



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000764

First-tier Tribunal No: EA/00973/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 25th of April 2024

Before

UPPER TRIBUNAL JUDGE PERKINS
DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

EGOH ABIGAIL UGOCHUKWU
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Ojukotola of SLA Law Ltd
For the Respondent: Mr E Tufan, Senior Presenting Officer

Heard at Field House on 10 April 2024

DECISION AND REASONS

1. This is an appeal against a decision of First-tier Tribunal Judge Hussain promulgated on 12 December 2023 dismissing the Appellant's appeal in respect of an application made under the European Union Settlement Scheme ('EUSS').
2. The Appellant is a national of Nigeria born on 2 October 1984. Her EUSS application was made on 20 July 2023 on the basis of being the spouse of Mr Filipe Nunes Dos Reis, a national of Portugal (d.o.b. 29 December 1986), ('the Sponsor'). It was the Appellant's case that she had married the Sponsor on 26 December 2020 by proxy pursuant to customary tradition in Nigeria (neither party being present in Nigeria). In support of the application the Appellant submitted a number of documents purportedly proving the fact of the proxy marriage: see Respondent's bundle before the First-tier Tribunal at pages 48-54.

Those documents included in particular what was said to be a certificate of registration of the marriage - 'Native Law & Custom Marriage Certificate' issued through a local office of the Lagos State Government (page 49).

3. The Respondent refused the application on 17 September 2023 for reasons set out in a decision letter of that date. The pertinent part of the decision letter is in these terms:

"You state that you are a spouse of a relevant EEA citizen. However, you have not provided sufficient evidence to confirm this. ...

The required evidence of family relationship for a spouse of a relevant EEA citizen, where the spouse does not have a documented right of permanent residence is" - there then follows a number of alternatives, the last of which is - "or a valid marriage certificate, as the spouse of that relevant EEA citizen. You have not provided any of these documents".

4. The Appellant appealed to the IAC.

5. In her grounds of appeal dated 30 December 2022 it was stated in terms:

"Contrary to the assertion of the Secretary of State, the Appellant provided valid customary marriage documents under the Nigerian native law and customs and overwhelming documentary evidence of her residence and cohabitation with her EEA sponsor in the UK as at 31 December 2020".

6. Further to this, the Appellant provided to the First-tier Tribunal a Skeleton Argument which amplified the grounds and reiterated that documentation in respect of the marriage had been submitted with the application - making express reference to pages 48-54 of the Respondent's bundle. The Skeleton Argument also set out matters in respect of the recognition of foreign marriages in the UK. Further, there was reference to Nigerian statute on registration of marriage - the Birth, Death, etc. (Compulsory Registration) Act. (We note, parenthetically and for completeness, that Mr Ojukotola produced a letter from the Foreign and Commonwealth Office dated 4 February 2013 in respect of proxy marriages which makes express reference to that same instrument.)
7. The proceedings before the First-tier Tribunal were 'on the papers' without a hearing: accordingly the supporting documents submitted with the application and the written material relied upon by way of Grounds and Skeleton Argument, were particularly relevant.
8. For reasons that are unclear, the First-tier Tribunal Judge has completely overlooked these documents in the Decision. The focus in the Decision is on the issue of the recognition of such marriages in Nigeria and the consequent recognition in the UK by reference to the lex loci of the place of marriage (paragraphs 12 and 13) to an extent that the Judge seemingly erroneously formed the view that the Appellant had failed to address the basis of the Respondent's refusal.
9. Mr Tufan very helpfully and properly acknowledged that there was a material error of law in that the Judge failed to engage with the case as presented by the Appellant and failed to engage with the documents relied upon by the Appellant. That concession is such that we accept it, and the necessary consequence is that the Decision of the First-tier Tribunal Judge must be set aside.

10. This leaves the issue of the re-making of the decision in the appeal - and it is perhaps this issue that has detained us more today than the 'error of law' issue which, as indicated, Mr Tufan readily conceded.
11. We note in the premises that it is not for a domestic court to attempt to interpret foreign law. It would not be for the Tribunal to proceed to an analysis of what had happened in Nigeria in attempt to adjudicate upon the validity of the certificate at page 49 by reference to Nigerian law. It seems to us that what is pertinent is that a certificate was issued, whether or not that was done properly in accordance with Nigerian law is a matter for the Nigerian authorities; it is not for the Tribunal to entertain submissions and adjudicate on any potential issue of foreign law.
12. We mention this because Mr Tufan made reference to the possibility that provisions under Nigerian statutory law provide for a period to pass between a divorce and a further marriage, and suggested that this period is 90 days. The Appellant had relied upon a document indicating she was divorced on 30 October 2020 (Respondent's bundle pages 55-57) - i.e. fewer than 90 days before the date of the proxy marriage ceremony. Mr Tufan frankly acknowledged that he was not able to put materials in front of the Tribunal at the time of the hearing. In contrast, Mr Ojukotola emphasised that this was a traditional marriage and as such the statutory provisions would not apply. Be that as it may, for the reasons already indicated, it is not for us to adjudicate upon any debate or discussion in this regard.
13. That leaves the question of whether or not the certificate of registration of the marriage is a genuine document. We cannot help but notice that it was submitted with the application and not commented upon at all by the Respondent. Moreover, it was relied upon again in the context of the appeal. The Respondent had an opportunity to respond by way of Review or other written argument joining issue with the Grounds and the Skeleton Argument, but did not do so. Nor has anything been formally raised with due notice in the context of the proceedings before the Upper Tribunal pursuant to Rule 24 or Rule 15(2A).
14. We considered whether we would be working any unfairness on the Secretary of State by proceeding to re-make the decision on the basis of the available evidence, and not affording the Respondent a further chance to state a new position and/or file any further evidence. We concluded that the Respondent has had every opportunity to address the document. In the circumstances we proceeded to re-make the decision in the appeal.
15. There is nothing before us to suggest anything other than that the certificate of registration of the Appellant's proxy marriage is a genuine document that evidences the marriage in accordance with the requirements of Appendix EU. On that basis we find that the Secretary of State should have granted the application under Appendix EU of the Immigration Rules and the appeal is to be allowed accordingly.

Notice of Decision

16. The decision of the First-tier Tribunal contained a material error of law and is set aside.

17. The decision in the appeal is remade. The appeal is allowed.

The above represents a corrected transcript of ex tempore reasons given at the conclusion of the hearing.

I Lewis
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

15 April 2024

To the Respondent

Fee Award *(This is not part of the determination)*

We have allowed the appeal essentially on the basis of materials submitted with the application. In the circumstances we make a full fee award.

I Lewis
qua **Judge of the First-tier Tribunal**
Immigration and Asylum Chamber

15 April 2024