



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: EA/04578/2016

THE IMMIGRATION ACT

**Heard at Field House
On 12th December 2017**

**Decision & Reasons Promulgated
On 18th December 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

**Mr Chigozle Peter Ugwunze
(No anonymity direction made)**

Appellant

And

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Miss Record Counsel

For the Respondent: Miss Ahmad Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Mr Chigozle Peter Ugwunze date of birth 5 July 1984 is a citizen of Nigeria. Having considered all the circumstances, I do not consider it necessary to make an anonymity direction.
2. This is an appeal by the appellant against the decision of First-tier Tribunal Judge Butler promulgated on the 30th March 2017 whereby the judge dismissed the appellant's appeal against the decision of the Secretary of State for the Home Department to refuse the appellant a residence card as the spouse of an EEA national, who was exercising treaty rights. The

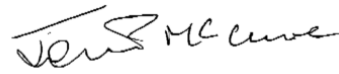
appellant had applied for a residence card as confirmation of a right to reside in the United Kingdom as the spouse of Ms Shayenne Charandra Eiflaar, a Netherlands national exercising treaty rights in the United Kingdom.

3. The letter of refusal had given the following reasons for refusing the application that:-
 - a) the identity card used to confirm the identity and nationality of the spouse had been reported stolen and therefore it was not accepted that the appellant was genuinely married to an EEA national.
 - b) given the discrepancies in the accounts of the appellant and his partner, it was not accepted that this was a genuine marriage. It was asserted that this was a marriage of convenience.
 - c) as there was no evidence that the EEA sponsor was working in the UK, the EEA national was not in any event a qualified person.
4. Judge Butler in refusing the appeal made reference to the requirements of Regulation 15 and to the fact that the evidence did not disclose that the sponsor had been working in the UK for 5 years. The judge appears to be confusing the requirements for a permanent resident card (Regulation 15 of the 2006 Immigration (EEA) Regulations) with the requirements for a residence card (Regulation 17 (1)).
5. The issues that the judge had to decide were those identified in the refusal letter. The judge has made no findings with regard to whether this was a marriage of convenience. The appellant otherwise to qualify for a residence card, if the marriage was not a marriage of convenience, had to show that the sponsor was an EEA national and that she was working in the UK. It would have been sufficient to show that the sponsor was working at the time of the hearing. Again the judge has not made a finding with regard to whether the EEA sponsor was working at the time of the hearing. The judge has made no finding as to whether the identity card belonged to the EEA national.
6. The issues identified mean that the judge has failed to make material findings. The judge has also confused the requirements of the regulations seeking to establish whether the sponsor had been working for a full five years. That was not a requirement for a residence card under Regulations 2, 6 and 17 (1) of the 2006 Regulations.
7. There are clear errors of law disclosed in the decision. The evidence needs to be considered afresh with none of the findings of fact preserved. The appropriate course is for the case to be remitted to the First -tier Tribunal for a rehearing of the case.

Notice of Decision

8. I allow the appeal to the extent that the appeal is remitted back to the First-tier Tribunal to be heard afresh.
9. I do not make an anonymity direction

Signed

A handwritten signature in black ink, appearing to read "James McClure". The signature is written in a cursive style with a horizontal line above the first few letters.

Date 12th December 2017

Deputy Upper Tribunal Judge McClure