



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2023-005050

First-tier Tribunal No: EA/02428/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

On 6<sup>th</sup> of March 2024

**Before**

**UPPER TRIBUNAL JUDGE PICKUP**

**Between**

**RAYMOND AYODELE OZOLUA ASEIN**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr I Ikedukwu

For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

**Heard at Manchester Civil Justice Centre on 19 February 2024**

**DECISION AND REASONS**

1. To avoid confusion the parties are referred to herein as they were before the First-tier Tribunal.
2. By a decision of the Upper Tribunal (Judge Kebede) issued on 13 January 2024 the respondent has been granted permission to appeal to the Upper Tribunal against a decision of the First-tier Tribunal (Judge Chowdhury) promulgated on 25 October 2023 allowing the appellant's appeal against the respondent's decision on 20 January 2023 to refuse his application for a residence card under the EU Settlement Scheme (EUSS) as a spouse of a relevant EEA national.
3. The application had been refused on the basis that the appellant had married after the deadline time and date on 31 December 2020 and therefore he could

only succeed on the basis of being a durable partner that would require his residence to have been facilitated. I have heard submissions from both representatives and I am grateful for their submissions.

4. I have also taken into account the skeleton argument for the appellant which is undated but received by the Tribunal on 15 February 2024.
5. At the First-tier Tribunal appeal the appellant relied on a claimed proxy marriage in Nigeria taking place on 26 October 2020 as being sufficient to meet the EUSS eligibility requirements. The First-tier Tribunal concluded the appellant had concluded a valid customary marriage before the specified date and that the respondent was under an obligation to authenticate the marriage.
6. In summary the grounds assert that the First-tier Tribunal made a material misdirection in law by reversing the burden of proof to place an obligation on the respondent to demonstrate that the proxy marriage certificate was unreliable or not genuine. It is submitted that the judge misconstrued the law in purporting to apply the case of QC (verification of documents; Mibanga duty) China [2021] UKUT 33. In that case the Upper Tribunal found that such an obligation to take steps to verify the authenticity of the document will only arise exceptionally (in the sense of rarely) and where a document is central to the claim; can easily be authenticated; and where authorisation is unlikely to leave any live issue as to the reliability of its contents. Even if the obligation does arise, it remains open to the respondent to question the reliability of what the document actually says.
7. In granting permission Judge Kebede considered “arguable that the judge reversed the burden of proof and failed to make findings on the reliability of the proxy marriage certificate in the round, together with the concerns otherwise expressed about the evidence, in accordance with the principles in Tanveer Ahmed”.
8. I am satisfied that the marriage certificate, purporting to certify a proxy marriage in Nigeria was not such a document that could easily be authenticated by the respondent. As Mr Bates has pointed out even a genuine document could be obtained by fraud. Given its origin, it would not be easy for the respondent to verify the authenticity of the document or the reliability of it.
9. As the marriage certificate was not such a document that could easily be authenticated, the burden of proof should not have been reversed by the judge of the First-tier Tribunal. What should have happened is that the normal Tanveer Ahmed principles should have applied, and it remained for the appellant then to demonstrate that the certificate was a reliable document. In that regard, the judge failed to make any adequate assessment of reliability. As Mr Bates has pointed out, even if the respondent did not dispute the validity of the document or the genuine issue of the document the judge should nevertheless have considered its reliability. In the light of paragraph 22 of the judge’s decision I find it difficult to see how the appeal could have been allowed. There the judge said, “I find documents that could reasonably be expected to be produced have not been however, I have also borne in mind the fact the Appellant was only served with a Respondent’s bundle on the morning of the hearing”.
10. Mr Ikedukwu raised the claim in his submissions of the alleged failure of the respondent to serve the bundle but that was not relevant to the issue of the reliability of the document. I am satisfied that the judge effectively abdicated the responsibility to address the reliability of the marriage certificate and erroneously

concluded that the respondent should have but failed to verify the document, with the judge simply accepting the document on its face. I am satisfied that was a material error of law.

11. In the light of those findings the decision is flawed for error of law and cannot stand and must be set aside to be re-made. This is not a matter that can be simply re-made here and now in the Upper Tribunal. I am satisfied that the decision ought to be remitted to the First-tier Tribunal to be re-made afresh, consistent with paragraph 7.2 of the Practice Direction as evidence will be required.

### **Notice of Decision**

12. The respondent's appeal to the Upper Tribunal is allowed. The decision of the First-tier Tribunal is set aside in its entirety with no findings preserved.
13. I remit the making of the decision in the appeal to the First-tier Tribunal to be made de novo.
14. I make no order as to costs.

**D M W Pickup**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**19 February 2024**