



IAC-AH-SAR-V1

**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: EA/00182/2020**

THE IMMIGRATION ACTS

**Decided under Rule 34 Without a Decision & Reasons Promulgated
Hearing On 12 October 2020
At Field House
On 5 October 2020**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

**DOUYE PEREGBA
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge S. Aziz promulgated on 9 March 2020 to, dismissing his appeal under the Immigration (European Area) Regulations against a decision of the respondent to refuse to issue him with a residence card confirming his right of residence as the spouse of a French citizen exercising Treaty Rights in the United Kingdom.
2. The appellant's case is that he was married to a French National by proxy, the ceremony being carried out in Nigeria. The respondent did not accept that the marriage was valid, nor was she satisfied that the appellant's spouse was employed as claimed.

3. The appeal was determined without a hearing. The judge was not satisfied by the documentary evidence provided that the appellant's wife is employed as only photocopies has been provided, and that even had they been originals, he would not have been satisfied that she is employed as claimed [26]. The judge also found that the marriage was not valid, again on the basis that only photocopies of documents had been provided and he was not even satisfied that the marriage had taken place [28].
4. The appellant sought permission to appeal on the grounds that the judge had erred
 - (i) In failing to take into account the photocopies as evidence given that the directions expressly stated that only photocopies were to be send to the First-tier Tribunal;
 - (ii) In failing to note that the respondent had not submitted a bundle and so reached a decision without taking into account all relevant material; and,
 - (iii) Raising a new issue - whether the marriage ceremony had in fact taken place - when the only issue was whether the marriage was valid.
5. On 18 May 2020 First-tier Tribunal Judge Bird granted permission to appeal on all grounds.
6. Subsequent to the grant of permission, Upper Tribunal Judge Kopieczek made directions in this case on 4 May 2020 which provided:
 1. I have reviewed the file in this case. In the light of the present need to take precautions against the spread of Covid-19, and the overriding objective expressed in the Procedure Rules¹, I have reached the provisional view, that it would in this case be appropriate to determine the following questions without a hearing:
 - (a) whether the making of the First-tier Tribunal's decision involved the making of an error of law, and, if so
 - (b) whether that decision should be set aside.
 2. I therefore make the following DIRECTIONS:
 - (i) The appellant may submit further submissions in support of the assertion of an error of law, and on the question whether the First-tier Tribunal's decision should be set aside if error of law is found, to be filed and served on all other parties no later than **14 days after this notice is sent out** (the date of sending is on the covering letter or covering email);
 - (ii) Any other party may file and serve submissions in response, no later than **21 days after this notice is sent out**;
 - (iii) If submissions are made in accordance with paragraph (ii) above the party who sought permission to appeal may file

¹ The overriding objective is to enable the Upper Tribunal to deal with cases fairly and justly: rule 2(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008; see also rule 2(2) to (4).

and serve a reply no later than **28 days after this notice is sent out.**

(iv) All submissions that rely on any document not previously provided to all other parties in electronic form must be accompanied by electronic copies of any such document.

3. Any party **who considers that despite the foregoing directions a hearing is necessary** to consider the questions set out in paragraph 1 (or either of them) above must submit reasons for that view no later than **21 days after this notice is sent out** and they will be taken into account by the Tribunal. The directions in paragraph 2 above must be complied with in every case.
4. If this Tribunal decides to set aside the decision of the First-tier Tribunal for error of law, further directions will accompany the notice of that decision.
5. Documents and submissions filed in response to these directions may be sent by, or attached to, an email to [email] using the Tribunal's reference number (found at the top of these directions) as the subject line. Attachments must not exceed 15 MB. This address is not generally available for the filing of documents. Service on the Secretary of State may be to [email] and to the original appellant, in the absence of any contrary instruction, by use of any address apparent from the service of these directions.
7. There was no response from the appellant but in submissions dated 11 August 2020, the respondent accepted that it was procedurally unfair to hold against the appellant the fact that only photocopies had been supplied when that is what the directions required; that the Tribunal did not have all the relevant material before it, there being no bundle from the respondent, and in raising a new issue.
8. The Tribunal has the power to make the decision without a hearing under Rule 34 of the Procedure Rules. Rule 34(2) requires me to have regard to the views of the parties. Given that no objection to this course of action has been raised, and bearing in mind the overriding objective in Rule 2 to enable the Tribunal to deal with cases fairly and justly, I am satisfied that in the particular circumstances of this case where no objection to a decision being made in the absence of a hearing that it would be right to do so.
9. In the light of the concise and sensible concessions made by the respondent, I am satisfied that the decision of the First-tier Tribunal did involve the making of an error of law in the errors identified in the grounds. It was unfair and perverse to hold it against the appellant that he had provided only photocopies when that was what the directions instructed him to provide. It was also unfair and a serious procedural error to raise an issue which had been issue between the parties and make a decision on it without the parties being able to make submissions on it. It was also a serious error to reach conclusions where clearly not all the relevant documents had been provided.

10. For these reasons, the decision involved the making of an error of law as claimed and I set it aside. Given all the procedural flaws, it is abundantly clear that the appellant did not receive a fair hearing, and so I consider that it is in the interests of justice to remit this appeal to the First-tier Tribunal for a fresh decision on all issues.

Notice of Decision

- 1 The decision of the First-tier Tribunal did involve the making of an error of law and I set it aside.
- 2 I remit the appeal to the First-tier Tribunal for a fresh decision on all issues, to be heard by a judge other than FtTJ S Aziz. For the avoidance of doubt none of his findings are preserved.

Signed

Date 6 October 2020

Jeremy K H Rintoul
Upper Tribunal Judge Rintoul