



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-005722
First-tier Tribunal No:
EA/00926/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 01 May 2023

Before

UPPER TRIBUNAL JUDGE PITT

Between

Tolulope Sedunupo Sutton
(NO ANONYMITY DIRECTION MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Not present

For the respondent: Mr Mullen, Senior Home Office Presenting Officer

Heard at Employment Tribunal, Edinburgh on 26 April 2023

DECISION AND REASONS

1. This is an appeal against the decision issued on 15 September 2022 of First-tier Tribunal Judge Abebrese which refused the appellant's appeal against refusal of a Family Permit under the EUSS.
2. The appellant is a national of Nigeria was born on 11 June 1980.
3. The appellant married a Portuguese national on 29 October 2019. An application for a Family Permit was refused on 28 August 2020. A further application was made on 20 October 2020. That application was refused on 24 November 2020. The respondent did not find, after telephone interviews with the appellant and his spouse, that the marriage was genuine.

4. The appellant's appeal against the refusal was dismissed by Judge Abebrese in the decision issued on 15 September 2020. Judge Abebrese found that the marriage was not genuine and refused the appeal.
5. Permission to appeal to the Upper Tribunal was granted by the First-tier Tribunal on 21 October 2022.
6. Before me Mr Mullen accepted that the decision of the First-tier Tribunal made no reference to any of the materials provided by the appellant in support of the appeal. These materials included witness statements from the appellant and the sponsor commenting on the respondent's view of what they had said in their interviews and on the refusal decision. There were also photos of the couple and a large number of text messages sent between them. This evidence was potentially material to the outcome of the appeal but there is nothing suggesting that Judge Abebrese had sight of these documents, or, if he did, what weight they attracted.
7. It was my conclusion that the absence of any consideration of the appellant's documents in support of the appeal amounted to an error on a point of law such that the decision had to be set aside to be remade. The appeal will be remade in the First-tier Tribunal as primary findings of fact must be made.

Notice of Decision

8. The decision of the First-tier Tribunal discloses a procedural error and is set aside to be remade afresh in the First-tier Tribunal.

Signed: S Pitt
Upper Tribunal Judge Pitt

Date: 26 April 2023