



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: EA/03808/2017

**THE IMMIGRATION ACTS**

Heard at Field House  
Oral decision given following hearing  
On 5 July 2018

Decision and Reasons Promulgated  
On 3 August 2018

Before

**UPPER TRIBUNAL JUDGE CRAIG**

Between

**MRS OLUBUNMI SIMILEOLUWA DAN-EKHATOR**  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

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

Respondent

**Representation:**

For the Appellant: Mr Dan-Ekhator, sponsor

For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a national of Nigeria who was born on 4 July 1967. She made an application for an EEA family permit to visit her husband, Mr McDaniel Aiyanyo Ekhator who is an Italian national, pursuant to Regulation 7 of the Immigration (European Economic Area) Regulations 2016. Her application was refused by the respondent, who is the Entry Clearance Officer on 24 March and she appealed against this decision pursuant to Regulation 36 of the EEA Regulations.
2. The reason why the application had been refused was because the respondent was not satisfied that the matrimonial relationship which it was accepted had previously been genuine was now subsisting. It is notable in this case that a previous application had been refused for lack of necessary documentary evidence establishing the genuineness

of the relationship and this appeal came before First-tier Tribunal Judge Oxlade who decided the case on the papers, the appellant having indicated that that was how she wanted the appeal to be disposed of. Judge Oxlade dismissed the appeal because, although the appellant in her application had referred to documentation to support her appeal including a letter from her husband and a certificate from the Italian authorities as evidence of the marriage status, the marriage certificate, an Italian residence permit, an ID card, her husband's UK residence documentation, passport and ID, as Judge Oxlade states at paragraph 6 of her decision, "however, this was not attached to the notice of appeal on the Court file".

3. Judge Oxlade noted in particular at paragraph 14 as follows:

"The Appellant has singularly failed to adduce any evidence; the odd thing is that the Appellant had been refused in 2016 for a lack of documentation, and so would have been aware of the need to either file it at the application stage or at least by the hearing."

It was because of the absence of any of this evidence that at paragraph 15 Judge Oxlade set out her finding that "the Appellant has not satisfied me that she remains a family member of an EEA national". For this reason she dismissed the appeal.

4. The appellant's case is that these documents had been provided to the court by email and the grounds of appeal repeat her claim that she is still legally married to her husband and the marriage is still subsisting. Furthermore, a number of documents have been provided now which support her claim that the marriage is subsisting. However, that is not the issue before the Tribunal today. The only basis upon which an error of law can be found in the circumstances of this case (and this is the basis upon which permission to appeal was given by Judge Davidge on 3 April 2018) is if documents had indeed been sent to the Tribunal which because of an error on the part of the Tribunal, had not been put before the judge when she made her decision. The difficulty with regard to this appeal is that there is no record on the court file of such documents being received and nor has the appellant (through her sponsor, her husband who has represented her at the hearing before me today) submitted evidence capable of establishing that the email he says he sent had in fact been sent to the correct address (or at all). I asked the sponsor during the course of the hearing whether he was able to show me the email which he says he sent because a record would have been retained which would show when the email he claims to have sent was sent, who the email had been sent to and what documents had been attached to that email. The sponsor told me that he could not do so because he had deleted the documents. When I asked why he had done that, especially since it had been made clear to him on a previous occasion that the lack of documentary evidence was what had prevented that application from being successful, he said that he was a writer and always deleted emails very soon after they had been sent. He confirmed however that he had not received any confirmation from the Tribunal by email that the document had been received which should have, at the very least, set some alarm bells ringing.

5. When I made it clear that in these circumstances I did not consider that I would be able to find on the balance of probabilities that the Tribunal had received the documents that he claimed to have sent, he asked for more time to see if he could discover a record of the email because he may not have deleted it, he was not so sure. I refused an

adjournment because the appellant and the sponsor have had sufficient time to put before the Tribunal the evidence necessary to establish on the balance of probabilities that the documents which it is claimed were sent, were sent, and they have not done so. Even if the sponsor had attempted to send an email to the tribunal as he claims, there is no evidence that he sent such an email to the correct address and given the total absence on the court file of any such document being received and the inability of the sponsor to provide any evidence to support his belief that he sent it to the correct address, I am unable to conclude that there was a procedural irregularity such that the decision should be set aside.

6. It follows that the decision must stand. However, as I made plain during the course of the hearing, there is nothing to prevent the appellant now making another application, relying on the documents which have been supplied to this Tribunal for the purposes of the appeal. My decision is not made on the basis of any finding that the appellant is not the wife of the sponsor as she has claimed or that the marriage is not subsisting. The reason why Judge Oxlade dismissed the appeal was that on the basis of the evidence which had been put before her the appellant had not established that the marriage was subsisting. The reason why I have found no error of law in that decision is because the appellant (through the sponsor) has not put evidence before the Tribunal sufficient to establish that there had been a procedural error in Judge Oxlade's decision because it is not established that the documents which the sponsor claims to have sent to the Tribunal were in fact sent to the correct email address of the court. I make no findings as to the merits of any future application the appellant might now make.
7. However, for the reasons I have given, this appeal must be dismissed and I so find.

**Notice of Decision**

**There being no procedural error, and no other material error of law in Judge Oxlade's decision, this appeal is dismissed.**

No anonymity direction is made.

Signed:

A handwritten signature in black ink, appearing to read "Ken Craig", is written over a light blue rectangular background.

Upper Tribunal Judge Craig

Date: 27 July 2018