



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: EA/05940/2019 (P)**

THE IMMIGRATION ACTS

**Decided under Rule 34
On 27 October 2020**

**Decision & Reasons Promulgated
On 02 November 2020**

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

**EGHOSA IKPONMWEN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. The Appellant is a citizen of Nigeria born on 13 November 1982. He appeals against the decision of First-tier Tribunal Judge T R Smith, promulgated on 30 January 2020, dismissing his appeal against the refusal of a residence card under the Immigration (EEA) Regulations 2016 on the ground that the marriage was one of convenience. The appeal was decided on the papers at the Appellant's request.
2. Permission to appeal was granted by First-tier Tribunal Judge Adio on 13 May 2020 on the grounds it was arguable the judge had erred in law in relying on unsupported evidence in the form of letters inviting the Appellant for interview if in fact those letters were not before the judge or part of the Respondent's bundle.
3. On 30 July 2020, Upper Tribunal Judge Norton Taylor issued a note and directions expressing his provisional view that it would be appropriate to

determine the appeal without a hearing. The Appellant was invited to address the issues of whether there was an error of law in the decision of the First-tier Tribunal and whether the decision should be set aside. The parties were invited to submit reasons for the view that a hearing was necessary.

4. Judge Norton-Taylor noted the grounds of appeal were focused on the assertion that the Respondent had failed to provide copies of the interview invitation letters dated 14 and 18 October 2019. Judge Norton-Taylor stated:
 - “5. Having perused the papers on the file for myself, I note that at pages 72 and 75 of the respondent’s bundle, which had been sent to the Appellant’s representatives under cover of the letter of 30 December 2020, there are copies of the two interview invitation letters. Whilst Judge Smith did not state in terms he had the respondent’s bundle before him, there is certainly no evidence to suggest that he did not, and his references to the invitation letters in his decision indicate that he had in fact seen them for himself.
 6. The appellant’s representative may wish to reflect on the above. It is for the appellant to make out his case on appeal.”
5. The Appellant’s representative submitted further submissions on 27 August 2020 stating that at the date of filing the application for permission to appeal on 12 February 2020, the Appellant had not received the Respondent’s bundle and the Respondent was requested to provide proof of service. It was the Appellant’s case that he was not aware of the marriage interview letters and was therefore deprived of the opportunity to respond to the Respondent’s reasonable suspicion that the marriage was one of convenience. Having regard to the Appellant’s persistent requests for disclosure the judge should have considered whether the Appellant was provided with copies of the interview invitation letters. It was in the interests of justice that the Appellant be afforded opportunity to attend a marriage interview.
6. The Respondent submitted that it was apparent from pages 72 and 75 of the Respondent’s bundle that the Appellant and his spouse were invited to attend interview. They failed to indicate that they would attend and the Respondent wrote to the Appellant on 24 October 2019 stating that due to this failure the application would be referred to the case working team for a decision to be made on the information provided. The Respondent contacted the Appellant’s representatives, SLA Solicitors, by telephone on 14 October 2020 and confirmed the email address to which the interview invitation letters were sent. The letters were referred to in the refusal letter dated 29 October 2019 and there was no record of a request to provide copies. The Appellant was aware that the Respondent did not accept the relationship was genuine.
7. The Appellant requested the appeal be determined on the papers. The judge considered the evidence before him and his conclusion that the marriage was not genuine was open to him on that evidence.

8. It is the Respondent's position that the appeal can be decided without hearing. The Appellant did not express a view on this matter. I have considered the views of the parties and the overriding objective. I am satisfied, after considering the submissions from the Respondent and the Appellant set out above and the grounds of appeal, that the appeal can be justly determined without a hearing.

Conclusions and reasons

9. The interview invitation letters dated 14 and 18 October 2019 were in the Respondent's bundle on the court file at pages 72 and 75. It is apparent from paragraphs 19 and 20 that the interview invitation letters, relied on by the Respondent, were before the Judge Smith.
10. The interview invitation letters were sent to SLA Solicitors who have represented the Appellant throughout. The address is the same as that on the court file, the refusal letter and the grounds of appeal. The email address is the same as that given in the refusal letter and on the letters from SLA solicitors to the Tribunal and the Respondent in connection with the application and the subsequent appeal. The Respondent has subsequently confirmed the email address to which the letters were sent was correct.
11. The grounds of appeal against the Respondent's refusal, dated 4 November 2019, state:

"The Respondent's grounds for refusal are unreasonable and not borne out of the documentary evidence submitted with the Appellant's application. The Appellant requests that this appeal is decided on the papers submitted because the appeal raises the sole issue relating to the genuineness of his marriage as well as the validity and proper registration of the Appellant's proxy customary marriage in accordance with the applicable Nigeria marriage laws. Secondly, neither the Appellant nor his solicitors was notified/aware of any invitation for the marriage interviews on 14 and 18 October 2019. The Secretary of State/Respondent is hereby put on notice to disclose and provide copies of the marriage interviews and proofs of delivery/service."
12. The evidence before the First-tier Tribunal was sufficient to establish that the Appellant was invited to interview on two occasions and he failed to attend. The judge was entitled to take this into account. The judge gave adequate reasons at [25] to [33] for finding that the marriage was not genuine. There was no challenge to these findings. The Appellant's failure to attend interviews was an additional factor taken into account at [34].
13. In any event, the failure to attend interviews was not material to the decision to dismiss the appeal. The Appellant exercised his right of appeal against the Respondent's decision. He has been given the opportunity to

respond to Respondent's allegation that the marriage was one of convenience and to produce evidence at the appeal. The Appellant chose not to attend the hearing and he was not represented.

14. The judge's conclusion that the marriage was one of convenience was open to him on the evidence before him. There was no error of law in the decision of 30 January 2020 and I dismiss the Appellant's appeal.

Notice of decision

Appeal dismissed.

J Frances

Signed
Upper Tribunal Judge Frances

Date: 28 October 2020

TO THE RESPONDENT **FEE AWARD**

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

J Frances

Signed
Upper Tribunal Judge Frances

Date: 28 October 2020

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.

3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.

5. A “working day” means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is “sent’ is that appearing on the covering letter or covering email