IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-004237

First-tier Tribunal No: EA/01285/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 27 March 2023

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

ATINUKE ADEBUKOLA ADEEKO
(ANONYMITY NOT ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr L Haastrup, Solicitor from Nathan Aaron Solicitors
For the Respondent: Mrs A Nolan, Senior Home Office Presenting Officer

Heard at Field House on 11 January 2023

DECISION AND REASONS

1. This is an appeal by a citizen of Nigeria against the decision of the First-tier Tribunal dismissing her appeal against the decision of the respondent on 25 January 2022 refusing her leave to remain under the EU Settlement Scheme.

2. The application that led to the appeal was for a grant of permanent residence. The application was refused because the respondent was satisfied that the applicant relied on a marriage that was a marriage of convenience. A particular reason was given for that. The appellant was married by proxy on 20 November 2020. However, the respondent knew from her records that the appellant's purported husband had attended an interview on 12 October 2020 to support an EEA application by a woman other than the appellant and with whom the

appellant's partner had had a child. The respondent did not accept that a person who went through a marriage ceremony by proxy with the appellant in 20 November 2020 was involved in a genuine, committed marriage when he had been interviewed supporting the marriage claim of another woman on 12 October 2020. The respondent decided that the marriage was one of convenience.

3. The respondent had been ordered to disclose her records of that and another interview by the Tribunal. When the case came to be head on 19 July 2022 the respondent did not appear and was not represented. At paragraph 7 the First-tier Tribunal Judge noted that the respondent wished to rely on an interview record dated 12 October 2020 but the judge said:

> "I do not place any weight on this interview as it was not served on the Appellant or the Appellant's representative. As the Respondent was not represented at the hearing, service could not be affected and I found it would be unfair to the Appellant to admit this document."

4. I am entirely satisfied that what the judge meant there was that no weight would be given to the record of interview that had not been disclosed to the appellant or her representatives as directed.

5. The appellant gave evidence which the judge outlined. It was the appellant's case that her husband had lied. He had said when they were interviewed that he and "S", his former partner, finished their relationship on the day of the Home Office interview but the appellant said that S and her husband were never in a relationship.

6. The sponsor gave evidence. He said that he thought the interview in October 2020 was about the paternity of S's child. He said he did not know that the interview was going to be about his purported relationship with S.

7. He told the judge that he and S did not live together but S came to the house to collect letters.

8. At paragraph 12 the judge said:

> "Asked why he answered in interview in January 2021 that after his interview regard[ing] [S] he broke up with her shortly afterwards, he states he wasn't concentrating on the answers and women are trying to use him."

9. At paragraph 16 the judge found it "highly implausible" that the sponsor would have sat through an interview about his relationship and then concluded that the relationship was about paternity.

10. The judge then referred to the sponsor's interview in January 2021. The sponsor was interviewed on 12 October 2020 and S was asked if he was in a relationship with the appellant at that time. The answer was equivocal.

11. He was then asked about how his relationship developed with the appellant between 12 October 2020 when he had claimed to be with S and 20 November 2020 when he married the appellant. He gave a long answer saying that:

> "Because I have known her for a long time, but she wouldn't listen to me. I was troubling her because she didn't accept my proposal that is was [what?] kept me with S. I was with her because she had a baby. I was trying to see if we could have a good relationship. She said no problem but after the interview we were driving back home. She started explaining what she wants, so I said is this what you wanted all along. You wanted to use me

> until you achieve everything then drop me. As you are moving along with your plans within the 5 years she will have got all the papers she wants, she will now claim divorce."

12. The judge noted there was good correlation between the answers of the appellant and the sponsor about matters relating to their relationship but the judge said at paragraph 18:

> "The answers given by the Sponsor in interview simply do not correlate with the evidence given in the Tribunal. The case therefore being presented by the Appellant is that he didn't know the first interview with S was an interview about durable partnership and that he lied in his second interview as he has never in fact been in a relationship with S."

13. The judge did not believe that the sponsor did not understand the purpose of the interview of 12 October 2020 and found the sponsor to be untruthful.

14. I confirm that I have read the appellant's skeleton argument dated 9 January 2023.

15. The main complaint was that the judge, correctly, had indicated that she would not place weight on the interview but had then placed weight on the interview. If that is really what had happened, there would be much merit in the appellant's appeal to the Upper Tribunal but it is not what had happened. As I have already indicated, the reference to "interview" in paragraph 7 was a reference to the interview record because it was not served on the appellant. It makes no sense that the interview was not served. The interview could not be served. It was the record that could be served. The judge has not placed any reliance on that record if indeed the judge ever had it. The judge was aware of the interview because the interview in October was discussed in the subsequent interview about the appellant's relationship with her sponsor and it is the remarks in that interview, the contents of which were disclosed properly, that the judge found relevant and incriminating.

16. The judge has simply not committed the error of relying on something which she said she would not rely upon. Certainly this is the Secretary of State's case and Mr Haastrup could not refer me to an example which showed the Secretary of State to be wrong.

17. I fully appreciate Mr Haastrup's vexation that the respondent ignored directions but the judge dealt with that appropriately by taking no notice of anything that should have been served but was not served. The judge did not fall into the error of relying on documents that had been disclosed to only one side. The judge's findings were based on the evidence that was properly before her.

18. I have heeded Mr Haastrup's urging that I must be careful to ensure that justice is seen to be done but, with respect, once the decision and reasons is read carefully there is no basis for doubting that justice has been done and seen to be done. The First-tier Tribunal did not err and I dismiss the appeal.

Jonathan Perkins

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated 2 February 2022