Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/00112/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 31 July 2013	**On 20 August 2013**

Before

UPPER TRIBUNAL JUDGE PINKERTON

Between

MR PRECIOUS NOSA OKORO
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Bello
For the Respondent: Mr E Tufan, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Nigeria who was born on 22 July 1980. He appeals the decision made by the respondent on 10 December 2012 refusing him a residence card as a family member of an EEA national.

2. The appeal was dismissed by First-tier Tribunal Judge Batiste but permission to appeal was granted and the matter came before me at a hearing on 13 May 2013. I

found that the First-tier Tribunal made an error of law such that its decision fell to be set aside. I had this to say:

1. "The appellant applied for a residence card as confirmation of his right to reside in the United Kingdom. That application was refused and he appealed the decision. The appeal was heard on the papers by First-tier Tribunal Judge S Batiste. In a determination promulgated on 15 March 2013 the appeal was dismissed under the EEA Regulations and on human rights grounds.

2. The appellant applied for permission to appeal that decision and permission was granted. It was noted that the judge accepted that the marriage was valid but not that the relationship between the couple was genuine and subsisting. The judge was also not satisfied that the EEA national spouse was exercising treaty rights as a worker.

3. In the application for permission to appeal it is contended that the judge did not have proper regard to the evidence. In particular, the judge did not take into account that an address check carried out by the respondent on the EEA spouse's former employer was for the ground floor and not for the first floor, where the employer was located. It is alleged that the judge misdirected himself in respect of the EEA spouse's current employment by stating that the evidence did not show that the employment was permanent. The judge accepted that an assertion by the respondent that the appellant and his spouse failed to attend an interview was incorrect but did not take into account documentary evidence as to the appellant and sponsor's relationship. It was found arguable that the judge did not give adequate reasons for his findings, particularly those made in relation to the EEA spouse's employment.

4. As a result of the submissions made to me orally at the hearing I have decided that the decision is not a safe one and that the appeal should be reheard. Although the judge was satisfied that the marriage entered into in Nigeria is valid and that in the absence of evidence of the invitation for interview being made he could not be satisfied that the appellant received any such invitation and did not find that issue relevant to his findings, there were other areas where he found against the appellant which findings are not safe. It was clearly important to establish the position with regard to the appellant's spouse's employment. The respondent stated that a search had been made of the address as given for the company at which the spouse was allegedly working. That search showed that the address housed a supermarket rather than a company that the spouse said she worked for, called Feligrace Ltd. This led the respondent to conclude that the spouse was not working for a company at that address.

5. This point is dealt with at length in the appellant's statement and there was supporting evidence that the company existed and still exists. The judge talks of an email confirming the sponsor's employment being littered with grammatical errors and appearing to be of little value. There are errors in the email but it is difficult to describe the document as being littered with them. The judge perhaps unsurprisingly appears to have given weight to the fact that there is an allegation in the refusal letter that UKBA attempted to contact Feligrace Ltd on a particular telephone number but "each call that was made was disconnected". It is asserted that the telephone of the previous employer of the spouse was working at all times and the respondent should have exhibited in their bundle the log in respect of the calls made. The judge has not engaged with the points that were raised in the witness statements that were before him. There was a considerable amount of evidence before him. The judge finds that the net amount shown in the payslips is not supported by any bank statements showing the payments going into an account. This is not surprising given that the payslips themselves refer to the payment method being in cash. The same may be said in relation to the payslips for the current employer where payment is in cash also.

6. These matters and others not referred to above that appear in the grounds seeking permission to appeal warrant a decision from me that this appeal should be reheard. I indicated to the representatives that I am unable to conclude that any of the findings in the determination are safe and that this appeal is to be a complete rehearing before me with both parties ready to argue all matters including the validity of the marriage.

7. For the above reasons this appeal is adjourned for a resumed hearing. Either party has liberty to file and serve updating statements and evidence. It is assumed that no interpreter is required but if otherwise the appellant's representatives must inform the Tribunal straightaway."

3. At the resumed hearing on 31 July there was put before me a bundle filed on behalf of the respondent, a copy of which had been served on the appellant's solicitors, as well as a further bundle filed on behalf of the appellant sent under cover of a letter dated 30 July 2013. Mr Tufan, on behalf of the respondent, did not object to the late filing of the appellant's bundle as he was able to find time to read the documentation prior to the hearing.

Reasons for Refusal of the Application

4. The Reasons for Refusal Letter shows that the respondent refused the application for a number of reasons. Firstly, it is said that because the appellant and his EEA sponsor were not resident in Nigeria at the time of the marriage the respondent could not be satisfied that the marriage was conducted in accordance with the relevant Nigerian laws and customs. Therefore it was not accepted that the marriage certificate submitted was lawfully issued and evidence of the relationship. This is

based upon paragraph 24.23 of the COIS Report for Nigeria which states "The United States State Department Reciprocity Schedule", in an undated section on marriage certificates in the country accessed on 17 October 2011, recorded that, "… both parties to the marriage technically must be physically present at the same location with witnesses to sign certain marriage documents, proxy marriages have ceased to be valid but still occur." That is said to apply to all marriages undertaken by Nigerian customary law as well as marriages undertaken by Nigerian law. Paragraph 11(1)(a) of the Nigerian Marriage Act states "before the registrar can issue the certificate he must be satisfied that one of the parties has been resident within the district in which the marriage is intended to be celebrated at least fifteen days preceding the granting of the certificate". Parties to the marriage must sign the certificate in the presence of the officiating minister or registrar as stipulated in paragraphs 26 and 28 of the Nigerian Marriage Act "Celebration of Marriage". Passports for the EEA sponsor and appellant did not show any entry stamps which would indicate that either of them was present at the marriage ceremony and present in Nigeria before the wedding.

5. Another reason for refusing the application was that on 13 November 2012 the appellant and his sponsor were invited to attend a marriage interview at UKBA in Liverpool. They failed to attend the interview and have not provided any valid reason as to why they did not attend. This led the respondent to doubt that the appellant is in a genuine, subsisting relationship with his sponsor.

6. Yet a further reason given for refusing the application is that the EEA sponsor failed to provide sufficient evidence that she is exercising treaty rights in the United Kingdom. She was said to be working for an organisation called Feligrace Ltd. UKBA had emailed the organisation to confirm her employment status but no response had been received and attempts by telephone to contact that organisation had failed. A search made of the address given for the company stated that a Halal supermarket operated from that address.

The appellant's written statement

7. The appellant filed a written statement dated 29 July 2013. I summarise the relevant parts of that statement.

8. The appellant states that the respondent appears to be confused in relation to the formalities of the Nigerian Marriage Act which guides civil marriages. She has mixed this up with the procedure that guides customary/traditional marriages. The only part of the Marriage Act relevant to the type of marriage celebrated between the appellant and his wife is Section 35 of the said Act. Neither the EEA sponsor nor the appellant needed to be present at the marriage. Neither of them was but all rites were performed as required. The marriage was conducted by proxy in line with the procedure for the type of marriage that took place between them. That type of marriage is recognised in Nigeria. The issue of residence within the district of the marriage applies to civil/registry marriages only and not the type of marriage that took place between the appellant and the sponsor. It is not compulsory for marriages

under native law and custom to be registered with the local government or customary court but it is just done nowadays as a matter of choice. The most important elements of the marriage are that the families and parties consent to the marriage and other formalities like bride price/dowry are carried out.

9. As to the purported interview request neither the appellant nor sponsor were ever invited for an interview and no evidence has been provided that such an invitation was received. It is particularly worrying that the respondent is using the allegation as a basis for finding that the relationship between the appellant and sponsor is not genuine or subsisting. It is. They met in London in October 2011. It was love at first sight. They began living together in December 2011 and have been living together ever since. Both families consented to the marriage and gave their blessing. A dowry was paid and the sponsor's family accepted the same. The sponsor was represented by her uncle and he has sworn an affidavit to that effect.

10. With regard to the sponsor's employment she is now employed by another employer. At the time of the application Feligrace Ltd clearly existed (and still exists). There was more than enough evidence of the existence of the business. As to whether an email was responded to or not should not have been used as a basis for finding that the sponsor was not working or exercising treaty rights. The employer did respond to the email after the sponsor brought the issue to their attention. The employer's phone was working at all times. If any phone calls were made the respondent should have exhibited logs for the same in their bundle. Properly issued payslips and documents in support of the employment were submitted and the respondent should not have ignored that evidence. There was also evidence from HMRC. There is also nothing unusual about two businesses sharing the same premises. The sponsor's ex-employers are on the top floor and the Halal supermarket is on the ground floor.

The appellant's oral evidence

11. The appellant confirmed as true the contents of his written statement date 29 July 2013. In oral evidence he stated that the dowry paid at the time of the marriage was a sum of money. His wife's family was represented by Mr Collins who swore an affidavit to that effect. The appellant was represented by his brother at the marriage ceremony. Afterwards the marriage was registered at the local government registry. He and his wife are therefore married according to customary law and are recognised as husband and wife. They are still living in the same house here in the United Kingdom.

12. Mr Tufan representing the respondent asked why the appellant and sponsor did not marry here, considering they did not need the permission of the Secretary of State to enable them to do so. The appellant replied that the families would not be able to give their blessing to the marriage because they would not be able to be here to be aware of it. He then gave evidence that his wife was not here to give evidence because her mother had had a car accident in France. He did not know if she had broken bones. He had talked to Ms Navarro on the telephone but it was not a

question that he asked her. Why then, asked Mr Tufan, did the sponsor put in her statement that her mother was ill if she had had an accident? The appellant responded that Ms Navarro's mother was ill as a result of the accident. He then said that there is no evidence other than the affidavit from Ms Navarro's uncle to prove that he is Nigerian but both the appellant's father and brother are Nigerian. The sponsor went to France on 27 July during the day. She had been to see the lawyer on Friday 26 July to make the statement. The appellant accepted that he had tried twice before to obtain a residence card. He denied that anyone had arranged for him to enter the UK illegally. He was asked where his wife was born and he responded that she was born in Paris and, when asked, gave the same date of birth as that given by the sponsor herself. There were other members of each side's family at the ceremony and not just Mr Collins and the appellant's brother. The appellant then said in answer to a question from me that he came on a visit visa to the United Kingdom in 2008 and overstayed. His passport was completely empty of any stamps because his original one had been stolen and he was issued with a replacement in London. He did not report the theft of his passport to the police because he was new here and did not know what to do.

The written evidence of Ms Navarro

13. The evidence of Morgan E Navarro is contained in a statement dated 26 July 2013. Ms Navarro did not give evidence before me and was not present in court. Ms Navarro is a French citizen born on 29 December 1990. She fully agrees with what the appellant said in his statement and repeats in hers what he said in his. She is still in employment in the UK but states that she is not able to attend the hearing due to the fact that she has to travel back to France to attend to a personal emergency – her mother being very ill – but she wholeheartedly supports her husband's appeal. She does not want her spouse to be expelled from the UK as this would have an adverse effect on her. She sees the UK as her home and they have set up their life in the UK.

Submissions

14. I then heard submissions from both representatives. Mr Tufan pointed to the fact that there was evidence in the bundle that the sponsor was born in Tours and not Paris. The signatures on the identity card for Ms Navarro and her statement differed. The appellant said that his mother-in-law had had a car accident whereas the sponsor herself said that she was only ill. There is no explanation as to how the sponsor's father and uncle are Nigerian but she is French. There is a previous finding by a judge that the appellant entered the United Kingdom illegally and the background evidence shows that this is not a valid marriage.

15. Mr Bello on behalf of the appellant referred to his up-to-date skeleton argument. Other matters raised by Mr Tufan were not of real importance. The point about the signatures on the two documents is not of any weight since Mr Tufan is not an expert on signatures. The appellant may think that Tours is part of Paris and the difference between being ill or sick is pure semantics. The appellant had given an explanation that he did not enter the country illegally. The correct procedure in relation to proxy

marriages has been followed and because the marriage is recognised in the country of origin it should be recognised in the United Kingdom: see **CB (validity of marriage: proxy marriage) Brazil [2008] UKAIT 00080**. This is a durable relationship of longstanding. There are clear human rights issues also.

The Burden and Standard of Proof

16. The burden of proof in this appeal unless otherwise stated is upon the appellant and the standard of proof is the civil one of the balance of probabilities.

My Deliberations

17. Although Mr Tufan did not concede that the sponsor is a qualified person under the Immigration (European Economic Area) Regulations of 2006 he did accept that he was not in a position to challenge the documentation, albeit copy documentation, that had been produced to support the sponsor's case that she is an EEA national and is a worker as defined in the said Regulations.

18. I find that I am satisfied to the relevant standard that the sponsor, Ms Navarro, is a qualified person for the purpose of the Regulations. There is a considerable amount of evidence that she was employed by Feligrace Ltd between at least April and August 2012 and by Mhug's & Co Ltd from January 2013. There are payslips and two letters from Mhug's Ltd, the latter one being dated 9 July 2013, confirming her employment there as an administration assistant. The fax from UKBA to Feligrace Ltd and the reply is further confirmation that Ms Navarro was employed there although I note that there are spelling and grammatical errors in the email and it is not written in good English. I do not find that the errors are such as to render the document a fabrication, particularly given that there is other evidence from that employer that is seemingly not challenged. National Insurance information given shows that Ms Navarro entered the scheme in February 2012 and her postal address is recorded as that now given which is the same as the address for the appellant also. There are in addition letters from Lloyds TSB and TV Licensing to the sponsor at the same address, as well as a postal polling card for 3 May 2012. Overall and on balance I am satisfied for these reasons that the sponsor is a qualified person for the purpose of the Regulations.

19. I leave aside the validity of the marriage into which the appellant and sponsor entered. I do so because if I make a finding that this is in any event a marriage of convenience then under the 2006 Regulations at 2(1) a spouse does not include a party to a marriage of convenience.

20. That this marriage is supposedly a marriage of convenience appears only to have been hinted at rather than brought into issue initially. The letter, whether received or not dated 9 October 2012 to the appellant's solicitors inviting the appellant and Ms Navarro to an interview on 13 November 2012 was with a view to them providing evidence of Ms Navarro's employment, bank statements, council bills, photographs taken during their relationship, wedding photographs etc. It must be fairly obvious that one of the purposes of the interview was to establish the genuineness of the

marriage. One may suppose that depending on what happened at the interview the issue of marriage of convenience would then have been raised and would have formed part of the reasons for refusal. As is known no-one attended the interview. In their statements both the appellant and Ms Navarro have denied ever being informed that they were expected to attend for interview.

21. The Reasons for Refusal Letter however raises the matter of the failure to attend the interview and states thereafter:-

> "The fact that you failed to attend this interview, together with the points raised previously in this letter, raises doubts about your claim to be in a genuine, subsisting relationship with your EEA national sponsor. On that basis your application has been refused under Regulation 7 of the Immigration (EEA) Regulations 2006."

22. No definition is given of marriage of convenience but that phrase has been construed in the context of the Immigration Rules as a marriage entered into without the intention of matrimonial cohabitation and for the primary reason of securing admission to the United Kingdom. See paragraph 14 of **Papajorgji (EEA spouse – marriage of convenience) Greece [2012] UKUT 00038 (IAC)**.

> "… not every applicant needs to prove that his marriage is not one of convenience. The need to do so only arises where there are factors which support suspicions for believing the marriage is one of convenience. Translated into the technical language of the English law of procedure and evidence, that means that there is an evidential burden on the respondent. If there is no evidence that could support a conclusion that the marriage is one of convenience, the appellant does not have to deal with the issue. But once the issue is raised, by evidence capable of pointing to a conclusion that the marriage is one of convenience, it is for the appellant to show that his marriage is not one of convenience."

23. The appellant has been represented by solicitors. I am satisfied that they and the appellant have been aware throughout that the evidence in possession of the respondent was such that supported the respondent's conclusion that this is not a genuine marriage and therefore in essence the marriage between the appellant and Ms Navarro constituted a marriage of convenience. The appellant therefore needs to show that on the balance of probabilities the marriage is genuine and not one of convenience.

My Findings of Fact Relevant to the Issue

24. In a determination promulgated on 6 August 2010 the First-tier Tribunal dismissed the appellant's appeal against the decision of the respondent refusing to issue him with a permanent residence card. The judge that heard the appeal made a finding that the appellant probably entered the United Kingdom illegally. At the time the appellant was living at the same address where he now lives and gave evidence that also living in the property were his sponsor (his nephew), his (then) sponsor's wife

and their three children. By a decision dated 11 March 2011 upon appeal from the First-tier Tribunal there was found to be no error of law in the determination.

25. According to the appellant he met Ms Navarro in October 2011 and they began living together approximately two months later. They married, or purported to marry, on 27 January 2012 by proxy "according to Benin Native Law and Custom" as per Ms Navarro's uncle who made a statutory declaration to that effect dated 28 May 2012. The application for a residence card was made on the appellant's behalf by his solicitors on 8 June 2012.

26. I have accepted on the evidence that Ms Navarro is working and that she lives at the same address as that given for the appellant. There are sufficient bills and other information before me that lead me to that conclusion. That does not mean, however, that I find that they are living together as man and wife or that the marriage is or ever has been a genuine one.

27. I do not find that the appellant's testimony is credible. The appellant has never shown that he entered the country legally. In his witness statement prepared for the earlier hearing before the Tribunal he stated at paragraph 9 that in January 2008 "my friend I was staying with in Lagos assisted in organising my departure from Nigeria". The appellant then arrived in the UK in March 2008. The evidence before the judge at the 2010 hearing from the UK sponsor was that he believed the appellant had come to the United Kingdom on an "official" visa. The appellant's representative informed the judge that he did not know the basis on which his client entered the United Kingdom and the appellant's written evidence on the point was "ambiguous". No evidence of the appellant having entered the country legally was provided which led to the judge finding it probable that he entered illegally. In answer to a question from me the appellant said that he came on a visit visa and then overstayed. His passport was stolen and that is why the passport currently in the possession of the Secretary of State does not have any entries in it. He did not report the theft of the passport to the police because he did not know what to do.

28. I do not believe the appellant in relation to those matters. If he obtained a visit visa in 2008 and then had his passport stolen he would have said as much in his statement prepared for the earlier hearing. Almost certainly his comment in that earlier statement that his friend assisted in organising his departure from Nigeria is code for that friend having arranged for his illegal entry into the United Kingdom. Had he entered on a visit visa I find that he would have said so and would have proved it. If his passport was stolen he would have reported its theft. He was purportedly living with his nephew and family who would have been able to advise him or point him to someone else who could if they were unable to do so.

29. The real difficulty for the appellant I find is the paucity of evidence supporting that this is a genuine marriage. I made it clear in the error of law decision that this appeal was to be a complete rehearing before me with both parties ready to argue all matters including the validity of the marriage. The appeal hearing earlier this year was "on

the papers". The appellant did give evidence before me but Ms Navarro has never given oral evidence and did not do so before me.

30. In a situation where the genuineness of the marriage is in issue the evidence of Ms Navarro I find is of great importance. The appellant gave a reason as to why she did not appear. The appellant spoke English well enough and made himself easily understood. His explanation for the non-appearance of his wife at the hearing is that her mother had an accident, which turned out to be a car accident on further questioning, and because Ms Navarro is the only daughter she had to travel to France to be with her mother. That explanation is perfectly satisfactory and provides a good reason for Ms Navarro not to be at the hearing. However, what is not satisfactory and leads me to believe that I have not been told the truth by the appellant is that although he had, he said, talked to his wife on the telephone about the injury he did not know if her mother had broken bones because that was not a question he asked. If Ms Navarro's mother had indeed been in a car accident prior to Ms Navarro's departure from the UK there would have been a conversation about what happened to her mother in the accident and he would have asked after her and her injuries when speaking to Ms Navarro by telephone subsequently. I do not accept as true either his reply when it was pointed out to him that there was no mention of a car accident by Ms Navarro in her statement, rather that her mother was "very ill", his response being that she was ill as a result of the accident. That could be true but is not the way that would obviously describe what is said to have happened to Ms Navarro's mother. There were no language difficulties that I could discern.

31. Even if I am wrong about that and Ms Navarro indeed intended to refer to her mother being very ill as a result of a car accident I would have expected there to have been an application for an adjournment to enable Ms Navarro to attend the hearing to give evidence. No such application was made. Whether to make such an application is of course entirely a matter for the appellant and those advising him, but there is a distinct lack of credible evidence in relation to the marriage in any event that Ms Navarro may well have been able to provide.

32. It seems that a conscious decision was taken to go ahead with the hearing in any event because the accident is said by the appellant to have taken place on 25 July, the appellant then telephoned his solicitors and his wife made her statement on 26 July prior to going to France the next day. That statement refers to the illness of Ms Navarro's mother so that the solicitors were well aware of the position.

33. Another matter is that the appellant does not know that his wife was born in Tours, according to her passport, and Tours, I note, is some 150 miles away from where he says she was born, namely Paris. It is not a big point but it does not help me arrive at a credibility finding in favour of this being a genuine marriage.

34. The lack of evidence extends also to there being no supporting witnesses to give evidence about the family life of the appellant and Ms Navarro, the history leading to their marriage and the current state of it. Such evidence, if given, would have been

invaluable in giving support to the claim that this is a genuine marriage, if such evidence was believed. In 2010 Mr Iyamu and his family provided a home for the appellant and the address given is that for Ms Navarro also. It is quite possible that Mr Iyamu and his family no longer live at the address. Mr Iyamu gave evidence at the hearing in 2010 but for whatever reason did not do so before me. There was also no witness statement from him or anyone else that might have provided corroboration.

35. Photographs have been provided which appear to show the appellant, presumably Ms Navarro, and others. No direct evidence has been given about those photographs and their significance such as would enable me to make any favourable findings as a result.

36. The appellant appeared to accept that he did not need permission of the Secretary of State to get married in the United Kingdom but his explanation for not doing so was that if he and Ms Navarro married here the family would not be able to give their blessing to the marriage and could not be here to be aware of and part of it. The appellant appeared to accept thereafter Mr Tufan's point that this meant that although the appellant and Ms Navarro would not be part of any marriage ceremony the families would be. I find that if that is the view of the appellant and Ms Navarro then that is their choice but again does nothing to lend substance to their claim that this is a genuine marriage.

Conclusions

37. Taking these matters altogether and applying the evidential burden which is upon the appellant, namely that it is for him to show on the balance of probabilities that his marriage is not one of convenience, my conclusion is that he has failed to do so for the reasons that I have given above. The result therefore is that even assuming that this is a valid marriage in all other ways (I make no such finding), it is nevertheless a marriage of convenience. The appellant has simply not provided enough credible testimony and supporting evidence to enable me to make any other finding.

38. For the sake of completeness and although provided late in the day I find it probable that the letter of 9 October 2012 was sent by UKBA to Apex Solicitors as the representatives of the appellant and Ms Navarro. I make no finding about its receipt. If the solicitors had received it then as the appellant's representatives they would have forwarded on that letter, in the normal course of business to him. They would have been negligent to have done otherwise. Unfortunately there is no witness statement from any representative from the solicitors to indicate that the letter was not received, which I might have expected to have before me.

39. There was a request in the letter for a reply slip to be sent by email to the UKBA interview team. I note that in the notice of appeal it is alleged that the appellant was not at any time invited for an interview but there is reference made by the solicitors in that notice to the fact that someone from UKBA telephoned those solicitors on 12 November 2012 asking if the appellant would be attending for interview on 13 November 2012 "as per an earlier emailed invite". It is said that the person from

UKBA was informed that no invitation had been received and, according to the grounds of appeal, UKBA promised to write to invite the appellant but did not do so.

40. If that is what occurred it is clear that UKBA certainly believed that the invitation had been sent and I anticipate that the solicitors would normally have requested a copy of the invitation allegedly already sent as it would have had great significance for the appellant and Ms Navarro. There is no evidence that the solicitors ever followed up that conversation. Nevertheless, and although unfortunate because an interview may well have clarified the position at a much earlier date, I view what I refer to as the interview episode as entirely neutral in considering the credibility of the appellant and the evidence either for or against him in relation to the circumstances surrounding the application.

The Article 8 Position

41. The paucity of information and evidence in this appeal extends to the appellant's private and family life. Although he appears to live at the same address as Ms Navarro I have not found to the appropriate standard that they are living together as man and wife and therefore I am not persuaded that he has family life with her or anyone else. He does, of course, have a private life but there has been no significant development of his case in relation to that life. I cannot assume that Mr Iyamu and his family still live at the address, the same address as the appellant, and I know nothing of the appellant's life otherwise and how he spends his time and days.

42. As is well known there shall be no interference by a public authority with the exercise of the right to private and family life. This is subject to the exception that there can be such interference if it is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of rights and freedoms of others.

43. In the current appeal it is proposed that the appellant will be removed from the United Kingdom and this will undoubtedly be an interference with his right to respect for his private life. I do not find that there is family life currently. The consequence of removal potentially engages the operation of Article 8. I find that the interference is in accordance with the law and is necessary in the interests of effective immigration control which, although not a legitimate aim in itself, is a well-established means of protecting the economic wellbeing of the country.

44. I have little hesitation in finding that the proposed interference in the appellant's private life is proportionate to the legitimate public end sought to be achieved. The appellant more likely than not entered the United Kingdom illegally but even if he did, as he says, obtain a visit visa there is no doubt he overstayed and from that point on was not here legally. I have found that his marriage to Ms Navarro is not a genuine marriage; there are scant details of his private and/or family life and there is no good reason for him not to return to Nigeria where he has spent all his life other than the last five years approximately. Therefore his Article 8 claim does not succeed.

45. Having found that the marriage is not a genuine one renders redundant any need for me to make a finding in relation to the validity or otherwise of the by proxy marriage ceremony that took place in Nigeria on 27 January 2012.

46. For the sake of completeness for the reasons given in this determination I do not find that the appellant is an extended family member of Ms Navarro or anybody else.

Decision

47. The First-tier Tribunal Judge erred for the reasons set out above. For different reasons the appeal is dismissed under the Immigration (European Economic Area) Regulations of 2006 and on human rights grounds.

48. No anonymity direction is made. None has been made previously, there was no application for one to be made now, and I see no need for it in the particular circumstances of this appeal.

Signed Date

Upper Tribunal Judge Pinkerton