Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/32338/2015**

THE IMMIGRATION ACTS

Heard at Manchester	**Decision & Reasons Promulgated**
On 20 April 2017	**On 3 May 2017**

Before

UPPER TRIBUNAL JUDGE CHALKLEY

Between

ABIMBOLA SONDE
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Moksud as agent for International Immigration Advisory Services Ltd
For the Respondent: Mr G Harrison, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant was born on 28th August, 1983 and is a citizen of Nigeria. She claims to have been the former wife of Mr Jan Maciejewskie, a Polish citizen exercising EEA treaty rights in the United Kingdom ("the sponsor").

2. The appellant entered the United Kingdom and applied for a residence card on 3rd March, 2009. This was issued by the respondent on 26th September, 2009. A further application for a permanent residence card made by the appellant was refused on 23rd December 2014. She applied once more on 31st March 2015 and this was refused on 27th September 2015, following which the appellant appealed to the First-tier Tribunal.

The appellant's appeal was heard by First-tier Tribunal Judge Herwald in Manchester on 22nd July ,2016.

3. In his determination promulgated on 8th August, 2015, the judge found himself satisfied on the evidence before him that the appellant's marriage with the sponsor was one of convenience. As a result, he did not go on to consider whether or not the sponsor was a qualified person at the time of divorce, but he did point out that the evidence adduced to him had failed to persuade him that the sponsor was, at the relevant time, a qualified person and a letter produced on the day of the hearing, but dated 16th March, 2015, addressed to the sponsor did not assist, noting as it does that the sponsor appears not to have submitted a full self-assessment tax return for the years shown in the letter.

4. Upper Tribunal Judge Jordan granted permission to appeal. The first challenge referred to the evidential burden on the respondent where the respondent alleges that the marriage is a marriage of convenience and criticises the fact that the appellant did not know the names of both witnesses and the name of the officiating priest at her wedding as a result the judge dismissed the appellant's appeal on the ground of credibility. It refers to paragraph 16 of the determination and claims that the majority of the above "inconsistencies" were not serious enough to damage the appellant's credibility completely.

5. At the hearing before me Mr Moksud reminded me that the judge made findings at paragraph 16, as a result of which he was persuaded that the marriage was one of convenience. However, says Mr Moksud 40 to 50 people attended the wedding and they would hardly have attended the wedding if it had been a marriage of convenience. The marriage itself lasted for over three years. The fact that the appellant could not name either of her witnesses or the name of the priest who officiated at the wedding should not have been held against her. Nor should it have been held against her that she could not name the place that the sponsor originated from, Olawa. She referred to it as being Otawa.

6. He reminded me that the appellant had been granted a residence permit before and suggested that if the Secretary of State believed that the marriage was one of convenience, she should have raised this before giving the appellant permission to marry and before the issue of the first residence card.

7. Responding briefly Mr Harrison suggested that there was no error of law identified in the grounds at all. At best, it amounted to a series of disagreements with the findings or an attempt simply to reargue the case. It was the parties' intent at the time of the marriage that was relevant. On the evidence before the judge (who heard and saw the appellant give evidence) he was entitled to find that the marriage was one of convenience.

8. Responding briefly the appellant's representative told me that simply because the marriage had broken down did not mean that it was one of

convenience. The appellant obtained permission to marry and she had been granted a residence card earlier. If the Secretary of State was going to challenge the marriage on the basis that it was one of convenience then she should have done so earlier.

9. I reserve my determination.

10. The judge properly directed himself on the law at paragraphs 8, 9, 10 and 11 and it has not been alleged that in doing so he erred.. The judge reminded himself that there is an evidential burden on the respondent as identified in *IS (marriages of convenience) Serbia* [2008] UKIAT 00031 and *Papajorgji (EEA spouse – marriage of convenience)* [2012] UKUT 0038. He pointed out that the burden of proving that a marriage is not a marriage of convenience for the purposes of the Regulations rested with the appellant but that the appellant was not required to discharge it in the absence of any evidence of matters supporting a suspicion that the marriage is indeed one of convenience.

11. The judge heard and saw the appellant give evidence. He made a note of that evidence in paragraph 12 of the determination.

12. Having considered all the documents placed before him the First Tier Tribunal Judge made a series of findings in paragraph 16 which led him to a conclusion that the appellant's marriage with the sponsor was one of convenience. He noted that the respondent had carried out an interview with the appellant on notice and that during the course of her interview she said that the sponsor came from a town called Otawa in Poland. However, in giving evidence to the judge she told him that the sponsor came from a town called Olawa. With very great respect that is not an insignificant discrepancy. One might expect someone who has formed a genuine relationship and committed themselves to a life long marriage to know the name of the town where their spouse comes from.

13. The judge noted that the circumstances of the appellant's meeting the sponsor were somewhat unusual. She sat down in the city centre and as the sponsor was walking past, she said, "I walk up to him and ask if he can give me some money to get a burger".

14. During the course of her interview, the appellant was recorded as saying that she was married at St Richard's Church in Wythenshawe and that that church had been married because it was close to where they lived and the nearest place to them. On oath however she claimed that she had been attending a Nigerian church in Manchester but was unable to marry in that church because it is a family Nigerian church and not a registered charity. She was told that she must marry in a Church of England church. The judge noted that there were further discrepancies between what the appellant said at interview and her answers in oral examination.

15. The judge recorded that the appellant could not name the vicar who married her. That on its own may not have given the judge any cause for real concern, but he also noted that the appellant claimed that her witness

at the wedding was “Aunty Folake”. Later the appellant explained that everyone calls this woman “Mommy Cynthia”. The judge noted that the name had not been mentioned at interview and that during her interview she was unable to give the full name of the witness Folake. He did not believe that it was credible that despite the passing of time the appellant would be unable to remember the name of someone who was so central to her wedding ceremony if the ceremony had been one of meaning and not a marriage of convenience.

16. The judge noted that the appellant was asked to name a second witness and simply said that “the second person that witnessed for Jan was his friend at work”. She did not know his full name and still did not know his full name in giving evidence. In interview she did not seek to explain any further, but before the judge she refined her evidence and now claimed that originally the witness was due to have been her husband’s brother from Poland, but he was prevented from attending at the last minute. The judge believed that if there was any truth in this then she would have told the interviewer that in September 2015.

17. The appellant told the judge that there had been no wedding rehearsal and when asked whether there had been any printed wedding invitations the appellant replied, “not printed just something simple to give to church members. I printed it myself to give to church members”. The judge did not believe that there were any such invitations.

18. The appellant had given evidence to the judge that between 40 and 50 people attended the wedding, but none of whom were members of her own family. She had explained that the only guests, apart from two members of the groom’s family, were church members and neighbours. She could produce no photographs from the wedding, no wedding gift list and while their absence was not .determinative in themselves, taken in the round they were worrying to the judge. The judge also noted that the appellant had made application for permanent residence in 2014, but said at interview and confirmed on oath that she had never seen the sponsor since 2014 and was, by then in effect living with another Nigerian male before making the permanent residence application. The appellant appeared to be anxious before the judge to suggest that the relationship with the other Nigerian male was “on and off”. However the judge recorded that it transpired that this gentleman was in a relationship with the appellant, but did not always stay over at her home. The judge recorded that submissions had been made that the appellant had been issued with a residence card in the past.

19. The judge concluded that the marriage was one of convenience. Having reviewed the judge’s findings and his reasons for making them, I believe that when looked at in the round they are sustainable. He saw and heard the witness give evidence. I believe that he was entitled on the evidence to find as he did.

20. Finally criticism was made that the judge had not gone on to consider whether at the relevant time the sponsor remained a qualified person as

claimed. However, at paragraph 16(j) he did actually say that the evidence adduced to him did not go far enough to persuade him that the sponsor was at the relevant time a qualified person. So, even if the judge's finding that the marriage was one of convenience was defective, it could not be a material defect because the judge had made a finding on the evidence before him that the sponsor was not at the relevant time a qualified person as claimed.

21. For all these reasons I find that the making of the determination by First-tier Tribunal Judge Herwald did not involve the making of an error on a point of law. I uphold his determination. The appellant's appeal is dismissed.

Richard Chalkley

A Judge of the Upper Tribunal Date
30 April 2017

TO THE RESPONDENT
FEE AWARD

There is no fee award.

Richard Chalkley

A Judge of the Upper Tribunal