



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003056
First-tier Tribunal No:
EA/11371/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 06 April 2023

Before

UPPER TRIBUNAL JUDGE KEITH
DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

Azeez Ayinde Adebambo
(NO ANONYMITY DIRECTION MADE)

Appellant

and

Entry Clearance Officer

Respondent

Representation:

For the Appellant: The appellant did not attend and was not represented.

For the Respondent: Mr T Melvin, Senior Presenting Officer

Heard at Field House on 19 January 2023

DECISION AND REASONS

Introduction

1. This is an appeal by the appellant against the decision of First-tier Tribunal Judge Lloyd-Smith, (the 'FtT'), promulgated on 6th April 2022, by which she dismissed his appeal under Appendix EU (FP) against the respondent's refusal of the appellant's application for a family permit to enter as the spouse of an EEA (Portuguese) national. The couple claimed to have married in Nigeria, the appellant's country of origin, on 19th December 2020, prior to which the sponsor claimed to have been exercising treaty rights. The appellant made his application on 29th April 2021, which the respondent refused in her decision dated

15th July 2021. The respondent offered the right of appeal under the Immigration Citizens' Rights Appeals (EU Exit) Regulations 2020. The basis for refusal was that:

"...there were a number of inconsistencies with this evidence. It is noted that the typed copy of your marriage certificate you have provided does not show any signatures for the bride and groom, the witnesses nor the Registrar. This office would expect to see a copy of your original marriage certificate as evidence of your relationship to your spouse."

2. The issue was therefore whether the couple were married, as claimed. No issue was taken that the sponsor was exercising treaty rights, and indeed the bundle later produced to the FtT, included the sponsor's grant of pre-settled status under the EU Settlement Scheme on 13th April (page [38]). At the core of the appellant's appeal to the FtT, was his claim that the copy of the marriage certificate that he had provided to the respondent was a certified copy of the original, which he had lost. He claimed that certified copies did not include original signatures and it was not possible to obtain a duplicate of the original certificate. He also enclosed with his evidence a copy of a police report, recording his earlier loss of the original marriage certificate and a statutory declaration from him to that effect, together with various receipts, and correspondence said to be from the Nigerian local government authority, said to evidence the authenticity of the various documents.

The FtT's decision

3. At the appellant's request, the FtT decided the appellant's appeal on the papers.
4. At paragraph [10], under the heading, "findings and reasons", the FtT set out the basis of the respondent's decision, which that there was insufficient evidence to support the claim of a marriage. This included concerns that the marriage certificate did not contain signatures of the bride and groom, witness or registrar, which cast doubt on the validity of the marriage. We regard this passage as a recitation of the respondent's case, albeit confusingly it has been referred to as findings and reasons.
5. The FtT considered the appellant's account of having lost his marriage certificate, at para. [12], including his explanation that the marriage certificate provided was a certified copy. The appellant had also provided a handwritten note from the Nigerian police and an affidavit, together with receipts, as well as a letter dated 14th September 2021 from the Nigerian local authority. The FtT noted that the affidavit, correspondence from the Nigerian police and receipts, were dated 12th April 2021, while the subsequent September local authority letter, entitled 'revalidation of marriage certificate,' stated that a new copy of the marriage certificate had been issued on 22nd April 2021. The fact that the other documents were all dated 12th April 2021 was something which the FtT regarded as casting doubt on their reliability (para. [13]), as they pre-dated the certified copy of the certificate.
6. The FtT was also concerned as to what the receipts were said to be evidence and so did not regard them as assisting her, particularly as they pre-dated the certified copy of the marriage certificate. At para. [13(d)], the FtT continued:

"d) Given the date that these claimed documents were issued, I see no basis upon which, if in existence at the time the application

was made they would not have been provided to explain the lack of the original certificate.”

7. At para [13(e)], the FtT recorded her concern about telephone records, said to show the sponsor’s links to the UK. She concluded that she could not find that the sponsor was residing in the UK as she claimed. This was despite the fact that this was not an issue taken by the respondent in her refusal decision.
8. The FtT went on to note that there was no apparent appeal by reference to article 8 ECHR. She dismissed the appeal under Appendix EU (FP) of the Immigration Rules.

The grounds of appeal and grant of permission

9. The appellant lodged grounds of appeal, the gist of which is below. We adopt our own numbering in relation to the grounds (the appellant’s grounds were unnumbered).
 - 9.1. Ground (1) - the FtT erred in recording at para [10] a concern as to the absence of signatures on the certificate, without considering that the certificate was a certified copy.
 - 9.2. Ground (2) - the FtT had ignored the appellant's bundle.
 - 9.3. Ground (3) - the FtT’s concerns about the appellant’s documents at para [13] were irrational. It was not far-fetched or unreasonable that the documents which the appellant had submitted to the marriage register to obtain a replacement certificate were issued on the same day, as he completed all of the documentation on that day. The FtT had also erred in her concerns about the letter of 14th September 2021. It was perfectly plausible that the local authority would issue a follow up letter, which confirmed the circumstances in which the certified copy of the marriage certificate had been obtained.
 - 9.4. Ground (4) - the issue of the sponsor’s residence in the UK had never been an issue in the respondent’s refusal letter and the FtT ought not to have consider it as a new issue in her decision.
10. First-tier Tribunal Judge Carolyn Scott granted permission on 24th May 2022. The grant of permission was not limited in its scope.

The hearing before us

11. We began by considering the appropriateness of proceeding with the hearing. The context is that the appellant had written to this Tribunal before the hearing on 4th January 2023, indicating that he was unable to attend the hearing before us given that he was not present in the UK and therefore he was likely to rely on an attached bundle, which we considered. The appellant’s appeal had been listed for a hearing at Field House, and it was open to the sponsor to attend, if she so wished. Nevertheless, we wrote to the appellant indicating that arrangements could made, if he so wished, for a video link, which he could then join, provided that he could do so with a secure internet connection and from a place of privacy, so that he could make oral representations in person, and provided that he did not give evidence. The appellant may not have been aware of the availability of a video hearing which we pointed out to him. We asked him to confirm as a matter of urgency whether he wanted the hearing listed before us

to be converted to a hearing which he could access via video link with the judge's and the respondent's representative attending in person, or instead whether he was content for the hearing to proceed without him, which for the avoidance of doubt, the respondent's legal representative was likely to be present at and make legal submissions orally. We received no further response from the appellant and regarded it as appropriate to proceed with the hearing. We did so on the basis that the appellant did have the opportunity to participate either by video link or alternatively with the sponsor as his representative (which is not untypical in such hearings). We therefore considered his detailed written submissions together with Mr Melvin's response.

The Appellant's Submissions

12. In addition to the grounds to which we have already referred, the appellant had sent to this Tribunal a bundle which included his reasons for appealing to the Upper Tribunal and his bundle to the First-tier Tribunal. He reiterated his criticism of para [10] of the FtT's reasons, to which we have already referred and which he said constituted a failure by the FtT to consider his explanation for why the certified copy of the marriage certificate did not contain original signatures. He reiterated that it was not far-fetched or unreasonable for the documents that he had submitted to the marriage registry to have been issued on the same day and for a subsequent letter issued by the local authority in September 2021 to postdate those documents. He had explained the relevant circumstances. He also added that the FtT had not considered or mentioned a bundle which he had submitted with his appeal. He also relied upon the respondent's policy document: "Brexit: Guidance for Individuals" which described evidence of UK residence. His bundle before the First-tier Tribunal included statements from him and his wife.

The Respondent's Submissions

13. Mr Melvin relied upon the refusal decision and also his skeleton argument. The ground of appeal that the FtT had not considered all the evidence was answered by the FtT's express reference to having so considered it at para. [9]. The FtT had referred specifically to the appellant's witness statement at para. [12] and had explained at paras [13] to [16] why she rejected the evidence and submissions. It could not be said therefore that the FtT had failed to take into account the appellant's evidence. Referring to the recent Upper Tribunal decision of Joseph (permission to appeal requirements) [2022] UKUT 218, we should resist the temptation to characterise disagreements of fact as errors in law. We were also referred to the well-known Court of Appeal authority of Volpi v Volpi [2022] EWCA Civ 464. The FtT's conclusions were plainly open to her to reach and disclosed no error of law. The appellant's challenges were merely disagreements with the FtT's findings.

Discussion and Conclusions

14. We accept Mr Melvin's submission of the need to resist the temptation of misidentifying, as errors of law, mere disagreements with an FtT's conclusions. We are also conscious of the dangers of the so-called "island hopping" between relevant passages of evidence and there is certainly no need for the FtT to have recited all of the evidence before her. In this context, the ground that the FtT had not mentioned the appellant's bundle or examined it, is not, in our view, a sustainable challenge. The FtT had plainly considered the appellant's bundle, referring expressly to an 84 page bundle at para. [6(a)], which included witness statements from both the appellant and his sponsoring wife. We also have

referred briefly to para [10] and a suggestion that in reaching a conclusion, the FtT had ignored the appellant's bundle. However, we refer again to the wording of para [10] which states:

"The basis of the decision was the fact that the ECO found that there was insufficient evidence to support the assertion that the appellant and sponsor were married as claimed. This was said to be due to inconsistencies with the evidence. ... Therefore, doubt was cast on the validity of their marriage."

15. It is clear from this excerpt that it describes the basis of the respondent's decision and not the FtT's findings or conclusion albeit it would have been clearer had the citation not immediately followed a heading, 'findings and reasons'. Grounds (1) and (2), as we have numbered them, therefore disclose no error of law.
16. We turn to ground (4), as it is a relatively discrete issue before turning to the final, and in our view, core ground, ground (3). Ground (4) is that the FtT made adverse findings in relation to the sponsor's exercise of treaty rights in circumstances where this had never been taken as an issue in the refusal decision. We accept this criticism. The appellant had asked for his appeal to be decided on the papers. He cannot, in that context, have anticipated that the issue of whether the sponsor was in fact exercising treaty rights would be identified as an additional issue by the FtT to which he could then respond. In the circumstances, we regard this as an error of law, but the next question is then whether this means that her decision is not safe and cannot stand. It is in this context that we consider ground (3) and the appellant's challenge to the FtT's reasoning on whether he and his spouse are married, as claimed. If the FtT did not err in law in reaching that conclusion, then the error in relation to the sponsoring wife's exercise of treaty rights is not material to the FtT's overall decision to refuse the appellant's appeal. Put another way, even if the FtT did err in taking a fresh issue that had not been considered by the respondent, if in fact she was entitled to reach the conclusion that the couple are not married as claimed, then her decision should, in our view, stand. In contrast, where the FtT erred in law in reaching a conclusion which the appellant says was irrational or perverse, then that would render the FtT's decision unsafe.
17. When the FtT reasoning at paras [13] to [14] is considered, we do not accept that the FtT's reasons were not open to her to reach, or that she failed to consider evidence that had been provided. In summary, her decision was not perverse as claimed. She had identified her concern as to why various documents were all dated on the same date, namely 12th April 2021 and her concern as to why the appellant would need to report the loss of a marriage certificate to the police. The FtT stated this had not been explained and therefore she placed little reliance upon the document. She was also concerned as to the exact nature of the receipts, one relating to an oath, which therefore may relate to an affidavit and the other not being easy to decipher, but "seems to say 'seal'". Once again she referred to the absence of an explanation (13(b)). She also identified her concern that the September 2021 correspondence had referred to the copy certificate being issued on 22nd April 2021 and therefore receipts could not relate to a payment for that copy certificate, as they predated its issue. Once again, she referred to the absence of an explanation and her reservations in relation to other documents which resulted in her placing no reliance upon the copy certificate, the original for which had not been provided.

18. In summary, the FtT identified a number of concerns which she regarded as not being explained fully by the appellant. She was therefore not prepared to attach the weight she might otherwise have to the marriage certificate. We cannot say that those concerns were not open to her to reach and in summary, we regard the FtT's grounds of challenge as amounting to disagreements with the FtT's conclusions. They do not disclose an error of law.
19. In conclusion, whilst the FtT erred in taking as an issue the sponsor's exercise of treaty rights in circumstances where there was never identified in the refusal decision, we do not regard that as an error which means that the FtT's overall decision is not safe and cannot stand. There were no other errors in the FtT's reasons and as a consequence, we uphold the FtT's decision.

Decision on error of law

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law, such that the FtT's decision is unsafe and cannot stand.

The decision of the First-tier Tribunal stands.

No anonymity direction is made.

Signed J.Keith

Date: 1st March 2023

Upper Tribunal Judge Keith