



IAC-AH-PC-V1

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

Appeal Number: IA/04587/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 28 October 2014**

**Decision & Reasons Promulgated
On 7 November 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

**MR CHINEDU COLLINS OGBUKE
(NO ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Ikegwuruka (legal representative)

For the Respondent: Mr M Shilliday (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This matter comes before me for consideration as to whether or not there is an error of law in the determination before the First-tier Tribunal (Judge Traynor) promulgated on 5 August 2014.
2. The appellant was born on 1 January 1981 and he is a citizen of Nigeria.

Background

3. The appellant applied for a residence card by way of confirmation of a right to reside in the UK as the family member of a European Economic Area (EEA) national under the Immigration (European Economic Area) Regulations 2006 ("the 2006 Regulations").
4. The respondent refused the application on 10 January 2014. The appellant's marriage had been conducted and presided over by Reverend Shipton on 8 October 2009 at All Saints Forest Gate. The marriage fell between the period of May 2009 and July 2010 where 193 sham marriages had been identified having been conducted by the Reverend Shipton. Reverend Shipton was charged and pleaded guilty to presiding over sham marriages.
5. The respondent took into account that the appellant previously made an application on 18 March 2008 claiming to be the extended family member of a German national. That application was refused on 27 April 2009. In that application he failed to mention that he had a fiancée or was involved in a long-term relationship with anyone else. Some five months later the appellant entered into a marriage and made a further application on 1 November 2009.
6. The respondent invited the appellant to attend an interview but he failed to do so because of illness. He made no further attempt to rearrange an appointment. The appellant submitted the present application on 28 March 2012. He failed to respond to the respondent's letter dated 7 June 2012 expressing concerns regarding the marriage and giving him the opportunity to respond and substantiate the claim that he was involved in a genuine marriage.
7. The respondent considered further evidence submitted regarding the EEA spouse's employment and concluded that the appellant failed to demonstrate the family member was currently economically active in the UK.
8. The respondent noted that official records failed to show that the sponsor had ever been resident at the address 5 Rosedale Road London.
9. The determination set out findings from [36-58]. The Tribunal found the appellant lacking in credibility and that he had failed to adduce evidence to show that he had not entered into a marriage of convenience.
10. At [46] the Tribunal found that the appellant had adduced no evidence to suggest he was ever related to a German uncle or that the applications he had made previously were in any way justified. It found that the appellant, realising that such an application could not succeed, took steps to enter into a marriage arranged by others.

11. The Tribunal placed weight on the appellant's failure to adduce evidence that the marriage arrangements had been made by a priest other than Reverend Shiptside. The Tribunal placed weight on the fact that Reverend Shiptside was not simply convicted of an isolated offence but there were almost 200 sham marriages over a period of fourteen months.
12. The Tribunal found it highly relevant that there was not one shred of evidence from the appellant's spouse and the appellant has failed to address the clear and serious doubts concerning the spouse's occupation in documents submitted by the appellant as compared with official records. [50].
13. The Tribunal found the evidence of other witnesses either lacking in credibility or failing to support the account given by the appellant. [51, 52, 54, 56].
14. At [39] the determination considered the concerns as to evidence of the spouse's address and referred to the appellant's witness statement. It found that "he had never addressed this point but had merely recited addresses and has not in any way challenged the respondent's assertion that there is no evidence of her residing at that address".
15. At [41] the Tribunal found the appellant's evidence that he did not know where his spouse was living, to be fundamentally undermined by his witness Ferdinand Okeke "who told me that until a matter of only two months before the appeal hearing the appellant's wife continued to live in the same building in the accommodation it was said that the appellant and she had occupied prior to the appellant moving out of that accommodation in December 2013".

Grounds for Permission

16. The appellant alleges that the determination failed to reflect accurately what transpired at the hearing. "Short of suggesting bias, the judge appeared to have indulged in 'cherry picking' of evidence taking what he is inclined to believe and rejecting those that did not support the appellant's case."
17. Ground 1 - the appellant was provided minimal opportunity in which to read papers served at the hearing by the respondent who had failed to comply with Rule 13, which was unfair.
18. Ground 2 - the Tribunal [39] was wrong to suggest that the appellant had failed to address the issue of his spouse's residence at 5 Rosedale Road. This was addressed in the appellant's witness statement, skeleton argument and documentary evidence at pages 119 to 134, 168, 169 and 194.
19. Ground 3 - the judge was wrong to find it relevant that the appellant had failed to attend the respondent's interviews in previous applications.

20. Ground 4 - the Tribunal erred by finding the appellant's previous application as a dependant of a German uncle to be relevant.
21. Ground 5 - it was unreasonable to have expected the appellant to adduce further evidence of his marriage being arranged by a priest other than Reverend Shippside. The finding regarding Reverend Shippside and Operation Silverhill was not supported by facts but based on mere unwarranted speculation. The appellant was not implicated in any way.
22. Ground 6 - it was unfair of the judge to draw adverse inference from the non-attendance of the appellant's spouse in circumstances that the parties had divorced based on adultery. The respondent had not challenged the validity of the divorce and it was not therefore relevant for the judge to raise queries regarding the same.
23. Ground 7 - the judge failed to consider the appellant's right to private and family life.

Permission

24. Permission to appeal was granted by First-tier Tribunal Judge Nicholson on 18 September 2014. She found little merit in many of the grounds. She stated that in the event of making a serious allegation of bias this should be properly documented and supported by evidence. Otherwise such general unsubstantiated innuendo has no place in an application.
25. Permission was granted with regard to ground 5 in which it is contended that the judge erred by stating at [39] the appellant failed to address the contention that there was no evidence to show his ex-wife had been living at 5 Rosedale Road. There was evidence before the judge in the appellant's bundle showing this to be the address of the appellant's wife, specifically letters to her at the address and bank statements in her name. In light of the fact that the Tribunal placed weight on the absence of evidence, it is arguable that a factual error was made which could have affected the outcome of the decision.

Error of Law Hearing

26. I heard submissions from Mr Ikegwuruka and Mr Shilliday the details of which are set out in the Record of Proceedings.
27. The main ground pursued by Mr Ikegwuruka was the issue of the evidence showing the address for the appellant's spouse at 5 Rosewood Road (ground 2). I am satisfied that the argument pursued on behalf of the appellant and as drafted in the grounds of appeal lacks clarity and does not accurately reflect the precise issue in relation to the spouse's residence at the address. Mr Ikegwuruka submitted that the Tribunal failed to take into account the evidence showing the spouse was living at 5 Rosewood Road. He cited specific references in the grounds of appeal to evidence showing that the spouse was living at that address.

28. The issue is a narrow one and relates specifically to the concerns raised by the respondent that the evidence adduced by the appellant of the spouse's residence at 5 Rosewood Road was not supported by any evidence of her residence at that address in any official records. Put another way it was not simply that there was no evidence of her residing at that address but that there was no evidence in any official records revealed in enquiries pursued by the respondent (see Reasons for Refusal Letter page 3 paragraph 8).
29. As is apparent from the Reasons for Refusal Letter the respondent pursued enquiries through UKVI which confirmed that the sponsor was employed as a hairdresser and was economically active. However, the respondent found that the information revealed in those enquiries did not tally with that relied on by the appellant and did not in fact show that the spouse was resident at that address.
30. This point was clearly made by the First-tier Tribunal at [39]. The Tribunal was well aware of the evidence produced by the appellant showing the spouse's residence at 5 Rosewood Road and had taken it into account. However, the issue that the appellant failed to address was the concern raised by the respondent, namely that the evidence in official records of the spouse's residence did not show that address. The Tribunal clearly had this in mind in reaching its findings and decision.
31. I find no error of law disclosed in the determination with regard to ground 2.
32. As to the remaining grounds I am satisfied that there is no merit in any of the points raised, which amount to a disagreement with the findings made by the First-tier Tribunal and which were not pursued by Mr Ikegwuruka.
33. The First-tier Tribunal carefully considered all of the evidence and made clear and sustainable findings of fact which are fully reasoned in the determination.
34. In short the Tribunal found the entire claim to be lacking in credibility and took into account the lack of evidence from the spouse, the appellant's immigration history, his avoidance of the marriage being scrutinised, the inconsistencies in the evidence in particular of the witnesses called, the appellant's failure to adduce any evidence to counter that the ceremony was conducted by Reverend Shiptside subsequently convicted of fraud and in addition to which the appellant failed to address the narrow issue that official records did not show the spouse's address as 5 Rosewood Road. Further I find no error of law in the judge's dealing of Article 8. There was no evidence relied on by the appellant in support of an Article 8 claim and in view of the conclusion reached by the Tribunal that the marriage was not genuine there was no basis on which any Article 8 family life claim could be pursued.

Notice of Decision

The determination discloses no material error of law.

The determination shall stand.

No anonymity order made.

Signed

Date 6.11.2014

Deputy Upper Tribunal Judge G A Black

TO THE RESPONDENT
FEE AWARD

No fee award made.

Signed

Date 6.11.2014

Deputy Upper Tribunal Judge G A Black