



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

Appeal Number: IA/12432/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 22<sup>nd</sup> January 2014**

**Determination  
Promulgated  
On 27<sup>th</sup> January 2014**

**Before**

**UPPER TRIBUNAL JUDGE MARTIN**

**Between**

**MR CHIKEZIE PETER AJAERO**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr S Jeshani (instructed by Str8T Record Ltd))

For the Respondent: Ms E Martin (Senior Home Office Presenting Officer)

**DETERMINATION AND REASONS**

1. The Appellant appeals to the Upper Tribunal against a decision of the First-tier Tribunal (Judge Naphthine) in which he dismissed his appeal against the Secretary of State's decision to refuse him leave to remain as a spouse.
2. The Secretary of State had refused the application because she was not satisfied as to maintenance. The First-tier Tribunal Judge found he was not

satisfied that the Appellant had the requisite funds. The appeal was argued on Article 8 grounds and on the basis of MM [2013] EWHC 1900 (Admin). The First-tier Tribunal dismissed the appeal on Article 8 grounds finding that the marriage was not subsisting.

3. The Appellant sought permission to appeal and the matter came before me on 26<sup>th</sup> November 2013. On that day I found the First-tier Tribunal Judge had erred in finding against the Appellant on the basis of a matter not raised by the Secretary of State in the Refusal or at the hearing or raised as a concern by the Judge. That was unfair and amounted to an error of law.
4. On 26<sup>th</sup> November the Home Office Presenting Officer however indicated that he was raising the subsistence of the marriage as an issue. The Appellant's representative requested an adjournment in order to adduce additional evidence about that and to call the Appellant's wife. I agreed and the case was adjourned.
5. Thus the matter came before me to decide whether there is a subsisting relationship and if so whether the Appellant should succeed on Article 8 grounds; it being accepted that the Appellant does not meet the requirements of Appendix FM.
6. I first heard evidence from the Appellant who adopted his two statements. He confirmed that he is in a genuine relationship with his wife, that they love each other and would be devastated if he lost his appeal.
7. He was then cross-examined. At this stage I should point out that the hearing was delayed because although the Appellant had arrived on time, his wife had not. I was told by the Appellant that was because he had travelled from Portsmouth on the morning of the hearing and his wife from London. He was unable to tell me why it was that he did not travel to London the night before the hearing to stay with his wife so that they could travel together. He said that his wife had been in Portsmouth Sunday but returned to London on Monday. The hearing was of course on Wednesday.
8. The Appellant was asked why it was when he lives in Portsmouth and his wife's family live in London they got married at a registry office in Aberdeen. He said he had a cousin in Aberdeen, although when asked why his cousin was not a witness, said that the cousin did not in fact even attend the wedding. He said that they married in Aberdeen because that was where he and his wife wanted to get married.
9. The Appellant was asked what time his wife spent in Portsmouth living with him. After some prevarication he told us that she had travelled to Portsmouth on Sunday, 19th January, returning to London on Monday, 20th. The last time he saw her prior to that was when he came to London for Christmas. He travelled to London on Christmas Eve, 24th December

and returned to Portsmouth on 28<sup>th</sup> or 29<sup>th</sup> December. Prior to that he had not seen his wife throughout the month of December.

10. At the present time neither the Appellant nor his wife are working or studying. When the Appellant was asked why he did not live in London with his wife, he said that he was planning to. He said she lives with her mother when in London and that her mother is ill although he does not know what is the matter with her.
11. The Appellant did not know what his father-in-law or mother-in-law did for a living. He said that his father-in-law's name is Stuart.
12. The Appellant could not remember the colour of his own bathroom floor and told us that he had no curtains at the kitchen windows. He said he had cloth over his bedroom windows but could not remember the colour. So far as his wife's mother's home in London is concerned he could not remember how many bedrooms the flat had nor could he remember the colour of the living room carpet. He could not remember whether the bed that he had shared with his wife over Christmas was made of wood or metal. He could not remember what vegetables he had had at his mother-in-law's house with his Christmas dinner.
13. The Appellant told us that he had not asked his wife to his graduation as it was a private matter and he had not asked her. He did not know what she was doing that day but she was not in Portsmouth.
14. The Appellant told us that his wife had been studying at college in Surrey but he could not remember the name of it. He told us that notwithstanding his earlier stated intention to move to be with his wife in London, she was looking to go to university in Portsmouth. He did not know what subject she proposed to study.
15. The Appellant was asked about the two witnesses on the marriage certificate. Thomas Drysdale, he said was a friend of his who lives in Aberdeen, but he could not remember his address. The other witness, L Grant he said was his wife's friend whose name was Luna.
16. I then heard evidence from the Appellant's wife and the contradictions between her evidence and that of the Appellant were numerous.
17. She adopted her two witness statements as being true and when asked by the Appellant's representative, described her relationship with her husband as very good, that they love each other very much and that she would be devastated if he lost his appeal.
18. She was asked when she was last in Portsmouth with the Appellant and she said Monday, 20<sup>th</sup> January. However, she told us that she had been there for four days having travelled there on Friday, 17<sup>th</sup>. The Appellant had told us that she had travelled down on Sunday, 19<sup>th</sup>. She was unable to explain why there was a difference in the evidence.

19. She was then asked when she went to Portsmouth prior to that and she said it been the week before and that her habit was to spend all week in Portsmouth coming to London for the weekend. This again was in total contradiction to the Appellant's evidence. He had said that she had been to Portsmouth only one night this year and not at all in December.
20. The Appellant's wife was asked when he was last in London and she said it was at Christmas. However, she said that he had travelled to London four days before Christmas returning on 28th. She was unable to say why the Appellant told us that he had only travelled to London on Christmas Eve.
21. The Appellant's wife confirmed that she had no evidence of her train travel between London and Portsmouth.
22. With regard to the kitchen curtains in Portsmouth, she said there were net curtains whereas the Appellant had said there were none. She said that the bathroom tiles were blue-and-white whereas the Appellant said they were white. She said that the kitchen floor was linoleum and the Appellant said it was carpet.
23. The Appellant's wife told us that her father's name is George whereas her husband said it was Stuart. She was unable to explain the discrepancy.
24. She confirmed she is not currently studying but wants to go to Portsmouth University. She was unable to explain why the Appellant said he was looking to move to London.
25. With regard to the Appellant's graduation ceremony, his wife said that she was unable to attend because she had family issues but that her husband had wanted her to go. This again was in total contradiction to his evidence.
26. When the Appellant's wife was asked why they had married in Aberdeen she said that that was where there was space available. However, she had not checked with the local registry office. When she was asked why they had travelled so far to get married she said that her husband had an aunt there. This was in contradiction to his own evidence that he had a cousin. She also confirmed that no family members actually attended the wedding. She said that her witness, L Grant was Lorraine and was unable to say why her husband had said her name was Luna.
27. The Appellant's wife confirmed that she had no photographs of them together because she did not like having her picture taken.
28. It is quite clear from the evidence of the two witnesses that they know virtually nothing about each other or their lives or families. On the basis of the evidence I cannot accept that this pair are in any kind of relationship at all and indeed am satisfied that this is a sham marriage. Accordingly Article 8 is not engaged. The appeal is dismissed.

Signed

Date 23rd January 2014

Upper Tribunal Judge Martin