



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: DA/00172/2018

THE IMMIGRATION ACTS

Heard at: Field House  
On: 13<sup>th</sup> September 2019

Decision & Reasons Promulgated  
On: 17<sup>th</sup> September 2019

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

Chima Collins Madu  
(no anonymity direction made)

Appellant

And

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Ume-Ezeoke, Counsel instructed by Barnes Harrild and Dyer Solicitors

For the Respondent: Mr Jarvis, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Nigeria born on the 24<sup>th</sup> May 1982.
2. He has permission to appeal against the decision of the First-tier Tribunal (Judge EB Grant) to dismiss his appeal on a single ground. It is submitted that Judge Grant erred in adopting in her reasoning parts of an earlier determination which had itself been set aside by the Upper Tribunal.

3. The relevant chronology is as follows.
4. On the 11<sup>th</sup> April 2018 the First-tier Tribunal (Judge Rowlands) heard the Appellant's appeal against the Respondent's decision to refuse to grant him a residence card as the spouse of an EEA national exercising treaty rights. The Appellant was present and gave oral evidence. By his decision of the 17<sup>th</sup> April 2018 Judge Rowlands dismissed the appeal, finding that the Appellant's marriage was a marriage of convenience.
5. The Appellant appealed to the Upper Tribunal on the grounds that by his decision, and his conduct during the hearing on the 11<sup>th</sup> April 2018, that he was biased against the Appellant. The matter came before Upper Tribunal Judge Rintoul, who was satisfied that a fair-minded observer in possession of all the facts would perceive there to have been bias, and that accordingly the Appellant had been deprived of a fair hearing. By his decision dated 12<sup>th</sup> July 2018 Judge Rintoul decided that in the circumstances the appeal should be remitted to another judge.
6. That other judge was Judge EB Grant. By the time that the matter came before her, on the 18<sup>th</sup> June 2019, the Appellant had been deported and so was not present to give evidence in the appeal. Reference is made to the practical difficulties that this created at paragraphs 7 to 14 of the decision. The Appellant was not able to afford the high cost of a video link, and the Judge was not satisfied that there was any realistic prospect of the Appellant imminently being granted entry clearance in order to attend a hearing. She therefore proceeded to hear the evidence of the Sponsor and other witnesses and to assess the written materials. In the absence of the Appellant those written materials assumed some significance, because they contained, in the form of interview records, witness statements – and crucially in Judge Rowlands' record - the Appellant's own evidence about his marriage. To this end Judge Grant set out in her determination four paragraphs from the decision of Judge Rowlands, in which the evidence of the Appellant is summarised. She went on to dismiss the appeal.
7. The Appellant submits that in taking this approach Judge Grant infected her own decision with the bias of Judge Rowlands. There were two possible ways in which the alleged unfairness could arise.
8. The first is that in the four cited paragraphs there was some inaccuracy, there by virtue of Judge Rowlands' bias or otherwise. If the record of evidence was inaccurate it would follow that it should not, in these circumstances, have been relied upon by Judge Grant. The Appellant however makes no submission to that effect. Mr Ume-Ezeoke was unable to identify any part of those four paragraphs with which the Appellant took issue. No error therefore arises there.

9. The second way in which the citation of those paragraphs may have been unfair, submits Mr Ume-Ezeoke, is that in reading the decision of Judge Rowlands, Judge Grant may unwittingly have infected her mind with his bias; having absorbed his unfair reasoning she would have set about her decision making from a partial starting point.
10. There is absolutely nothing in the detailed and cogent determination of Judge Grant to indicate that this might be the case. As the chronology above indicates, in setting out those four paragraphs she was in fact seeking to give the Appellant a voice in his own appeal. He had given live evidence before Judge Rowlands but could not do so before her. It was therefore important for it to be taken into account. Further Mr Ume-Ezeoke's submission assumes that the mind of a First-tier Tribunal Judge is so suggestible as to render them unfit to perform their primary function. This was the notion considered by the Court of Appeal in Swash v Secretary of State for the Home Department [2016] EWCA Civ 1063, who cited with approval the approach taken by Collins J in R v Secretary of State for the Home Department (ex parte Ahmed Aissaoui) as follows:
- "12. ... the IAT had remitted an appeal to be heard *de novo* by another adjudicator. The second adjudicator, when dismissing the appeal, recorded in his determination that the determination of the first adjudicator had been on file and that he had "had the advantage of having perused it". The applicant sought permission to move for judicial review on the ground that it had been improper for the second adjudicator to have read the determination of his colleague. In dismissing the application, Collins J held at p. 187:
- "It is no doubt inevitable that the previous determination will be on the file. It may be inevitable that the adjudicator looks at it. It seems to me that there is no reason in principle why he should not, provided, of course, that he does not allow it in any way to influence the decision that he has to make on a fresh consideration of the whole case. It may be that it would be desirable that steps were taken not to include such a decision in the papers, because that would avoid any question of a suggestion that the adjudicator had been wrongly influenced in any way by it; but that does not seem to me to be in the least essential and adjudicators can surely be trusted to carry out their functions in a proper fashion."
11. They went on to say that whilst it may be preferable for judges not to have any regard to decisions of colleagues that had been set aside, it did not follow that to do so would automatically give rise to some unfairness. It was indeed common in civil proceedings for the judge to be well aware of the entire history of a case. It must be assumed, unless there is evidence to the contrary, that any Judge approaches the task before her with a fair and open mind. I am not satisfied that Judge Grant did anything other. The appeal is therefore dismissed.

**Decisions**

12. The decision of the First-tier Tribunal contains no error of law and it is upheld.
13. The appeal is dismissed.
14. There is no order for anonymity.

Upper Tribunal Judge Bruce  
13<sup>th</sup> September 2019