IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003183

First-tier Tribunal No: EA/05334/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 7 November 2023

Before

UPPER TRIBUNAL JUDGE LINDSLEY
DEPUTY UPPER TRIBUNAL JUDGE BAGRAL

Between

BOLA OGUNTAYO
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr O Omoniruvbe, of Church Street Solicitors
For the Respondent: Mr E Terrell, Senior Home Office Presenting Officer

Heard at Field House on 17 October 2023

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Nigeria born on 19th October 1985. She applies to remain in the UK under the EUSS on the basis of her relationship with Mr Frontisek Olah, a citizen of the Czech Republic. Her application was refused on 10th May 2022. Her appeal against the decision was dismissed by First-tier Tribunal Judge Abdar in a determination promulgated on the 6th April 2023.

2. Permission to appeal was granted by Judge of the First-tier Tribunal Mills on 15th June 2023 on the basis that it was arguable that the First-tier judge had erred in law in failing to take into account all of the material

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evidence; in failing to take into account the explanation for not attending the marriage interview contained in the witness statements; and in placing the burden of proof on the appellant contrary to the authority of Sadovska & Anor v SSHD [2017] UKSC 54.

3. The matter came before us to determine whether the First-tier Tribunal had erred in law, and if so whether any such error was material and whether the decision should therefore be set aside.

Submissions – Error of Law

4. In the grounds of appeal it is argued, in short summary, as follows.

5. Firstly, it is contended that the First-tier Tribunal erred in law as at paragraph 21 of the decision the judge stated that there was no evidence of the completed reply slip (relating to an interview scheduled for 19th April 2022) being sent by recorded delivery when in fact that document was within the documents before the First-tier Tribunal. We asked Mr Omoniruvbe where this reply slip was to be found as we could not locate it. He contended it had been submitted with the notice of appeal but could not tell us where it was to be found in the documents before the First-tier Tribunal. Mr Terrell added that he had also not been able to find it and he was certain it was neither in the respondent's bundle or the appellant's bundle.

6. Secondly, it is argued, for the appellant that the First-tier Tribunal erred in law as it failed to consider the reasons the appellant and sponsor did not attend the interview as set out in their statements which were before the First-tier Tribunal, and instead found at paragraph 22 of the decision that there was no explanation for their non-attendance. We asked Mr Omoniruvbe to identify in the statements the explanation as to why the appellant and sponsor had not attended the marriage interview on 19th April 2022 as we could not see where this was addressed. He could not identify a paragraph that addressed this issue in the statements. Mr Omuniruvbe wanted to pass us a paper copy of an email that he claimed to be relevant to this issue but we explained that he needed to show that this document was in the papers before the First-tier Tribunal for it to be relevant or otherwise explain how it evidenced an error of law. He could not identify that it was in the bundles before the First-tier Tribunal or explain how it was evidence of an error of law and so we did not consider the document. We noted that at paragraph 21 the First-tier Tribunal Judge specifically found that emails about the interview had not been included in the appellant and respondent bundles.

7. Thirdly, it is argued, that the First-tier Tribunal erred in law in finding that the respondent had shown on the balance of probabilities, in accordance with Sadovska, that the marriage between the appellant and sponsor was one of convenience, particularly as the respondent had not attended the hearing and cross -examined the witnesses, or

request an adjournment so that this would be possible. We asked Mr Omoniruvbe if he was also contending that the conclusion at paragraph 23, that there was only negligible evidence before the First-tier Tribunal regarding the appellant and sponsor relationship at the point of their marriage in 2015, was irrational and he agreed that he was arguing this.

8. There was no Rule 24 notice for the respondent but Mr Terrell defended the decision of the First-tier Tribunal as not disclosing any error of law. We did not need Mr Terrell to make further submissions as we found that the appellant had not identified any errors of law in the decision of the First-tier Tribunal. We informed the parties of this fact but did not given an oral judgement, and instead set out our reasons in writing below. We indicated to Mr Omoniruvbe that we had concerns about the standard of representation before us.

Conclusions – Error of Law

9. It is clear from paragraph 2 of the decision that the respondent was not represented at the hearing of the appeal before the First-tier Tribunal. From paragraph 4 of the decision it is evident that the only issue was whether the marriage between the appellant and sponsor was one of convenience.

10. At paragraph 5 of the decision there is a statement that the standard of proof is the balance of probabilities but there is no clarification on to which party the burden falls. However this is correctly clarified as falling on the respondent at paragraph 11 of the decision, with reference to the judgement of the Supreme Court in Sadovska. At paragraph 25 of the decision there is again reference to the legal burden being on the respondent. We are entirely satisfied that the correct legal test and burden of proof was applied by the First-tier Tribunal.

11. We do not find it was irrational for the First-tier Tribunal to conclude at paragraph 23 of the decision that: “There is negligible evidence before me on the Appellant’s relationship with the Sponsor, leading to their marriage on 16 May 2015.” This is because the witness evidence of the four witnesses does not address the genuineness of the marriage at the point of time it was entered into, which is the key point in time, as identified by the First-tier Tribunal at paragraph 12 of the decision with reference to the decision of the Court of Appeal in Rosa v Secretary of State for the Home Department [2016] EWCA Civ 14. The witness statements of the appellant’s aunt and uncle are identical and do not provide any factual information about how the couple met, why they were compatible or why they decided to marry. The appellant and sponsor’s statements likewise saying nothing more about this stage of their relationship beyond stating than they met in the UK and giving the date of the marriage. There was no other information going to the reasons for the marriage in 2015, and we find that it was lawfully open to the First-tier Tribunal to conclude at paragraph 16 of the decision that there was: “no evidence on the Appellant and the Sponsor’s relationship

at the time of the marriage, which in my view is reasonably available to the Appellant and the Sponsor to adduce." We find that the totality of the evidence going to the relationship between the appellant and sponsor at the time of the marriage can properly be characterised as negligible and the conclusion of the First-tier Tribunal is not irrational.

12. At paragraph 21 of the decision it is clearly stated that the various emails concerning the marriage interview and the special delivery reply slip do not form party of the evidence in the appellant's bundle. We find that this is accurate, and there was no error of law by the First-tier Tribunal by failing to consider material evidence. Further, at paragraph 22 of the decision, the First-tier Tribunal finds in any case that the real issue is not that the appellant and sponsor did not respond to agree to go to the interview, as might be evidenced by the special delivery reply slip, but that they did not actually attend the interview on 19th April 2022. This is in keeping with the reasons for refusal letter of the respondent where "failure to attend multiple interviews" is a key reason given for the conclusion that the marriage was one of convenience. We find that it was entirely rationally open to the First-tier Tribunal to find that this counted against the appellant and sponsor at paragraph 24 of the decision particularly as their statements do not explain why they did not attend the interview on the 19th April 2022.

13. We feel compelled to add that we were concerned that Mr Omoniruvbe of Church Street Solicitors did not appear to understand the process of an appeal on a point of law to the Upper Tribunal. His grounds of appeal did not identify errors of law in the decision, and were in large part factually inaccurate, and his submissions were very hard to follow and portrayed a lack of understanding of the role of the Upper Tribunal, as, for instance, he appeared to feel he could submit new evidence to us with no application under the Upper Tribunal Procedure Rules, and without an explanation as to how this could show an error of law. We also had concerns that the statements of the witnesses (particularly the appellant's aunt and uncle which were identical) were not in their own words, and may have been drafted by those representing them without reference to the witnesses, and failed to address the key issues in the appeal such as where and how the appellant and sponsor had met, their motivations for their marriage in 2015, and why the appellant and sponsor had not attended the interview on 19th April 2022. We take this issue no further on this occasion, but should we encounter unprofessional behaviour from Church Street Solicitors in the future serious consideration will be given to making a referral to the Solicitors Regulation Authority.

Decision:

1. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.
2. We uphold the decision of the First-tier Tribunal dismissing the appeal under the Immigration Rules.

Fiona Lindsley

Judge of the Upper Tribunal
Immigration and Asylum Chamber
31st October 2023