



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

Appeal Number: HU/01873/2015

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 5<sup>th</sup> October 2017 and signed  
And sent to Promulgation on  
6<sup>th</sup> October 2017.**

**Decision & Reasons  
Promulgated  
On 09 October 2017**

**Before**

**Upper Tribunal Judge Chalkley**

**Between**

**KEHINDE EMMANUEL OLORUNFUNMI  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

*For the Appellant: Mr R O Ojukotola, a solicitor with S L A Solicitors  
For the Respondent: Mr S Walker, Home Office Presenting Officer*

**DECISION AND REASONS**

1. The appellant is a citizen of Nigeria born on 22<sup>nd</sup> November 1976.

2. He made application for leave to enter the United Kingdom as a partner under Appendix FM of a Statement of Changes in Immigration Rules HC 395 (as amended) (the "Immigration Rules"). The appellant's partner ("the sponsor") is Oluwayemisi Sorungbe. The appellant's application was refused on 7<sup>th</sup> July 2015, because doubt was expressed at the relationship between the appellant and sponsor being genuine and subsisting and the Entry Clearance Officer was not satisfied that the appellant and sponsor intended to live together permanently in the United Kingdom.
3. The judge noted that the parties were married on 4<sup>th</sup> June 2015. They had known each other since 2000, when they were at college together and they re-established contact in about July 2014 and further contact from about 31<sup>st</sup> January 2015, when the appellant showed sympathy to the sponsor. She was having difficulties with her miscarriage. The parties had been in regular contact and she was proposed to on 25<sup>th</sup> March 2015, but could not accept because she was still married to her previous husband. In paragraph 14 of her decision the judge found that the sponsor had been married to her first husband in June 2012, and she divorced him on 12<sup>th</sup> May 2015. The sponsor reconnected with the appellant in July 2014, and she returned to Nigeria to see him and her family in November 2014. The judge noted that the sponsor was going through difficulties with her husband in the United Kingdom at that time, but that this did not prevent her from making an application for indefinite leave to remain on 7<sup>th</sup> February 2015, on the basis that she was in a genuine and subsisting relationship with her then husband and that they intended to live together permanently in the United Kingdom.
4. The judge noted that the sponsor did not mention to the Home Office that she was going through difficulties with her husband when she obtained indefinite leave to remain on 18<sup>th</sup> February 2015. She started divorce proceedings against her husband some three days later on 21<sup>st</sup> February 2015, and the divorce was finalised in May that year. The judge said that she was not satisfied that the appellant can meet the requirements of the Rules. She had considerable doubts about the genuineness of the relationship between the appellant and sponsor, partly because of the short-lived period of their courtship and partly because of the lack of regular communications between the parties, but she went on to express "considerable concerns" about the sponsor's overall credibility in applying for indefinite leave to remain on the strength of her marriage with her then husband, even though three days after having been granted indefinite leave to remain she commenced divorce proceedings.
5. The judge found herself satisfied that the sponsor had obtained her indefinite leave to remain on the strength of false evidence, in that she failed to tell the Home Office of her intention to start divorce proceedings from her then husband.
6. The appellant obtained and was granted permission to appeal to the Tribunal on the basis that it was arguable that the judge may have erred in

law by failing to consider postdecision visits by the sponsor to the appellant. In addressing me today, Mr Ojukotola suggested that the judge erred by failing to consider postdecision evidence of contact between the parties and dismissed the appeal after having taken into account the material evidence. It was immaterial that the sponsor submitted her divorce petition three days after being granted indefinite leave to remain. The fact of the matter was that at the time of the application and at the date of the Entry Clearance Officer's decision, the sponsor had indefinite leave to remain. If the respondent has any concerns on how that was obtained then there are legal remedies available to her. Mr Ojukotola explained to me that the marriage was subsisting on 18<sup>th</sup> February, but an incident occurred on that evening after the sponsor and her first husband had returned home from the Home Office when her leave had been granted, and as a result of his behaviour she then decided to present a divorce petition on 21<sup>st</sup> February. I pointed out that this appeared to be new evidence. I explained that I had read the papers and could find no evidence at all before the judge to suggest that it was as a result of actions on the part of her husband after the grant of indefinite leave to remain which caused the sponsor to issue a divorce petition on 21<sup>st</sup> February.

7. Mr Ojukotola appeared to be in some difficulty and spent some time looking through his papers. I suggested that perhaps it might be helpful to him if I were to adjourn the hearing to the end of my list to give him time to collect his papers together and to take further instructions. He readily agreed.
8. Later during the morning, having finished my list, Mr Ojukotola told me that he was ready to proceed and that he did not require any further time. He produced a letter from King's College Hospital dated 15<sup>th</sup> July 2015, and said that since the sponsor was pregnant at that time it is clear that she must have been in a durable relationship with her husband. He also referred me to the appellant's grounds of appeal to the First-tier Tribunal. He said that there the sponsor explains how the relationship between the appellant and sponsor developed. In the grounds of appeal she said:-

"I have known [the appellant] since my college days in year 2000; in Nigeria. He was a year my senior and a good friend before we lost contact due to lack of internet and telephone facilities at the time in Nigeria. I reconnected with him on social media after a long period around July 2014 and on the 31<sup>st</sup> January 2015; he started showing more care and affection towards me. He came to my life when I needed comfort and someone to share my pains with. I had just lost my pregnancy and my ex husband care less about it. [The appellant] was the only listening ears and caring heart at this crucial time. We communicated through phone calls and WhatsApp often; I could call him at anytime of the day. He is an epitome of true love and he is God fearing. He proposed to me on the 27<sup>th</sup> March 2015 but I restrained because my divorce has not come through yet. However, I led him on because I was certain the divorce would go through. We got closer and always eager to talk with him, so it was not difficult saying YES to his proposal after the divorce went through."

9. I pointed out to Mr Ojukotola that the next paragraph appeared to contradict what he had said and to confirm that at the time she obtained her leave to remain the sponsor had already decided to divorce her then husband. The next paragraph says:-

“It is noteworthy that I visited Nigeria in November 2014, it was a glorious opportunity for re-union and to be with my widowed-mother and siblings after many years. I also met and opened up to [the appellant] about the troubles in my marriage with my ex husband and my plan to get a divorce. However, I told him nothing can happen until the divorce goes through. We visited his friends, family and had shots at local delicacies (sic).”

10. The grounds of appeal concluded by saying:-

“I returned to UK and started consulting on how to be free from the terror of my ex husband. Respite came through the counselling of Citizen Advice Bureau at Peckham and other counselling through Telephone Consultations.

... our parents and siblings in accordance with our culture. And on the 4<sup>th</sup> June 2015, we went to Ikoyi Registry for the wedding. Both were low key in honour of my late dad and [the appellant’s] mom who passed on when he was just three months old.”

11. I explained to Mr Ojukotola that it appeared to be perfectly plain on the evidence before the judge that at the time the sponsor obtained her indefinite leave to remain, she had already made plans to divorce her husband. He pointed out that at the time of the hearing the judge could have found herself satisfied on the evidence that the appellant met the requirements of the Immigration Rules.
12. In closing, Mr Walker suggested that the judge had considered the evidence of post-marriage contact at paragraph 14 and on the evidence before her was entitled to find as she did.
13. I reserved my decision.
14. The issue before the First-tier Tribunal was whether or not the appellant met the requirements of Appendix FM of the Immigration Rules as set out in section E-ECP. Specifically, the Entry Clearance Officer doubted the relationship between the appellant and the sponsor was genuine and subsisting and was not satisfied that the appellant and sponsor intended to live together permanently in the United Kingdom.
15. The judge considered all the evidence and concluded that she was not satisfied on the evidence that the appellant is in a genuine and subsisting relationship with the sponsor, or that they intend to live together permanently in the United Kingdom. At paragraph 14 of the decision she said this:-

“The burden of proof is on the Appellant and the civil standard of the balance of probabilities applies. The Appellant was a contemporary of the sponsor at college in Nigeria in 2000. The sponsor, who married Lyndon Jones in June 2012 and divorced him on 12<sup>th</sup> May 2015,

reconnected with the Appellant in July 2014 and they started a relationship from about January 2015. She had returned to Nigeria to see him and her family in November 2014. She was going through difficulties with her husband in the UK, but this did not prevent her from making an application for indefinite leave to remain on 7<sup>th</sup> February 2015. She did not mention to the Home Office that she was going through difficulties with her husband (and indeed she was pregnant with his child before she later miscarried) and after she obtained ILR on 18<sup>th</sup> February 2015 she started divorce proceedings some three days later, on 21<sup>st</sup> February 2015. The divorce was finalised in May 2015. She then went to Nigeria on 29<sup>th</sup> May 2015 for three weeks and married the Appellant on 4<sup>th</sup> June 2015. The burden of proof is on the Appellant to show that he can meet the requirements of the Immigration Rules on the balance of probabilities. I am not satisfied that he can do so. I have considerable doubts about the genuineness of the relationship, partly because of the short period of their courtship and partly because of the lack of regular communications between the parties up to the date of the decision in July 2015, which is the only date which I can consider and to the evidence regarding ongoing communication since that time (including the sponsor's return visit to Nigeria in March 2016). I also have considerable concerns about the sponsor's overall credibility when she applied for ILR on the strength of her marriage with her then husband, even though a few days later she commenced divorce proceedings from him. On the balance of probabilities, I am satisfied that she obtained ILR on the strength of false evidence in that she did not tell the Home Office of her intention to start divorce proceedings from Lyndon Jones."

16. It is quite clear from the grounds of appeal that the sponsor and her then husband were having matrimonial difficulties as early as November 2014 because by that time the sponsor had already made plans to divorce her husband.
17. The judge was entitled to find that she had considerable concerns about the sponsor's overall credibility. Indeed, before me the appellant's solicitor continued to insist that the relationship between her and her first husband was genuine and subsisting until 18<sup>th</sup> February 2015, and that even at that date she and her previous husband intended to live together permanently in the United Kingdom. Very clearly they did not, as demonstrated by what the sponsor said in the grounds of appeal.
18. The judge had expressed "considerable" doubts about the relationship partly because of the short period of their courtship and partly because of lack of regular communication but, even despite those concerns she went on to express "considerable concerns" about the sponsor's overall credibility. I believe that the judge was entitled to find as she did. She did not take into account immaterial facts or give undue and disproportionate weight to an immaterial matter. The sponsor's credibility was important, because in order to qualify under E-EPC.2.10 the appellant must prove that he and his partner must intend to live together permanently in the UK. The sponsor is clearly someone who is prepared to tell untruths to get what she wants and her credibility was wholly relevant. I find that the making of a decision by the First-tier Tribunal Judge did not involve a making of an error of law. **I uphold the decision. The appellant's appeal is dismissed.**

**Richard Chalkley**  
Upper Tribunal Judge Chalkley

**TO THE RESPONDENT**  
**FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

***Richard Chalkley***  
Upper Tribunal Judge Chalkley