Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: EA/01416/2020 (P)

THE IMMIGRATION ACTS

Determined without a hearing pursuant to rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008	**Decision & Reasons Promulgated On 15 February 2021**

Before

UPPER TRIBUNAL JUDGE BLUM

Between

TOYOSI SHOWEMIMO
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Grounds of appeal by Ms F Shaw, counsel, instructed by Babs & Co
For the Respondent: Written reply provided by Ms J Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS (P)

1. This is an 'error of law' decision determined without a hearing pursuant to rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008, paragraph 4 of the Practice Direction made by the Senior President of Tribunals: *Pilot Practice Direction: Contingency arrangements in the First-tier Tribunal and the Upper Tribunal* on 19 March 2020, and the Presidential Guidance Note no 1 2020:

Arrangements During the Covid-19 Pandemic, as amended on 19 November 2020.

2. The appellant appeals against the decision of Judge of the First-tier Tribunal F E Robinson (the judge) who, in a decision promulgated on 24 November 2020, dismissed her appeal in respect of a decision by the respondent dated 27 January 2020 refusing her application for a permanent residence card as the former spouse of an EEA national exercising Treaty rights in the UK who has retained a right of residence following the end of her marriage.

3. Permission to appeal to the Upper Tribunal was granted by Judge of the First-tier Tribunal Andrew in a decision dated 22 December 2020 but sent on 29 December 2020.

4. In a document headed 'Memorandum & Directions' dated 5 January 2021 Upper Tribunal Judge Rintoul expressing his provisional view that, in light of the pandemic, it was appropriate to determine the questions (i) whether the judge's decision involved the making of an error of law and, if so, (ii) whether the decision should be set aside, without a hearing. The parties were required to submit further evidence on these questions within stipulated time limits and to indicate whether, despite Judge Rintoul's provisional view, they considered that a hearing to determine questions (i) and (ii) was necessary. On 7 January 2021 the Upper Tribunal received a Rule 24 response (pursuant to the Tribunal Procedure (Upper Tribunal) Rules 2008) from the respondent indicating that she did not oppose the appellant's challenge to the judge's decision. The Rule 24 response stated:

> "The respondent does not oppose the appellant's application challenging the decision of Judge Robinson promulgated on 20 November 2020. This is because in line with ground 1 the Judge appears to have made a mistake of fact when considering the evidence regarding the marriage registration and dowry. In light of this, the Tribunal are invited to determine the appeal with a fresh oral hearing in the FTT to consider whether the appellant is entitled to permanent right [*sic*] of residency."

5. No submissions were made in respect of whether the two questions could be determined without a hearing. No further submissions have been received from the appellant.

6. Having regard to the overriding interest in rule 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008 to deal with cases justly and fairly, and having considered the nature of the appellant's challenge to the judge's decision, and having regard to the relatively narrow focus of the legal challenge (whether the judge made mistakes of fact amounting to error of law; whether the judge misdirected herself on the validity of the appellant's proxy marriage, and whether the judge

misdirected herself in respect of case law) and the respondent's rule 24 response, and having satisfied itself that both parties have been given a fair opportunity of fully advancing their cases, and having regard to the judgment in **JCWI v President of the Upper Tribunal** [2020] EWHC 3103 (Admin), the Upper Tribunal considers it appropriate, in light of the Covid-19 pandemic, to determine questions (i) and (ii) without a hearing pursuant to rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Discussion

7. Given the respondent's position it is not necessary for me to deal with the challenge to the judge's decision in great detail. By way of brief summary, the appellant is a Nigerian national born on 31 May 1984 who claims to have entered the UK in 2005 and who, following an application made on 18 September 2012, was granted a residence card as the unmarried partner of an EEA national after an appeal to the First-tier Tribunal. In a determination promulgated on 28 November 2013 Judge of the First-tier Tribunal Seifert found that there was insufficient evidence that the appellant was the spouse of an EEA national (the issue being whether the proxy marriage that was conducted in Nigeria was recognised in the Netherlands), but he did accept that the appellant and the EEA national were in a subsisting and durable relationship, and the residence card was issued on that basis.

8. On 7 October 2019 the appellant applied for a permanent residence card on the basis that she was the family member of an EEA who had retained the right of residence following the termination of her marriage and who had resided in the UK for a continuous period of 5 years in accordance with the Immigration (European Economic Area) Regulations 2016. This application was refused and the appellant appealed to the First-tier Tribunal.

9. The judge had to determine, *inter alia*, whether the appellant had been lawfully married to an EEA national. At [34] the judge considered there to be a number of inconsistencies in the evidence produced relating to the proxy marriage. At [35] the judge found there was "some uncertainty" about the date of registration of the marriage and the form it took. The judge referred to a confirmation letter which, in the judge's view, indicated that the marriage certificate was issued by the registrar on 26 April 2018, but the appellant claimed that the marriage was registered on 8 April 2012. The 1st ground of appeal contends that the judge confused the original 'date of registration' of the marriage (8 April 2012) with the 'date of issue' of the replacement certificate and confirmation letter (26 April 2018). The respondent accepts that the judge was so mistaken. I have independently considered the certified copy of the marriage certificate and the confirmation letter and I accept that the judge made a mistake in her

assessment of these documents. Having regard to paragraphs 5 and 6 of the grounds, I additionally accept, having considered the certified copy of the marriage certificate, that, contrary to the judge's finding at [36], the name of the registrar who provided the certificate copy and the date on which it was provided were detailed in the copy, and that the certificate number of '000797' was provided in the certificate, in the narrow vertical column, contrary to the judge's finding at [37].

10. The respondent additionally accepted that the judge erred in law at [37] in respect of her finding that there was a discrepancy as to the amount of the dowry. The dowry mentioned in the marriage certificate was 10,000 naira, but the appellant referred to a dowry of 5,000 naira in her statement. As pointed out in the grounds of appeal at paragraph 7, the appellant indicated that her spouse "paid N5,000 bride price to her kinsman", reflecting Nigerian custom that a dowry is paid to both the bride and, separately, to the bride's family.

11. The respondent accepts that the above errors of law materially undermine the sustainability of the judge's decision. I agree. The judge has either made mistakes on points of fact amounting to legal errors, or she has taken into account or given weight to irrelevant matters. It is not therefore necessary for me to consider the remaining grounds. I find for the reasons given, which have been accepted by the respondent, that the decision contains mistakes on points of law that require it to be set aside.

12. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 18 June 2018 a case may be remitted to the First-tier Tribunal if the Upper Tribunal is satisfied that:

    (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

    (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

13. I have determined that the judge's conclusions relating to the lawfulness of the appellant's marriage, and by implication, the appellant's credibility, are unsafe. The appeal will be remitted to the First-tier Tribunal so that a new fact-finding exercise can be undertaken. It will be for the First-tier Tribunal to determine the most appropriate mode of hearing the appeal.

Notice of Decision

The making of the First-tier Tribunal's decision involved the making of errors on points of law and is set aside.

The case is remitted back to the First-tier Tribunal to be decided afresh by a judge other than judge of the First-tier Tribunal F E Robinson.

D.Blum

Signed Date 20 January 2021

Upper Tribunal Judge Blum