



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/08104/2017

THE IMMIGRATION ACTS

Heard at Field House
On 2nd November 2018 & 10th January 2019

Decision & Reasons Promulgated
On 1st February 2019

Before:

UPPER TRIBUNAL JUDGE GILL

Between

MRS. ADEBIMPE ABOLANLE OLOKO
(ANONYMITY ORDER NOT MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Dirie, of Counsel, instructed by Farhad Ahmed Solicitors.

For the Respondent: Ms Z Kiss (on 28 November 2018) and Mr C Avery (on 10 January 2019).

DECISION AND REASONS

1. When this case was first listed for hearing before me on 2 November 2018, I heard submissions on ground 3 only. Shortly afterwards, the decision of the President in Safi & others (permission to appeal decisions ([2018] UKUT 00388 (IAC) was published. I decided to issue directions on 20 November 2018 informing the parties that, following the decision in Safi, I had decided to re-list the appeal for hearing and that I was minded to hear the parties' submissions on all grounds. The appeal was therefore listed for further hearing before me on 10 January 2019. At the hearing on 10 January 2019, Mr Avery did not object to my hearing Ms Dirie's submissions on the remaining grounds. As Mr Avery had not represented the respondent at the hearing on 2 November 2018, Ms Dirie did not object to my proposal that I hear submissions from both her and Mr Avery on all three grounds, afresh.
2. The appellant has been granted permission to appeal the decision of Judge of the First-tier Tribunal Keith who, in a determination promulgated on 30 July 2018,

dismissed her appeal against a decision of the respondent 18 September 2017 to refuse to issue her with a residence card under the Immigration (European Economic Area) Regulations 2016 (hereafter the "EEA Regulations") as the spouse of an EEA (Dutch) national, Mr Mathew Woods (the "sponsor").

3. The respondent refused the appellant's application because he considered that her marriage to the sponsor was a marriage of convenience.
4. The judge heard oral evidence from the appellant and the sponsor. It is plain that he did not find them credible. His reasons are given at paras 22-27 of his decision, which I quote below. His reasons are better understood if I provide a summary of the background facts.

Summary of the background facts

5. The appellant's case is that she first began her relationship with the sponsor in Nigeria in 1992. The sponsor entered the Netherlands in 1996 and subsequently became a Dutch national. He began a relationship with a Dutch national ("D1") in 1997 and another Dutch national ("D2") in 2000. He had three children with one of these Dutch nationals. The children were born on 11 November 2001, 7 April 2004 and 24 July 2005. In 2002, he went through a traditional marriage with the appellant in Nigeria and had three children by her. They were born on 3 September 2002, 4 September 2004 and 20 March 2006. The sponsor's three children by the appellant lived in Nigeria where the appellant also lived.
6. In 2009, the appellant entered the United Kingdom. In 2010, the respondent refused an application by her for a residence card as the family member of Billy Woods, the sponsor's brother. The appellant posed as his sister.
7. In 2013, the sponsor was assaulted in the Netherlands and suffered a head injury as a result.
8. In 2014, the sponsor's mother died in Nigeria. In 2015, the sponsor brought his three children by the appellant to the United Kingdom. The appellant and the sponsor were married legally to each other in the United Kingdom on 4 May 2017.
9. The application which was the subject of the decision on appeal was made on 11 May 2017. The appellant and the sponsor were interviewed separately by the respondent on 6 April 2017.
10. Following the decision dated 18 September 2017 to refuse the appellant's application for a residence card, a fourth child was born to the appellant and the sponsor, on 18 January 2018.

The judge's decision

11. The judge summarised the witness statements of the appellant and the sponsor and their oral evidence in his decision. It was the appellant's and the sponsor's evidence that their relationship with each other rekindled in 2015 because it was his mother's dying wish that they should do so. She died in 2014. In her witness statement, the appellant said that she was unaware that the sponsor had entered into several relationships in the Netherlands and that she only learned of the sponsor's other family during the marriage interview in 2017.

12. In oral evidence, the appellant admitted that she had used a false birth certificate in her previous application of 2010 for a residence card. She said that it was her solicitor's idea that she should pretend to be her brother-in-law's sister. She said she was ignorant and did not know what was going on. The appellant also said, inter alia (para 9 of the judge's decision), that:

"9. ... In terms of the period between 2007 and 2015 when they were not living together, this was a difficult period in the couple's marriage. They lived in different countries. However, matters have changed in 2015 because in 2014, the Sponsor's mother passed away and the couple's children had previously lived with the Sponsor's mother. His mother had been trying to reunite the couple. The Sponsor then called the appellant and he relocated to the United Kingdom to show commitment. He then collected the children from Nigeria so that they could all be together."

13. In oral evidence, the sponsor said, inter alia (paras 15 and 16) of the judge's decision:

"15. The idea for the wedding in 2017 was the Sponsor's. He had wanted a fresh start. He couldn't remember when he told her that he wished to get married. He had not told the appellant of his relationship with a woman in the Netherlands before the Home Office interview. He couldn't recall when his mother died as he had problems with his memory. He was aware of his brother trying to assist the appellant in getting status in 2010. He had not been involved as he was angry with the appellant for not remaining in Nigeria with his children.

16. When asked as to how many relationships he had been in at any one time, and it was put to him that he had stated that it was in four relationships when interviewed he disputed that he had been four at any one time but four in total over a period of time. When asked again how many he had been in at any one time, he said two, 'maybe'. When asked again if he could be more specific, he said he had been in three relationships but then clarified that he regarded 'relationships' as including female friends with whom he was not in sexual relations. He no longer spoke to those female friends."

14. As I have said, the judge made an adverse credibility assessment. Paras 22-27 of his decision, which set out his reasons, read as follows:

"22. I considered all of the evidence presented to me, whether I refer to it specifically in these findings or not.

23. The sole issue was the intention of the appellant and the Sponsor in entering their marriage in May 2017. I was conscious that the burden of proof was on the respondent to the ordinary civil standard of showing that the marriage was one of convenience.

24. I considered the events prior to the couple's marriage in 2017. The appellant had admitted using a false birth certificate to make an application for an EEA residence card as the family member of an EEA national, as the claimed sister of Billy Woods Jr, who was in fact her brother-in-law, in 2009. On the one hand she claimed to be ignorant and in a difficult period in her marriage, and on the other hand claimed that it was her lawyer's idea and that it was he who made the application albeit that it was facilitated by her brother and sister-in-law. It was not the case that the appellant 'volunteered' the fact of her previous EEA application and the use of deception and in fact it was only when the respondent's 2010 decision was put to her in this hearing and she was asked about the names within the decision that she accepted her part in that application. In summary, I find that the appellant was a willing participant in a previous act of deception in 2010 and whilst this did not necessarily mean that the 2017 marriage was in order to gain an immigration advantage, I find that she was a woman who was willing to use deception specifically to gain an historic immigration advantage and was not someone who was willing to disclose that fact unless she had no choice other than to do so.

25. I also assessed the claims of why the relationship between the appellant and Sponsor rekindled in 2015. On the one hand, the Sponsor suggested that his mother died in 2014 and that it was she who had looked after the couple's children after the appellant's entry

into the United Kingdom on a visit visa in 2009. On the other hand, in answer to questions [33] and [34], the Sponsor suggested that his mother died three years ago; his children had come into the United Kingdom one year ago and in the meantime that they had been looked after by the Sponsors sister-in-law. The inference was therefore that between 2014 and 2016, the children were looked after by the Sponsor's sister-in-law and it was unclear in that context why the Sponsor's mother's death would prompt a rekindling of the relationship, if, as was suggested, it was at least in part prompted by a need for someone to look after the couple's children.

26. In addition, the Sponsor had suggested that he had only one additional partner in the Netherlands, which had ended 10 years prior to this hearing, which supported his assertion that the rekindling of the relationship in 2015 was a genuine one. He suggested that his answers in interview referring to 4 partners had been misunderstood, in the sense that he did not have 4 partners at one time, but 4 partners in total over the years. I did not assess his evidence as reliable. He suggested that he had left the Netherlands in 2015 because he had problems with his girlfriend there, in answer to question [15] which suggested an ongoing relationship; and also he had a girlfriend there, in the present tense, in answer to question [13]. He suggested that his wife had come to the United Kingdom to be close to him and that she had a UK visa (in answer to question [20]) when in fact she merely had a visit visa and remained unlawfully. He also answered question [26] as to how many relations he was in now, by saying '4', including with his partner in the UK, with the mother of his children in the Netherlands and 2 girlfriends in the Netherlands. I accept the submission that the fact that he was unfaithful did not necessarily mean that the marriage with the appellant had been entered for the purposes of immigration advantage, but I assessed that he was not an honest and credible witness. This was relevant in assessing the credibility of the claimed rekindling of the relationship in 2015. In assessing the reason for doing so, the appellant was a witness who had previously taken the serious step of using false documentation to seek an EEA residence card; the Sponsor was not a reliable and honest witness; and the timing of the rekindled relationship was not explained by the fact of the Sponsor's mother's death and the need to care for the couple's children.
27. I accept that the appellant's answers in interview question 22 could be interpreted as meaning that merely that her marriage in 2017 was to reflect an existing genuine relationship, namely a traditional one but I had to consider her answer in the context of having previously sought to legalise her stay by means of deception. She now wished to get married to legalise her stay. The Sponsor's family had previously assisted her in her deception and the Sponsor himself was not a man of candour or honesty. While I noted that the couple have since had an additional child, I find that the respondent has shown that the principal purpose of the couple's marriage in 2017 was to gain an immigration advantage and not a reflection of a claimed rekindling of their relationship in 2015."

The grounds and submissions

15. There are three grounds which may be summarised as follows:
- (i) (Ground 1) The judge erred in finding that the evidence as to why the appellant and the sponsor rekindled their relationship was inconsistent when the evidence was consistent.
 - (ii) (Ground 2) The judge erred in her reasoning in the first sentence of para 27 because: (i) he failed to take into account the fact that it was the sponsor who asked the appellant to re-marry him so that their family could have a fresh start, as the appellant's and the sponsor's oral evidence summarised at paras 9 and 15, respectively, of the judge's decision shows; and (ii) if the sole purpose of the appellant entering into the marriage with the sponsor was for an immigration advantage, this "*could and arguably would have been done a lot sooner*".
 - (iii) (Ground 3) that the judge materially erred in law in his assessment of credibility by failing to take into account medical evidence regarding the

sponsor's brain injury. The medical evidence referred, inter alia, to the sponsor's inability to remember consistently.

16. In relation to ground 1, after some discussion at the hearing before me on 10 January 2019, Ms Dirie agreed that she was not suggesting that the judge's reasoning at para 25 of his decision was wrong but that, in his assessment of this aspect of the case, the judge had overlooked the fact that there was other consistent evidence as set out at paras 5-10 of the grounds. In essence, this evidence, said to have been overlooked by the judge and which is relied upon at para 5-10 of the grounds, is that appellant's and the sponsor's evidence as to the reasons what their relationship was rekindled was that it was the dying wish of the sponsor's mother; that the sponsor had then moved to the United Kingdom to show his commitment to the appellant and collected their children from Nigeria in 2016; and that this was followed by the sponsor proposing to the appellant and the marriage taking place in 2017.
17. In relation to ground 2, Ms Dirie relied upon para 13 of the grounds, summarised at my para 15(ii) above.
18. Ms Dirie informed me that ground 3 concerned the judge's reasoning at para 25, specifically, the inconsistency in the sponsor's evidence as to the timing of his mother's death, whether in 2014 or in 2015.
19. Mr Avery submitted that the grounds amount to no more than a disagreement with the judge's reasoning. Although it may have been said in oral evidence that the relationship between the appellant and the sponsor rekindled because of the wishes of the sponsor's mother, the sponsor's answers at questions 29 and 30 of his interview were relevant, i.e. that his mother had told him that he "*should get back with my wife for the sake of my kids*". Accordingly, Mr Avery submitted that it was open to the judge to draw the inference that the primary reason why the sponsor's mother felt that they should rekindle their relationship was the care of the children. He submitted that the judge was therefore entitled to reason that the rekindling of the relationship between the appellant and the sponsor was driven by the need for their children to be cared for but, Mr Avery submitted, there were already arrangements in place for their care, as the sponsor's sister was looking after them then. Mr Avery submitted that ground 2 ignores the fact that the appellant had already attempted to obtain leave by deception by pretending to be the sister of the sponsor's brother. He submitted that there was no substance in the suggestion that the appellant could have applied for a residence card sooner if the sole purpose of her marriage to the sponsor was to gain an immigration advantage. As the sponsor was in a relationship in the Netherlands and had three children by another lady, there may have been many reasons why it might not have been possible for the appellant to make an application for a residence card as the sponsor's wife sooner.
20. In relation to ground 3, Mr Avery submitted that the one-page document at page 81 of the appellant's bundle, which is the only medical evidence relied upon before the judge, was not a proper medical report.

Assessment

21. Ground 1 was re-formulated by Ms Dirie at the hearing, as explained at my para 16 above. Essentially, therefore, ground 1 is that the judge erred in finding that the evidence of the appellant and the sponsor as to the reasons why their relationship

was rekindled was inconsistent, in that, he overlooked taking into account their evidence that the reason why their relationship rekindled was that it was the dying wish of the sponsor's mother that they rekindle their relationship and that their evidence was consistent with the fact that the sponsor moved to the United Kingdom and brought their children from Nigeria to the United Kingdom.

22. There is simply no substance in ground 1. It is abundantly clear that the judge was fully aware of the evidence of the appellant and the sponsor that it was the dying wish of the sponsor's mother that they should get together again. He was fully aware of their evidence that this is the reason why the sponsor moved to the United Kingdom and why he fetched their children from Nigeria.
23. I therefore reject ground 1. In effect, ground 1 amounts to no more than an attempt to re-argue the appellant's case.
24. Likewise, there is no substance in ground 2. The judge was plainly aware of the evidence of the appellant and the sponsor that it was the sponsor who had proposed to the appellant. He summarised their evidence in this regard at paras 9 and 15 of his decision. There is no reason to think that he did not take it into account. The submission that the appellant could have legally married the sponsor sooner if the sole purpose of the appellant entering into the marriage with the sponsor was for an immigration advantage amounts to no more than an attempt to re-argue the case. In any event, I agree with Mr Avery that this submission ignores the fact that, as the sponsor had another family in the Netherlands, there may have been many reasons why it could not have been done sooner.
25. Ms Dirie explained at the hearing that ground 3 relates to para 25 of the judge's decision; specifically, the inconsistency in the sponsor's evidence as to the timing of his mother's death, whether in 2014 or in 2015.
26. It is plain, from para 25 of the judge's decision, that he took into account, against the sponsor's credibility, that he had been inconsistent about the timing of his mother's death. At the hearing, the sponsor gave oral evidence that he could not remember when his mother died as he had problems with his memory.
27. Although I agree with Mr Avery that the medical evidence relied upon in this case is not a full report (it consists of merely one-page), it is nevertheless a document from Dr Clarence Liu, a consultant neurologist, who has had responsibility for or oversight of the sponsor's case or, alternatively, has had access to his medical records. The document related to an assessment on 21 May 2018. The hearing before the judge took place on 17 July 2018. Dr Liu states that the sponsor's symptoms are mainly due to the psychological effects of the injury he suffered rather than organic memory loss. However, he goes on to say that the sponsor can remember well what he has forgotten about and often such problems indicate slow processing and distractibility rather than memory loss as such.
28. The inference I draw from Dr Liu's evidence is that what may appear to be memory loss at a given point in time may subsequently turn out not to be so because the sponsor may subsequently remember what he has forgotten about and that the underlying problem is slow processing and distractibility rather than memory loss as such. It is also clear from Dr. Liu's evidence that the sponsor has suffered from these problems since he suffered his brain injury in 2013, although the regularity with which he suffers from the "*memory loss*" is not stated.

29. Dr Liu's evidence, albeit brief, was sufficient to support the sponsor's evidence that he had problems with his memory at the hearing because it is clear from Dr Liu's evidence that he may have what appears to be memory loss at a given point in time but subsequently he may remember what he had forgotten about. Dr. Liu's evidence was therefore capable of supporting the sponsor's evidence at the hearing, that he could not remember when his mother died. It was also capable of explaining the reason for his evidence concerning the timing of his mother's death being inconsistent.
30. Accordingly, the judge should have considered Dr Liu's evidence in his assessment of the inconsistency in the sponsor's evidence concerning the timing of his mother's death. However, this aspect of the judge's assessment of the sponsor's evidence represented a small part of his assessment of the sponsor's evidence as a whole which, in turn, only represented part of his assessment of the case as a whole. Having carefully considered the whole of the judge's reasoning, I have concluded that the outcome could not have been any different on any legitimate view.
31. I have therefore concluded that any error on the part of the judge in failing to take into account Dr. Liu's evidence is not material, i.e. it is not sufficient for the decision of the judge to be set aside.

Decision

The making of the decision of the First-tier Tribunal did not involve the making of any error of law sufficient to require it to be set aside.



Signed
Upper Tribunal Judge Gill

Date: 25 January 2019