



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

Appeal Numbers: EA/04450/2018

**THE IMMIGRATION ACTS**

**Field House  
On 29<sup>th</sup> October 2019**

**Decision & Reasons Promulgated  
On 31<sup>st</sup> October 2019**

**Before**

**UPPER TRIBUNAL JUDGE LINDSLEY**

**Between**

**MONISOLA OLUTOYIN OKULAJA  
(ANONYMITY ORDER NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms S Akinbola, of Counsel, instructed by DF Solicitors

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

**DECISION AND REASONS**

*Introduction*

1. The appellant is a citizen of Nigeria who wishes to remain in the UK on the basis of an EEA residence card. She says that she is the wife, and therefore family member, of a Portuguese citizen, Mr Alexandere Manuel Coutinho Queiros. Her application was refused in a decision dated 5<sup>th</sup> June 2018. Her appeal against the decision was dismissed by First-tier Tribunal Judge Herbert in a determination promulgated on the 20<sup>th</sup> March 2019.

2. Permission to appeal was granted by Upper Tribunal Judge Sheridan on 17<sup>th</sup> September 2019 on the basis that it was arguable that the First-tier judge had erred in law in requiring an expert opinion that the proxy marriage was recognised under Portuguese law which was arguably not compatible with the decision of the Court of Appeal in Awuku v SSHD [2017] EWCA Civ 178.
3. The matter came before me to determine whether the First-tier Tribunal had erred in law.

*Submissions -Error of Law*

4. The grant of permission was made on a basis that it was acknowledged was not advanced in the grounds, but was found to be compliant with the principles in AZ (error of law: jurisdiction; PTA practice) [2018] UKUT 00245. Ms Everett accepted that the First-tier Tribunal had erred in law on the basis identified by Judge Sheridan.
5. The grounds, which are drafted by an appellant who acts in person, argue that the marriage is not one of convenience as there was not proper evidence to support such a contention as she did not attend the interviews at the Home Office due to panic attacks and mental health problems, and further that the marriage is recognised in Portuguese law.
6. I asked the parties to consider whether it was also an error of law that the First-tier Tribunal had not considered the decision of Judge of the First-tier Tribunal Wyman promulgated on 21<sup>st</sup> April 2016, which found that the appellant and Mr Coutinho Queiros were in a genuine and subsisting durable relationship, but which was set aside by the Upper Tribunal, with hindsight wrongly, on Sala grounds on the basis that the First-tier Tribunal had no jurisdiction. Both representatives submitted that this was an error of law, as although the decision of Judge Wyman was not a starting point, as Devaseelan was not applicable, the findings and evidence in that decision were relevant considerations.
7. I then asked Ms Akinbola to show me why the errors were material when the appeal had been dismissed not only because there was no expert evidence that the marriage was recognised in Portugal and because it was one of convenience, both of these conclusions being infected by error of law, but also because there was no evidence that the sponsor was exercising EU Treaty rights at the date of hearing. Ms Akinbola accepted that the evidence, in the form of payslips and a bank statement Mr Coutinho Queiros, was not recent at the time of appeal and that as a result it could not be shown that the errors were material as the appeal fell properly to be dismissed on this basis.

### *Conclusions – Error of Law*

8. As the Court of Appeal held in Awuku, the question of formal validity of a marriage in the law of England and Wales is governed by the law of the country where the marriage was celebrated, and thus the question should have been whether the marriage was valid in Nigeria, as is correctly set out in the decision under challenge at pages 141 to 142 of the bundle. It was therefore an error of law for the First-tier Tribunal to have held at paragraph 20 of the decision that the appeal fell to be dismissed due to a lack of evidence that the marriage was valid in Portugal.
9. The First-tier Tribunal also erred in law by failing to consider the weight to be given to the decision of Judge Wyman which, whilst overturned by the Upper Tribunal on Sala grounds, found that the appellant and Mr Coutinho Queiros were in a genuine and subsisting durable relationship.
10. However, the appeal was dismissed for another reason: that there was insufficient evidence that Mr Coutinho Queiros was exercising Treaty rights in the UK. Neither he nor the appellant attended the hearing before the First-tier Tribunal, and the appellant and his unsigned and undated statements do not state unequivocally that he was in employment at that time, although they do state that the evidence he had submitted relating to this issue was genuine. The evidence of Mr Coutinho Queiros being a qualifying person before the First-tier Tribunal was 7 payslips from an unknown organisation, the last of which was dated March 2018 and a Lloyds bank statement for the period November 2017 to May 2018. The Lloyds bank statement does not include the payments by BACS as recorded on the payslips with the possible exception of the 29<sup>th</sup> January 2018 amount, but does include a different payment of wages from Ronald & Partners on 2<sup>nd</sup> May 2018. I find that as the most recent of this evidence related to ten months prior to the hearing before the First-tier Tribunal it could not, even if accepted as genuine, have shown on the balance of probabilities that Mr Coutinho Queiros was exercising Treaty rights at that time.
11. As a result. I find that the errors of law were not material as the appeal fell in any case to be lawfully dismissed on the basis outlined above.

#### Decision:

1. The making of the decision of the First-tier Tribunal involved the making of errors on a point of law.
2. I uphold the decision of the First-tier Tribunal dismissing the appeal as the errors were not ultimately material as the appeal was also rightly dismissed on the basis set out at paragraph 10 above.

Signed: Fiona Lindsley

Date: 29<sup>th</sup> October 2019

Upper Tribunal Judge Lindsley