprehend the person concerned, who gave her name as Lizzy Rose Benson and a date of birth 13th June 1978. It was because of that that the Officer suspected that it was likely to be falsification, that she spelled her name in various ways and appeared to be at least 50 years old. It is said that this person was in fact the appellant. She claimed to have first entered Ireland six years ago, gave various residences in both countries during the timeframe. She was served as the subject of an illegal entrant with an IS96 to report in London to an address where she claimed that her friend lived. That being [~] Bream Close. Those documents were sent to her at that address.
20. It was the case of the appellant that she had only been in Ireland for the day and she had purchased something for Lizzy. The authorities had been confused as to her identity. She seemed to accept that she received notification in Lizzy's identity but did not correct that until 2010. She indicated however she had sought to do so before then and it was simply a mistake on the part of the Home Office.
21. The Judge, having considered the evidence, came to the conclusion that the explanation for the appellant was not to be believed, particularly in the light of the very specific report of the Immigration Officer that he set out. It was the conclusion of the Judge that the appellant had not been honest with the authorities at a time immediately prior to the marriage which had been conducted and that in itself was a matter undermining of credibility.
22. In terms of accommodation there were many changes of an address.
23. In paragraph 57 and 58 of the determination, the Judge found on the evidence as presented that the appellant had stayed at Bream Close at material times. Regard was had to a photograph showing that the person recorded as being Lizzy Rose Benson was that who appeared in court as the appellant. There was evidence placing the sponsor at Bream Close.
24. It was noted that there was a tenancy agreement for a one room apartment at [~] Clayton Road, London dated 26th September 2009 listing the sponsor and appellant as tenants. There is a letter from Virgin Media

dated 20th October 2009 addressed to the sponsor at that address. A statement from a Mr [GL] seemingly indicated that he had inherited the sponsor and the appellant from the previous landlord on 16th April 2010. Talk Talk bills dated around 18th August 2010 were addressed to the sponsor at 1-5 Clayton Road, London. A Talk Talk bill at page 298 of the appellant's bundle dated 15th November 2009 shows the sponsor at [~] - [~] Clayton Road, London rather than at the flat above [~] Clayton Road. Whether it is the same address or a variant of the same is perhaps not clear. It was noted by the Judge, however, that apart from the one tenancy agreement, the documentation did not put the sponsor and the appellant as residing at that address and did not support the conclusion of cohabitation. The Judge indicated at paragraph 29 of the determination that the appellant was unclear as to how long they were at the address above the Clayton Arms Pub.

25. According to the evidence of the appellant they had moved to Dallas Road in 2010 but was still "in and out of that place". The Judge could find no documentation which assisted on the issue of cohabitation at that address. At some stage the appellant had moved out to Friary Road but continued to go to Clayton Arms, where she claimed that there was correspondence. It was unclear as to why the appellant would have correspondence at an address which she no longer lived. An example possibly of that correspondence is a bank account from Barclays for September to October 2011 addressed to the appellant at [~] - [~] Clayton Road, London. Indeed there seemed to be a series of bank statements addressed to the appellant at that address.
26. Significantly however the documentation does not seem to show any joint cohabitation at that address.
27. It is the HSBC joint bank account, which seems to place the sponsor and the appellant at 77 Friary Road, the bank statements seem to date from November 2012 through to November 2014 at that particular address. Of course the appellant is still returning to Clayton Road to collect mail addressed to her at that address. It does not necessarily follow because bank documents are addressed to the appellant and to the sponsor at Friary Road, that they are living together.
28. Indeed the documents, particularly a Lloyds TSB account of September 2012 through to 6th December 2012, March 2013 to 11th April 2013 is addressed to the appellant herself at 25 Dallas Road, Sydenham during a period where there is also the joint account from HSBC addressed to the sponsor and appellant at the Friary Road address. Wage slips for the appellant would seem to be in her name at 77 Friary Road and 26 Dallas Road.
29. As the Judge had remarked, for the most part the documentary evidence is addressed to one or other of the sponsor or appellant and seldom both apart from the HSBC bank statements. There would seem to be an overlap between the documents and addresses.

0. These were matters noted specifically by the Judge in the course of the determination and in particular the dates and addresses crossed over with 2009 being extremely poorly documented. The Judge has dealt with the address issue in some detail at paragraphs 57 to 65 of the determination.
31. The nature of the relationship was also considered. There was little detail about what interests they had, no photographs or details of domestic arrangements. That was however on the periphery of the central concerns. In terms of domestic violence the Judge perhaps employed a marked degree of speculation and noted the paucity of information on that matter. It is perhaps in paragraph 72 of the determination that the allegation of undue speculation about the cause and nature of such violence has some merit.
32. In terms of the factual matrix, therefore, arise the issues whether the appellant was credible, whether she lived with the sponsor in any meaningful way and whether or not the marriage was genuine at the time it was entered into. It seems to me that the findings of the Judge are entirely open to be made. I reminded myself of the case of **Sadovska [2017] UKSC 54** of the relevant issues as to the standard of proof and burden of proof. It was suggested that in parts the Judge has perhaps been somewhat speculative in the consideration of a number of matters particularly as to the cause of violence at paragraphs 46, 50 and 72 of the determination.
33. Overall however I find that proper consideration has been given to what the appellant had to say. There is no suggestion within the determination that that which was recorded was not the evidence that was given. The appellant was at that time legally represented and I find little in the answers that were given to indicate that she did not know or was confused as to matters by reason of her mental health.
34. When looked at overall and in the light of the proper directions as to the standard and burden of proof, I find that the findings of fact made by the Judge as determinative of the appeal were properly to be made in all the circumstances. I do not find therefore there to be a material error of law. Although the Judge has expressed himself fairly strongly in certain passages in the determination, I find when read as a whole that it is a proper consideration of all relevant issues.

Notice of Decision

The appellant's appeals before the Upper Tribunal are dismissed. The decision of the First-tier Tribunal shall stand namely that the appeals of the appellant are dismissed in respect of the EEA Regulations.

No anonymity direction is made.

Signed

Date 17 December 2018

A handwritten signature in black ink, appearing to read "P. L. King", enclosed within a thin black rectangular border.

Upper Tribunal Judge King TD