



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-004596

First-tier Tribunal No: EA/02128/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 15th of January 2025

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

PETER OKU

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L Appiah of Vine Court Chambers

For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

Heard at Field House on 8 January 2025

DECISION AND REASONS

1. The appellant is a citizen of Ghana born on 29 April 1996. He appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse his application under the EU Settlement Scheme (EUSS).

2. The appellant applied, on 24 December 2020, for leave to remain in the UK under the EUSS as the spouse of a relevant EEA citizen, Wendy Osei Bonsu. As evidence that he was the spouse of an EEA citizen, the appellant produced a marriage certificate dated 14 June 2020. Both the appellant and sponsor were interviewed by the Home Office about their relationship and marriage on 27 January 2022 via Skype.

3. The appellant's application was refused on 4 February 2022 on the grounds that he did not meet the eligibility requirements for settled or pre-settled status in Appendix EU to the immigration rules. The respondent considered that the appellant had not provided sufficient evidence to confirm that he was the spouse of a relevant EEA citizen. That was because the respondent had reasonable grounds, based on the information gathered during the interview and the inconsistencies set out in the refusal decision, to suspect that the marriage was one of convenience entered into as a means to circumvent the requirements for lawful entry and residence in the UK.

4. The appellant appealed against that decision. His appeal was listed for hearing on 16 August 2022 and came before First-tier Tribunal Judge French. There was no attendance by or on behalf of the appellant, but the respondent was represented. Attempts were made to contact the appellant's representatives to enquire about the lack of attendance and the judge, having satisfied himself that the notice of hearing had been properly served, decided to proceed with the hearing in the appellant's absence. (It has since transpired that the appellant sought to have his appeal determined by way of a paper appeal and did not wish to attend an oral hearing). The judge observed that the appellant had failed to produce an adequate bundle and that there were no statements for the appeal. The judge also observed from the skeleton argument that the appellant was asserting that the respondent had failed to provide a full transcript of the interview, although he (the judge) was provided with the transcript himself at the hearing. For the various reasons set out in his decision, the judge concluded that there was not a genuine relationship between the appellant and the sponsor. He was therefore satisfied that the decision by the respondent to refuse the appellant's application was entirely justified and he accordingly dismissed the appeal.

5. The appellant appealed Judge French's decision on five grounds. Firstly, that the judge had wrongly found there to be no appellant's appeal bundle and was wrong to consider that there was no appearance at the hearing, when there had been representations made by the appellant requesting that the case be dealt with on the papers, and when that request, together with an appeal bundle, had been sent to the Tribunal before the hearing. Secondly, that the judge had erred in proceeding to consider the appeal with a hearing. The third and fourth grounds are essentially a repeat of the first ground. Fifthly, that it was unclear when the transcript of the interview was produced by the respondent and that the judge had erred by admitting it.

6. Permission was refused in the First-tier Tribunal, but was subsequently granted in the Upper Tribunal on a renewed application, on the basis of there being arguable procedural irregularities as asserted in the grounds.

7. The matter came before me for a hearing.

8. At the hearing, Mr Diwnycz conceded that the grounds were made out and that Judge French's decision had to be set aside by reason of error of law and the case reconsidered afresh. That was on the grounds that it was now apparent that the appellant had submitted an appeal bundle and a request for a papers determination of the appeal to the First-tier Tribunal which had not been seen or considered by the judge.

9. In light of Mr Diwnycz's concession, and having considered the evidence now produced that the appeal bundle and the request for a papers determination had been

filed with the First-tier Tribunal prior to the hearing, it is clear that there were procedural irregularities arising from the proceedings in the First-tier Tribunal and that Judge French's decision has to be set aside. I therefore set aside the decision.

10. As agreed by the parties, the appropriate course, given the nature of the error made by the First-tier Tribunal, is for the case to be remitted to the First-tier Tribunal for a fresh determination of the appeal. Whether that is by way of a papers determination as previously requested by the appellant, or at an oral hearing, is a matter for the First-tier Tribunal.

Notice of Decision

11. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside.

12. Given that the effect of the error was such as to have deprived the appellant of a fair hearing before the First-tier Tribunal, a remittal to the First-tier Tribunal is the correct course, in accordance with Practice Statement 7.2(a). The appeal is accordingly remitted to the First-tier Tribunal to be dealt with afresh pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007, before any judge aside from Judge French.

Signed: S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 8 January
2025