Upper Tribunal
(Immigration and Asylum Chamber)

Appeal No: EA/06929/2019

THE IMMIGRATION ACTS

Heard at Field House (via Skype)
On 7 January 2021

Decision & Reasons Promulgated
On 19 January 2021

Before

UPPER TRIBUNAL JUDGE BLUNDELL

Between

CHIDERA PRISCA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Neither present nor represented
For the Respondent: Mr I Jarvis, Senior Presenting Officer

DECISION AND REASONS

1. The appellant is a Nigerian national who was born on 16 January 1995. She appeals, with permission granted by Upper Tribunal Judge Plimmer, against a decision which was issued by First-tier Tribunal Judge Suffield-Thompson ("the judge") on 27 March 2020. By that decision, the judge dismissed the appellant's appeal against the respondent's refusal to issue her a residence card as the spouse of an EEA national.

2. The appellant claimed to be the spouse of a French national named Ruddy Fabrice Saxemard. She states that she and the sponsor married by proxy, according to the customary laws of Nigeria, on 8 June 2017. She applied for a residence card in reliance on that relationship in August 2017. That application

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was refused and an appeal was dismissed by a judge of the FtT in 2018. The judge did not accept, apparently, that the appellant was validly married to the sponsor.

3. On 25 July 2019, the appellant made a second application for a residence card. It was the refusal of this application which was under appeal before the judge. In her decision, the respondent made extensive reference to the decision of the first judge before concluding that the proxy marriage was not valid and that the applicant was not the family member of an EEA national as a result.

4. The judge heard the appeal 'on the papers', that having been the course she was invited to take by the appellant, who had also paid the fee of £80 to request disposal in that manner. The judge noted that the appellant claimed to have been married at Enugu South Local Government Office on 8 June 2017. She noted that the appellant had produced a letter from the Enugu government office dated 26 January 2018 in the course of her first appeal. She noted that she did not have the first judge's decision but that the respondent had cited extensively from it in the letter of refusal. She attached significance, as had the first judge, to the absence of the word 'proxy' from the copied marriage certificate and the letter of 26 January 2018. She was unable to attach any weight to that letter, not least because the word 'Nigeria' was misspelt. At [19], the judge declined to attach any weight to a letter from the Nigerian High Commission; she was unable to see a stamp from the High Commission on the document and the appellant

> 'would need to submit a letter from the Nigerian Embassy to confirm that she has genuinely married the appellant [sic] by proxy to satisfy this Tribunal especially as all the documents submitted are poor quality copies and have been copied in various sections so it is not possible to see the documents properly as a whole.'

5. At [20], the judge noted that the appellant could have submitted photographs of herself and the sponsor, letters between them, evidence of constant communication, or a witness statement or letter from him. All of these things the judge thought were 'easily obtainable' and there was a real paucity of evidence.

6. In granting permission to appeal, Judge Plimmer expressed some concern that the judge may have overlooked (or may not have had sight of) some of the documents relied upon by the appellant. She was directed by Judge Plimmer to file and serve a witness statement listing the documents she had relied upon before the FtT. The appellant duly did so. Taking the grounds and the witness statement together, it appears that the appellant's central submission is that the judge overlooked evidence which had been pprovided to the FtT in advance of the hearing.

7. At the start of the hearing, Mr Jarvis stated that he was without the original Home Office file and he asked me to detail for him the evidence on the Tribunal's file. I explained that there was a bundle of 54 pages containing witness statements made by the appellant and the sponsor and further evidence in support of those statements and that there was also a brown envelope in the file which contained a variety of original documents.

8. Mr Jarvis accepted, on balance, that the appellant's bundle and the brown envelope containing original documents had been provided to the FtT before the file was provided to the judge for determination. I consider that concession to have been correctly made. The appellant's bundle states on the first page that it was prepared for a hearing in Newport. It contains, at p54, the notice of hearing before the FtT. The statements made by the appellant and the sponsor are dated 3 February 2020. The chronology notes that the deadline for the submission of further evidence is 4 February 2020. There is every reason to think that this bundle, and the original documents in the brown envelope, were provided to the Tribunal before the file made its way to the judge.

9. For whatever reason, the judge did not make reference to the appellant's bundle or to the original documents. Given her observation about the absence of a witness statement from the sponsor, it is quite clear to me that she cannot have seen the bundle which contains, at item 3, precisely such a statement. Equally, given what the judge said about the absence of original documents, it is quite clear that she did not see the original documents in the brown envelope, including the original of the marriage certificate, for example.

10. Nor did the judge make any reference to a document dated 27 January which appears at p18 of the appellant's bundle. That document confirms that the proxy marriage took place; that it is registered with Enugu South Local Government; and that proxy marriages are recognised in Nigeria. That was plainly relevant evidence which post-dated the first judge's decision and which the judge should have considered but did not do so, for whatever reason.

11. Mr Jarvis accepted, for all of these reasons, that the judge had not had sight of, or had not considered, the appellant's bundle and the original documents which had been provided to the FtT. In the circumstances, he submitted that the proper course was for the judge's decision to be set aside and for the appeal to be remitted to be heard afresh by a different judge. On the facts of this case, I consider he was correct to make those submissions and I shall so order. There is no reason to doubt – and every reason to accept – the appellant's complaint that something went seriously wrong before the FtT.

12. I note three further matters for the sake of completeness. Firstly, the Upper Tribunal was notified shortly before the hearing that the appellant was to be represented by a firm of solicitors named Citi Law. There was no attendance by that firm when the matter was called on before me. It was whilst enquiries were being made by my clerk about their non-attendance that Mr Jarvis made the concessions I have recorded above. I was able to indicate, in the circumstances, that I agreed with his concessions and the relief he had suggested. When my clerk had finally made contact with the appellant's solicitor, therefore, I was able to indicate that the decision of the FtT was to be set aside by consent and remitted to be heard afresh. He confirmed, in those circumstances, that he did not wish to make any further submissions, having received all that he sought.

13. Secondly, Mr Jarvis suggested that this is a case which should be determined at a hearing on the next occasion. That is not for me to decide; it is a question for the next FtT judge, exercising his or her discretion and applying the overriding objective. It might well be thought, however, that the history of this matter and

the need to ensure that both parties receive a fair disposal, that the overriding objective militates in favour of Mr Jarvis's submission.

14. Thirdly, I noted with some concern that the FtT had proceeded without a copy of the first judge's decision. Whilst she was undoubtedly correct to observe that the respondent had cited from that decision in the letter of refusal, the ordinary course of events would be for the Devaseelan [2003] Imm AR 1 starting point to be before the next judge in full, rather than excerpts selected by a party. The decision will be available from the FtT's archive and should, to my mind, be requested in advance of any fresh consideration, whether that is to be on the papers or at a hearing.

Notice of Decision

The decision of the FtT involved the making of an error on a point of law and it is set aside. The decision on the appeal is be set aside and the appeal is remitted to the FtT to be heard afresh by a different judge.

No anonymity direction is made.

M.J.Blundell

Judge of the Upper Tribunal
Immigration and Asylum Chamber

11 February 2021