



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/04955/2017

THE IMMIGRATION ACTS

Heard at Manchester
On 25th July 2018

Decision & Reasons Promulgated
On 7th August 2018

Before

Upper Tribunal Judge Chalkley

Between

MR FRANKLIN CHUKWUEMEKA ERUKA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant:

Mr Karnik of Counsel, instructed by Greenfield Law Solicitors

For the Respondent:

Mrs Pettersen, a Senior Home Office Presenting Officer

REASONS FOR FINDING AN ERROR OF LAW

1. The appellant is a citizen of Nigeria who was born on 20th September 1982. He arrived in the United Kingdom on an unknown date and in August 2010, he was issued with a residence card on the basis of his marriage to Ms Michalkova. However, the respondent subsequently identified that a number of sham marriages between European and non-European marriages were being undertaken and checks revealed that the last twenty marriages the Reverend John Magumba had conducted been between Nigerian nationals and EU nationals. Subsequently, on 26th January 2012 the

Reverend Magumba pleaded guilty to conducting sham marriages covering a three year period.

2. The appellant made application on 26th October 2016 for a new residence card but on 9th May, 2017 the respondent refused that application, as a result of which the appellant appealed. His appeal was heard by First-tier Tribunal Judge S Agnew, sitting in Manchester on 14th February 2018. It had been asserted on behalf of the respondent that the marriage between the appellant and his spouse had been a sham marriage and one of convenience.
3. The respondent relied on a document provided to the Home Office dated 11th March 2010, signed by Reverend Magumba, in which, it is claimed, he stated he was satisfied that the marriage he performed for the appellant and Ms Michalkova was one of convenience. Unfortunately, the judge failed to notice that she had no evidence at all before her. There was no Home Office file or bundle in the First Tier Tribunal file and so it was necessary for her first of all to decide whether there was a marriage of convenience. She could not possibly have done that because there was no evidence before her and to the extent that she purported to do so, she erred in law.
4. I am satisfied that the appellant has been denied a fair hearing. The determination of First-tier Tribunal Judge S Agnew does contain an error of law and I set it aside. Given the failure to provide the appellant with a fair hearing, I have concluded that justice requires that I remit this appeal to the First-tier Tribunal for a hearing afresh before a judge other than Judge S Agnew. None of the judge's findings shall stand.

Richard Chalkley

Upper Tribunal Judge Chalkley

Direction to the Respondent

The Respondent shall, as soon as is possible and in any event no later than 21 days before the hearing of this adjourned appeal, file with the First Tier Tribunal and serve on the appellant and on his representatives, a copy of the Home Office file with copies also of all exhibits, annexes and statements it wishes to rely upon.

The original signed statement of the former Reverend Magumba dated 11th March 2010, will be made available for inspection by the First Tier Tribunal Judge and by the appellant's advocate at the adjourned hearing.

Richard Chalkley

Upper Tribunal Judge Chalkley

31st July 2018.