



IAC-FH-AR-V1

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

Appeal Number: IA/31213/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 4th December 2015**

**Decision & Reasons Promulgated
On 6th January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE ZUCKER

Between

**OLUWAROTIMIM SAMSON JIMBOLA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Adophy, of Atlantic Solicitors

For the Respondent: Miss A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Nigeria whose date of birth is recorded as 23rd September 1973. He has been granted a residence card pursuant to the Immigration (European Economic Area) Regulations 2006. On 25th April 2012 the Secretary of State wrote to the Appellant asking for additional information in support of his claim to be entitled to reside in the United Kingdom as the spouse of an EEA national. On 23rd October 2013 he applied for a permanent residence card as the spouse of Carla Martins, a Portuguese national said to be exercising treaty rights. They, on their

case, married on 18th April 2009, which marriage, on their case, was not a sham.

2. The Secretary of State, on 10th April, revoked the existing residence card on the basis of her contention that the marriage was a sham. Reliance was placed on the conviction of a minister who had facilitated breaches of immigration laws by arranging sham marriages at a particular church. The minister who in fact conducted the marriage was however acquitted after a short trial.
3. At the hearing before Judge Oliver, sitting at Richmond on 22nd May 2015, there was a last minute application by the Secretary of State to adduce by way of evidence the decision in relation to the Appellant's mother in respect of whom it was said that she had at an earlier stage relied on a false document. There was then something of an issue as to what happened. It is argued on behalf of the Appellant that based upon what the judge said, it was thought that no adverse inferences would be drawn from that determination in relation to the mother and because of what it is said the judge said at the hearing, the hearing proceeded in a way in which it would not otherwise have done; such is the allegation. In the event the appeal was dismissed. Perhaps not surprisingly the Appellant made application for permission to appeal to the Upper Tribunal; this was done by Notice dated 25th June 2015. On 8th September 2015 permission was granted by First-tier Tribunal Judge Colyer and on 13th November 2015 the matter came before me.
4. At that hearing, on 13th November 2015, the Appellant was represented by Mr Kareem. He was, to say the least, upset by the fact that I suggested to him that if he were to pursue the point he should have had some evidence, namely his contemporaneous notes of the hearing, and further, I suggested to him, that he could not both be a witness insofar as he was seeking to tell me what had occurred and be the advocate.
5. I took the view that this was one of those very rare cases in which it was appropriate for the judge to comment. He has now done so. There is a clear dispute between the judge and Mr Kareem as to what happened.
6. The matter has come back before me today, 4th December 2015. It seems to me that the most important consideration for me must be that there is a fair hearing and that the hearing is perceived to be fair. I recognise that two people can be mistaken. I recognise that two people can honestly hold a view or opinion of what transpired, but one or both may be wrong. If I am to resolve this matter and make a finding then I am put in the invidious position of having to find either that the judge was mistaken or that Mr Kareem, who is an Officer of the Court, is mistaken, or neither, or both, but one thing is for certain, the Appellant would be left, in my judgement, with a sense of injustice. I am not prepared to find that Mr Kareem has acted in any way other than professionally, advancing what he honestly believes transpired. Although, as I have noted he did not have a contemporaneous note, but in fairness nor did the Secretary of State.

7. At the commencement of today's proceedings, having regard to the guidance in **Alubankudi (Appearance of bias) [2015] UKUT 54**, in which it was said:

"The interface between the judiciary and society is of greater importance nowadays than it has ever been. In both the conduct of hearings and the compilation of judgments, judges must have their antennae tuned to the immediate and wider audiences. ... It is of seminal importance that the fairness, impartiality and detached objectivity of the judicial office holder are manifest from beginning to end. Clearly there is a higher point of principle in this case than the immediate determination of the merits."

I canvassed with the parties whether in all the circumstances the fairest way to proceed was for me to make no finding whatsoever on the dispute as between the judge and the representative, Mr Kareem, but to recognise the sense of injustice on the part of the Appellant and in those circumstances remit the matter to the First-tier Tribunal to be heard afresh with no preserved findings, before a judge other than Judge Oliver. I raised with Mr Adophy the issue of whether or not the Secretary of State might rely on the determination in relation to the Appellant's mother. It seems to me that the question of admissibility of evidence will be a matter for the First-tier Tribunal Judge because I am not preserving any findings. But I make plain that in saying that, it should not be inferred in any way whatsoever that in my view the evidence is inadmissible. I am simply saying that I am neutral on the point and the judge must listen to arguments, if arguments there will be, as to why, if the Appellant says it is not admissible it ought to be treated in that way.

8. In the circumstances I find that there is perceived procedural unfairness. By consent this matter is to be remitted to the First tier Tribunal.

Notice of Decision

9. The decision of the First-tier Tribunal is set aside to be heard afresh by a judge other than Judge Oliver at any of the London hearing centres.
10. No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Zucker