



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000866

First-tier Tribunal No: EA/09091/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 13 June 2023

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

OLAYIWOLA OLUWAFEMI SOFOLA
(no anonymity order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Layne, instructed by Visas 24/7
For the Respondent: Mr E Terrell, Senior Home Office Presenting Officer

Heard at Field House on 31 May 2023

DECISION AND REASONS

1. The appellant is a citizen of Nigeria born on 10 January 1979. He appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse his application for settled or pre-settled status under the EU Settlement Scheme (EUSS).

2. The appellant made his application under the EUSS on 21 June 2021 as the spouse of an EEA (Irish) national, whom he had married on 10 October 2020. He and his spouse attended a marriage interview on 30 August 2022 via Skype. His application was refused on 13 September 2022 on the grounds that it was not accepted that the relationship was genuine. The respondent considered that the marriage was one of convenience, owing to inconsistencies between the accounts given by the appellant

and the sponsor at the interview. Such inconsistencies arose in particular in relation to the contact the appellant had with his own children, how many children the sponsor had, when they came to visit the sponsor in the UK and how many times the appellant saw them during their stay; details of the appellant's and sponsor's respective siblings; the sponsor's property in Ireland and who lived there, and when they moved into their current accommodation; and periods of separation for travel when the sponsor visited Nigeria and Ireland.

3. The appellant appealed against the respondent's decision and elected for the appeal to be determined on the papers without an oral hearing. His appeal came before First-tier Tribunal Judge Skehan who considered it on the papers on 15 February 2023. Judge Skehan considered that the respondent had reasonable grounds to allege a marriage of convenience by reference to the inconsistencies in the accounts of the appellant and sponsor. The judge noted that she had no oral evidence from the sponsor and appellant and their friends and she concluded on balance that the marriage was one of convenience, such that the eligibility requirements under the EUSS were not met. The judge accordingly dismissed the appeal.

4. The appellant then sought permission to appeal to the Upper Tribunal on the grounds that the judge had erred by failing to give a clear explanation as to how she had made her assessment of the children visiting the UK in August 2022; by failing to acknowledge photographs of the two families meeting for the wedding day in Nigeria and to consider the effort made by the families to visit one another including the sponsor's visit to Nigeria to meet the appellant's mother, and the additional celebration which took place in the UK in April 2021; and by failing to consider the clarification provided for the inconsistencies and to consider that the couple were nervous at their interview.

5. Permission was granted in the First-tier Tribunal on the grounds that it was arguably incumbent upon the judge to make findings on matters identified in the grounds. Reference was also made in the grant of permission to the case of The Secretary of State for the Home Department v SSGA (Iraq) [2023] UKUT 12, where adverse credibility findings were made in circumstances where there had been no oral hearing.

6. The matter then came before me and both parties made submissions.

7. Mr Layne submitted that the judge's decision was flawed as she had failed to make findings on relevant points raised by the appellant and sponsor in their witness statements, in particular in relation to the sponsor's visit to Nigeria to visit the appellant's mother, the post-wedding celebration in April 2021, and the fact that the sponsor's children came to visit the appellant in the UK. Although the decision was made on the papers, the judge still had to consider and address all relevant matters, particularly where credibility was in issue. Mr Layne submitted that the judge's decision should be set aside and the case remitted to the First-tier Tribunal for a fresh hearing which the appellant and sponsor would attend in person. Mr Layne accepted that the case of SSGA cited in the grant of permission was not on all fours with the appellant's case but he relied on one point raised in the decision which was relevant, namely that where credibility issues were raised it was always sensible for the appellant and sponsor to be presented for cross-examination at an oral hearing.

8. Mr Terrell submitted that the judge had all points in mind and did consider all the evidence but was not required to address each and every piece of evidence. The judge focussed on the main issues and was entitled to consider the inconsistencies in the accounts given by the appellant and sponsor to be significant, particularly those

relating to their respective children. The appellant had elected to have a papers determination of the appeal, with the result that he was not able to provide clarification of matters beyond those demonstrated in the papers. The decision was therefore safe. With regard to the case of SSGA, that related to a different part of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 (FTT Procedure Rules), namely Rule 25(1)(e) and (g), rather than the Rule relevant to the appellant's case, Rule 25(1)(a), where a request had been made for a papers hearing.

9. In response, Mr Layne submitted that the appellant opted for a papers hearing because of the fees for an oral hearing. The judge still had to conduct the hearing fairly and look at all the facts, whereas in this case she had not considered the appellant's side of the account properly and had conducted only a very brief analysis.

Discussion

10. Dealing with the second point, namely the guidance in SSGA, Mr Terrell is clearly correct in submitting that there was nothing in that decision which materially impacted upon the appellant's own situation. SSGA concerned a situation arising from Rule 25(1) (e) and (g) where a decision was made by the judge without consideration of the merits of the case in circumstances where the respondent had failed to comply with directions and was not in attendance at the hearing. That was entirely different to the situation of this appellant who had specifically requested a papers hearing and had elected not to attend an oral hearing of the appeal, and which therefore fell within the exception at Rule 25(1)(a). As Mr Terrell submitted, the appellant could not request a papers determination and then complain when the case went against him, having by his own actions deprived himself of an opportunity to clarify matters to the Tribunal. Mr Layne mentioned in his submissions in reply that the appellant elected a papers hearing because of the fee for counsel at an oral hearing, but that was not a reason why he could not attend in person with the sponsor to answer any questions put by the Tribunal.

11. It is of course correct, as Mr Layne submitted, that the fact that the appeal was to be determined on the papers did not mean that the judge was not required to give careful consideration to all relevant matters, particularly where credibility was in issue. However it is plain in this case that the judge did give careful consideration to all relevant matters. I do not accept the suggestion that the judge failed to consider the appellant's own account and any matters which may have been favourable to him or that she failed to consider the appellant's explanation for inconsistencies and discrepancies in the evidence. As Mr Terrell properly submitted, the judge was not required to make specific reference to each and every piece of evidence when it was otherwise clear that she had had regard to all the documents and had all the evidence in mind. The judge plainly gave full and careful consideration to all the evidence, setting out the documents before her and summarising the appellant's and sponsor's evidence from their witness statements. At [9], the judge considered the appellant's explanation for the inconsistencies in the evidence and accepted that there may have been some misunderstanding arising from the questions asked. However she was ultimately persuaded that the nature of the inconsistencies in other respects were such that they could not be adequately explained, as she said at [10]. That was with reference in particular to the starkly differing accounts in relation to the visit from the sponsor's children and the conflicting evidence about the sponsor's trip to Ireland, both of which were said to have taken place shortly before the interview and which the judge was accordingly fully and properly justified in finding to be of significance in assessing the nature of the appellant's relationship with the sponsor. Having therefore

considered all of the evidence, including evidence which was potentially favourable to the appellant, the judge reached a conclusion she was fully and properly entitled to reach.

12. In summary, therefore, the judge's decision was based upon a detailed consideration of all the evidence, with due regard being given to the appellant's explanations and the evidence upon which he relied, and with cogent reasons given for the findings made. The judge's analysis at [8] to [10] may not have been the most detailed, but it clearly focussed on the most relevant matters and provided a full and fair assessment of the appellant's case. There was no unfairness in the judge's approach to the evidence. The judge's findings and conclusions were fully and properly open to her on the evidence available to her. The grounds of appeal do not identify any errors of law in the judge's decision. Accordingly I uphold her decision.

Notice of Decision

13. The making of the decision of the First-tier Tribunal did not involve a material error on a point of law requiring it to be set aside. The decision to dismiss the appeal stands.

Signed: S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

31 May 2023