



**Upper Tribunal  
(Immigration and Asylum Chamber)** Appeal Number: UI-2022-003308  
EA/00706/2022

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 24 November 2022**

**Decision & Reasons Promulgated  
On 21 February 2023**

**Before**

**UPPER TRIBUNAL JUDGE RIMINGTON  
DEPUTY UPPER TRIBUNAL JUDGE CHANA**

**Between**

**MRS GANIYAT OLAIDE OLANLOKUN  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

Representation:

For the appellant: Mr A Syed-Ali, counsel

For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Nigeria and his date of birth is 24 June 1990. He appeals against the decision of the First-tier Tribunal Judge Kudhail who dismissed his appeal against the decision of the Secretary of State on 11 January 2022 to refuse his application under the EU settlement scheme (EUSS) Appendix EU (FP).

2. Permission to appeal was at first refused by Judge Aldridge of the First-tier Tribunal on 22 July 2022 but was granted by Upper Tribunal Judge Grubb on 16 September 2022 stating that it is arguable that the First-tier Tribunal Judge fell into error when he found that the appellant's pre-'the specified date' Nigerian marriage certificate was not genuine and that the marriage actually took place after 30 December 2020 which meant that the requirements of the EUSS were not met. It was also considered arguable that the Judge reached inconsistent findings, which were inadequately reasoned at paragraph 28, that both registration documents were not genuine and yet accepted at paragraph 28 that the marriage was registered on 23 March 2021 which was what the second document (apparently not genuine) purported to show.
3. The matter came before us to determine whether the First-tier Tribunal made an error of law.
4. The grounds of appeal are repetitive but in summary state that the Judge made negative findings on the issues as to whether the appellant was validly married before or on the specified date and whether the appellant was in a durable relationship with her sponsor at or before the specified date and his reasoning was deficient amounting to errors of law.
5. The appellant provided an Islamic marriage certificate which was registered by local government on 29 June 2020 which was before the specified date to corroborate the validity of marriage. No reason was provided by the Judge for not accepting that the marriage was duly registered with local government. The Judge erroneously accepted the respondent's argument that the marriage certificate submitted was not genuine and his subsequent conclusion at paragraph 25 that because it was not disclosed in the appellant's previous application, "it was not in existence" was flawed.
6. No document verification report was provided by the respondent to prove that the marriage certificate was not genuine. The Judge however accepted that the claimed "not genuine" marriage was in fact registered on 23 March 2021. The Judge chose which certificate to accept and accepted the one with the date that would adversely affect the appellant's case. The Judge opined that the document was not genuine because it was not submitted with the appellant's previous application. The Judge failed to consider that the appellant and her sponsor are expecting a child and that should have led him to conclude that the appellant is in a durable relationship with her sponsor. The respondent did not prove that the marriage certificate was false as alleged.
7. The appellant submitted further documents in response to the respondent's "next steps" Direction to provide any other evidence. The appellant submitted a fresh application and presented further evidence

as advised by the respondent. The new application should be considered as a fresh application with all supporting documents available given to the Home Office. The appellant's previous application should not have been given any consideration in the current application.

8. The Judge did not take into account the documents provided by the appellant including the validity of religious marriages which were registered by local authorities. The Judge took into account the registration date of 23 March 2021 instead of 20 June 2020. This irregularity made a material difference to the outcome and fairness of the proceedings. Had the respondent visited the Nigerian government website she would have found that the registration existed and that this evidence was uncontentious.
9. The Judge at paragraph 23 of the decision did not take into account the appellant's honesty in confirming that the appellant and the sponsor have not lived together continuously for two years but that should not be a sufficient reason for the Judge to conclude that the appellant did not meet the requirements of being a durable partner as it is not determinative of the issue of durable relationship. There was evidence before the Judge that the relationship was formed in November 2018.
10. We heard submissions from both parties. The appellant's counsel relied on his skeleton argument and the respondent relied on her brief rule 24 response and said that the Judge did not make an error of law and his findings were appropriate and well reasoned on the evidence before him.
11. Mr Syed Ali submitted that the judge had erred in the weight that he had attached to the documentation. Although it was accepted that the registration document relating to the marriage had not previously been provided with the application, it was not open to the judge to find the registration document was a forgery.
12. Mr Clarke submitted that marriages were only accepted where registered. The respondent accepted the marriage certificate dated 23rd March 2021 but did not accept the earlier documentation ie registration at the local office which had not been previously produced. The timeline is important when considering the way the judge approached the credibility of these documents. The marriage registration at page 63 (dated 29<sup>th</sup> June 2020) and the Ilorin West Local Government attestation letter dated 13<sup>th</sup> April 2022 at page 64 of the bundle were not before the Entry Clearance Officer and there was no proper explanation for the absence when considering the importance.

### **Error of law findings**

13. This was a decision under the EUSS and the appellant exercised his right of appeal under Regulation 3 of the Immigration (Citizens' Rights Appeals) EU Exit Regulations 2020.
14. We have carefully considered the appellant's grounds of appeal and the arguments presented to us at the hearing. The two issues before the Judge to determine in this appeal were the reliability of the Islamic marriage certificate to prove that the appellant was validly married to her sponsor before the specified date and the durability of the appellant's relationship at the exit date with her German sponsor in order to be granted leave to enter the United Kingdom under the EUSS regime.
15. The appellant submits that she married her sponsor under Islamic custom on 20th June 2020 and registered her marriage with the local authority on 29<sup>th</sup> June 2020 before the specified date of 31<sup>st</sup> December 2020 and was therefore entitled to a residence card. She also claims that she has demonstrated that she was a durable partner of her German national sponsor in the United Kingdom at the specified date as their relationship started in 2018 although accepting that they have never lived together as they live in different continents.
16. The Judge in his decision stated that although the appellant claims that she and the sponsor were married under Islamic law on 20th June 2020 and claims that registration with the local authority took place on 29<sup>th</sup> June 2020, this was not disclosed with her previous applications which goes to the credibility of the validity of the certificate.
17. The current application was made in July 2021. Evidence was recorded that the receipt of the certificates of registration (at page 63 and 64 of the bundle) was on 13 April 2021. The Judge found, notwithstanding, that the explanation of the late disclosure of the registration of the marriage certificate was inconsistent as it did not explain why the marriage was registered *again* on 23<sup>rd</sup> March 2021 and submitted with the application. A previous application was made on 25<sup>th</sup> April 2021 but the appellant did not, on this application or her previous application in January, disclose that she had registered her Islamic marriage on 20<sup>th</sup> June 2020.
18. The Judge did not accept the appellant's explanation for why the disclosure of the June 2020 marriage was not included in her April 2021 application which was that his wife "was confused". The Judge was entitled to find that this explanation was vague at best and did not explain why the appellant failed to make that disclosure with her earlier applications. The approach to the evidence was open to the Judge on the evidence.
19. The Judge found the marriage and marriage registration certificate unreliable and effectively found that if the certificate was known to the appellant at the date of April 2021 application, she would have

submitted it to respondent, instead of providing it later at the hearing. The Judge was entitled to find that the implication was that it has been produced later and therefore not reliable and the further implication being that the marriage and registration took place was after the specified date.

20. Furthermore the Judge also states at [27] of the decision that 'additionally', although a registration number had been provided on the copy of the registration certificate it was '*not complete as the copy is not clear*' and although the certificate identified that 'one can check the status of this certificate on a government website'... neither the 'appellant nor the sponsor have provided evidence from this website to confirm it is a genuine document as claimed'. We find that the Judge adequately reasoned the lack of reliability of the marriage certificate registration and there is no material error in his reasoning. The appellant grounds of appeal are a mere disagreement with the judge's findings.
21. The respondent accepted in her reasons for refusal letter that only Islamic marriages which have been registered with the local government are considered valid by the United Kingdom. The Judge found on evidence that registration of the marriage had not been completed before the specified date and therefore the appellant could not succeed in her appeal. This was the conclusion open to the Judge on the evidence.
22. The appellant submitted that the respondent or the Tribunal could look up the Nigerian registry to determine that the marriage was appropriately registered before the specified date. It is not for the Tribunal to conduct post hearing research as the burden of proof is on the appellant to prove that she meets all the legal requirements of her application.
23. In respect of the durability of the relationship, the Judge found that appellant and the sponsor have both confirmed that they have not lived together for two years in either Nigeria or the United Kingdom and thereby concluded that by their own evidence, they are unable to meet the requirements of being a durable partner".
24. It has been accepted that cohabitation for two years is not necessarily determinative of the issue of durability of a relationship within Appendix EU but it is clear that there must be *significant evidence* (emphasis ours) of durability.
25. The definition of a family member of a relevant EEA citizen in Annex 1 to Appendix EU requires that the partnership was formed and was durable before 31 December 2020. A durable partnership is one where the couple have lived together in a relationship akin to marriage or civil partnership for at least two years by that date and time, unless there

was at that date and time other significant evidence of the durable relationship.

26. The Judge found that the appellant and the sponsor accepted that they have not lived together in the relationship akin to marriage for two years and that they have been living apart in a different continent. The Judge properly directed himself at [11] of the decision in relation to 'significant evidence' of a durable relationship and clearly found that the evidence was thin as to the durable relationship. On the evidence presented there was no significant evidence of the durability of the relationship. It was noted at 17(m) that 'he [sponsor] lives in the UK and she [appellant] lives in Nigeria'. As stated in the reasons for refusal the appellant had provided no evidence that he had lived with his sponsor in a relationship akin to marriage, nor any evidence of the relationship before December 2020 (save for one money remittance and WhatsApp messages dated 11<sup>th</sup> December 2020 onwards). There were additionally some photographs of a wedding (undated). The evidence did not constitute significant evidence of a durable relationship and the Judge was entitled to find on the evidence before him that there was no durable relationship. There was no material error in the judge failing to refer specifically to 'other significant evidence'.
27. In respect of the child there was no objective evidence before the Judge of the existence of this child. There was no reference in the refusal letter. The sponsor informed the First-tier Tribunal at the hearing that his "wife is pregnant and is due to have the baby early next month". There was medical evidence that the appellant was pregnant but no independent objective evidence of the child was before the Judge. In the witness statements and oral evidence other than the fact that the child exists which the appellant claims proves the durability of the relationship, there was no other independent and credible evidence of the child or that the appellant's sponsor is the father.
28. The appeal was correctly dismissed under the Immigration Rules (Appendix EU) as the Judge was entitled to find that the appellant has not provided sufficient evidence to confirm that she is a family member of a relevant EEA citizen prior to the specified date, as defined in Annex 1 of Appendix EU which is 31 December 2020.

## **Notice of Decision**

### **Appeal dismissed**

## **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

No anonymity direction is made.

Signed by

Deputy Upper Tribunal Judge S Chana Dated this 5<sup>th</sup> day of December  
2022

---

## 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.

No anonymity direction is made.

Signed Judge S Chana

Date 5<sup>th</sup> day of December 2022