Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: EA/03527/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 9th April 2019	**On 30th April 2019**

Before

UPPER TRIBUNAL JUDGE WARR

Between

MR IFEANYI PIUS EZEOBI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Dr Ikegwuruka (Almond Legals)
For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Nigeria born on 28 November 1975. On 29 October 2017 he applied for a residence card as the spouse of [SS], a citizen of Bulgaria. The application was refused by the respondent on 27 April 2018. The parties were married by proxy on 27 March 2017 in Nigeria but the respondent was not satisfied that the uncle of the sponsor had attended the wedding or was resident in Nigeria as claimed. It was also the respondent's position that it was not credible that the appellant happened by chance to meet a sponsor whose uncle happened to live in Nigeria. The Secretary of State also considered the appellant's visit visa applications

on 9 November 2010 and 3 December 2010. The applications were both for a five day holiday. The first application was refused as the Entry Clearance Officer was not satisfied that the appellant was genuinely seeking entry as a visitor for a limited period as claimed and while the second application was granted, the visa issued was valid from 6 December 2010 to 6 June 2011. The appellant had said he had entered on 1 January 2011 and had remained in the UK ever since. This impacted on his credibility. Following abortive attempts to arrange an interview the respondent decided to conduct a home visit but on arrival it was said by the person who answered the door that the appellant did not reside at the address.

2. The respondent noted that the evidence provided did not include any jointly named evidence and the address was simply used as a postal drop in order to support the application for a residence card. The respondent stated:

> "Taking into account of the points made above regarding your proxy marriage, we do not accept that your proxy marriage was validly registered. Your application is therefore refused with reference to Regulation 7(1)(a)."

It was also considered that the appellant had attempted to enter into the proxy marriage for the sole purpose of gaining an immigration advantage and was a marriage of convenience. In relation to the appellant's sponsor exercising treaty rights, the respondent noted that the wage slips relied upon covered a period from January to July 2017 and in a telephone call the sponsor's employers stated that the sponsor had left their employment a few days after the application for the residence card had been submitted. Accordingly it was not possible to confirm that the sponsor was a qualified person.

3. The First-tier Judge heard oral evidence from the appellant and his wife. She referred in paragraph 9 of her decision to **Cudjoe (Proxy marriages: burden of proof) [2016] UKUT 180 (IAC)**. In relation to the issue of whether the appellant's marriage was one of convenience she reminded herself of the relevant authorities, including **Rosa [2016] EWCA Civ** and **Agho v Secretary of State [2015] EWCA Civ 1198**. The legal burden was on the respondent to prove that an otherwise valid marriage was a marriage of convenience, but if evidence was adduced capable of pointing to the conclusion that the marriage was one of convenience the evidential burden shifted to the applicant. The burden was not discharged merely by showing reasonable suspicion. The evidential burden might shift to the applicant by proof of facts that justified the inference that the marriage was not genuine.

4. The judge gave her reasons for her findings in relation to the proxy marriage as follows:

> "11. Although in ***Awuku v SSHD [2017] EWCA Civ 178*** the Court of Appeal found that the Upper Tribunal had erred in its reference to the law of the EU member state in order to determine the marital status of a spouse it did not undermine the Upper Tribunal's findings about the mechanics of proxy marriage in Nigeria.

12. In this appeal the respondent does not rely on an absence of documentation but casts doubt on the validity of those submitted because of an absence of evidence to corroborate that the sponsor's uncle, Plamen Penev, is resident in Nigeria as the documents purport. I find that the reasons for refusal letter clearly sets out the evidence that the respondent would expect to see to satisfy him in this regard (and which he would have expected to have been provided in Nigeria). Despite this, and the fact that the appellant is legally represented I find that he has failed to provide any documentary evidence that Mr Penev is resident in Nigeria and neither he nor the sponsor were able to explain this nor provide an address for Mr Plenev or why he is living there.

13. I also find that my overall assessment of the witnesses' credibility is relevant to my consideration of the documentary evidence on which they rely (***AHMED (Documents unreliable and forged) Pakistan * [2002] UKIAT 00439***) and for the reasons that I will set out below I have very significant concerns in this regard."

5. Accordingly the judge was not satisfied that the proxy marriage was valid and the appellant was not a family member under Regulation 7 of the Immigration (European Economic Area) Regulations 2016.

6. In relation to the issue of whether the appellant's marriage was one of convenience, the judge said that even if she had been wrong in her assessment of the proxy marriage she would nevertheless have concluded that the marriage was one of convenience as defined in the Regulations. The judge made the following findings:

"16. The legal burden of proof initially falls on the respondent and in this matter his initial doubts regarding the marriage were aroused by concerns pertaining to the validity of the proxy marriage (set out above), the lack of credibility that the appellant happened to meet an EEA national whose uncle lived in Nigeria, the appellant's immigration history (he has overstayed since January 2011) and a lack of documentary evidence regarding cohabitation such as a tenancy agreement or joint correspondence (which have not, I find, been remedied). Further, although the respondent accepts the reasons that the couple failed to attend two marriage interviews his concerns led him to carry out a home visit at which the person who answered the door on 24 April 2018 claimed not to know either the appellant or the sponsor. I find that the totality of these concerns suffice to persuade me that the respondent has discharged the legal burden of proof that falls on him and that the evidential burden has shifted to the appellant.

17. The oral evidence of the appellant and the sponsor is that their current address, Flat 3, 809 Romford Road, is the only address at which they have cohabited. I find however that whilst the appellant said that the couple moved into the property at the same time, had not previously visited one another's homes and that they live with their landlord, William, the sponsor said that the property was where the appellant had been living, that she has visited ten to fifteen times prior to moving in and that their landlord does not live with them, although two other people who she does

not know do. I find that these are significant, unexplained discrepancies on simple issues which undermine the couple's credibility.

18. I also find very significant the sponsor's evidence that the appellant's parents and brother live in Nigeria and that he has regular contact with them. In contrast however the appellant's evidence is that his mother is dead. I find that the sponsor was unable to explain this inconsistency which undermines, in my view, the reliability of the witnesses. I also find that whilst the appellant said that the sponsor was in contact with her father and brother in Bulgaria (and that he had once said "hi" to the sponsor's father) her evidence is that she does not have any contact with her father and does not know where he is.

19. I also find that in relation to cohabitation the respondent has placed weight on a lack of documentary evidence which has not been remedied by the appellant; there is no tenancy agreement, letter from the landlord, evidence of rent paid or joint correspondent. There is however evidence of the sponsor a different address to Flat 3 809 Romford Road in her most recent invoices for work (October-November 2018) of 64 Mottisfont Road. This is apparently the sponsor's cousin's address although I find that she was wholly unable to explain her reason for using it and that this casts further significant doubt on the couple's claim to cohabit.

20. Although Dr Ikegwuruka asked me to balance the inconsistencies against what he submitted were the consistencies in the evidence (such as how much the rent was, how it was paid and by whom) I find that the areas in which the discrepant evidence has arisen is so significant, and without reasonable explanation that, taken alongside the lack of documentary evidence, my concerns about the proxy marriage and the appellant's immigration history I am lead to conclude that on the balance of probabilities the marriage is a marriage of convenience. In reaching this conclusion I have not placed weight on the visit conducted by immigration officials because I accept Dr Ikegwuruka's submission that the respondent has failed to provide a copy of any contemporaneous note and/or a witness statement from one of the visiting Immigration Officers to corroborate the assertions in the reasons for refusal letter."

7. Finally the judge dealt with the question of whether the sponsor was a qualified person, noting the limited documentary evidence before her. Given the significant concerns that she had regarding the credibility of the witnesses and the documents on which they had sought to rely she was not satisfied that the sponsor was a qualified person.

8. The judge accordingly dismissed the appeal.

9. There was an application for permission to appeal. The application was refused by the First-tier Tribunal. The application was renewed and it was said that the main issue was whether the judge or the respondent could validly challenge the process leading to the issuance of a marriage certificate in another jurisdiction by a competent authority without recourse to that authority. The judge had erred in

challenging the competence of a competent authority. Reference was made to **CB (Validity of marriage: proxy marriage) Brazil [2008] UKAIT 00080**.

10. Issue was also taken with the findings by the judge that the marriage was one of convenience. It was said that the respondent had not discharged the initial burden of proof – the judge had relied on speculations or allegations – and cohabitation was not a requirement for a valid marriage under EU law. There was ample evidence that the sponsor was a qualified person.

11. Permission to appeal was granted by the Upper Tribunal on the basis that it was arguable that the judge had been wrong to doubt the validity of the appellant's marriage under Nigerian law given that it was issued by the competent Nigerian authority.

12. At the hearing Dr Ikegwuruka relied on the grounds of appeal and submitted that the process by which the competent authority had reached its conclusion could not be challenged. It was clear that the procedure was valid. The judge had accepted the submission that the respondent had failed to provide proper corroborative evidence to justify the assertions in the refusal letter about the visit to the claimed matrimonial home. There was no requirement in EU law that the couple should reside together. The respondent had not discharged the burden of showing that the appellant's marriage was one of convenience. There were sufficient invoices relied upon to show that the sponsor was in bona fide employment.

13. Mr Tarlow relied on the points made in the decision where it was made clear that proxy marriages were accepted if the marriage is recognised as valid in the country in which it took place and the marriage was performed and registered so that it satisfied the laws of the country in which it took place. The Secretary of State had given reasons for concluding as he had done on page 3 of the decision. The points had been dealt with properly at paragraphs 11 and 12 of the judge's decision. Even if the marriage certificate was valid, the marriage was one of convenience for the reasons found by the First-tier Judge and set out in the respondent's decision. The decision of the First-tier Judge should stand.

14. At the conclusion of the submissions I reserved my decision.

15. I have carefully considered the points made on both sides. The judge noted that the appellant, although he was legally represented, had failed to deal with the question raised by the Secretary of State in the decision concerning the sponsor's uncle. It was argued that if there was some fraud involved then the question should be sent back to the competent authority.

16. This is not a case in which the certificate itself is alleged to have been fraudulently obtained – it is therefore on its face a valid certificate – but the procedures were tainted by fraud and there was no response when this matter was raised by the Secretary of State. The appellant had the opportunity to explain matters and chose

not to do so. It is not clear what it would achieve to refer matters back to the competent authority where the Secretary of State had raised proper concerns which had not been answered. However, as Mr Tarlow submits in the alternative, the respondent's decision needs to be read as a whole and the respondent was entitled to conclude for the reasons given that the marriage was one of convenience.

17. It was open to the judge to conclude as she did on the issue of the proxy marriage but in any event to find that the marriage was one of convenience. I do not consider the issue of the uncle tainted the findings as suggested by the Upper Tribunal when granting permission. I find that the judge's conclusion that the marriage was one of convenience was reasonably open to her for the reasons she gives. Her approach was fair and for example she did not place weight on the visit conducted by the immigration officials as she explains. There is no material error of law in her decision.

18. The appeal is dismissed and the decision of the First-tier Judge shall stand.

Anonymity Direction

19. The First-tier Judge made no anonymity order and I make none.

TO THE RESPONDENT
FEE AWARD

The First-tier Judge made no fee award and I make none.

Signed Date 25 April 2019

G Warr, Judge of the Upper Tribunal