IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-005213
First-tier Tribunal No: EA/10696/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 03 April 2024

Before

UPPER TRIBUNAL JUDGE KOPIECZEK
UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

SHULAMMITE OGECHI DAN
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms C. Nicholas, counsel instructed by Moorehouse Solicitors
For the Respondent: Mr E. Terrell, Senior Home Office Presenting Officer

Heard at Field House on 8 March 2024
Extempore Judgment

DECISION AND REASONS

1. The anonymity order that was made by the First-tier Tribunal no longer applies, for reasons explained below.

2. We express our gratitude to Mr Terrell for his assistance in the appeal before us.

3. The appellant is a citizen of Nigeria born in 1984. She made an application on 30 June 2021 for pre-settled status under the EU Settlement Scheme.

© CROWN COPYRIGHT 2024

4. By a decision dated 1 October 2022 the respondent refused that application for the reasons given in the decision letter. Those reasons included the suggestion that the marriage to her partner, Mr Tomas Sulz, was a marriage of convenience. The appellant had been invited for interview in relation to the marriage on three occasions. On each occasion the appellant had failed to attend for interview. The decision letter also makes reference to the use of “fake” documents, which we understand to refer to a Barclays Bank statement and a utility bill.

5. The appellant appealed the decision and her appeal came before First-tier Tribunal Abebrese. His decision describes the appeal as having been determined ‘on the papers’ on 22 May 2023. The decision was promulgated on 22 June 2023.

6. It may be, but we are not sure, that the appellant asked for the decision to be considered without a hearing, that is to say, on the papers. The reason for our uncertainty about that is because although at paragraph 8 Judge Abebrese states that the appeal “was dealt with on the papers”, under the sub-heading “Representation” it states that there was no appearance by the appellant and no appearance by the respondent. His decision does not refer to any rule of the Tribunal Procedure (First-tier Tribunal)(Immigration and Asylum Chamber) Rules 2014 as to whether he proceeded to a hearing in the absence of the parties or whether it was a decision without a hearing.

7. In any event, Judge Abebrese referred very succinctly to the respondent’s decision and proceeded to dismiss the appeal.

8. The appellant’s grounds of appeal argue that Judge Abebrese failed to take into account evidence from the appellant to the effect that the email address that was used to invite the appellant for interview was not the email address that she gave on the application form. The grounds also refer to aspects of the appellant’s witness statement. Those arguments presuppose that a bundle of documents was provided to the First-tier Tribunal.

9. Regrettably, it has not been possible to establish today through counsel for the appellant, with her instructing solicitor in court, when it is said that the bundle was sent to the First-tier Tribunal. We were told that it was sent in 2022 but surprisingly, notwithstanding that this was plainly an issue to be relied on at the hearing before us, the exact date, or even an approximate date, was not established. We were not provided with any clear information on the point.

10. Nevertheless, we accept what we were told by Ms Nicholas through her instructing solicitor in court, that a bundle was sent. We therefore proceed on the assumption that the First-tier Tribunal was provided with a bundle but that Judge Abebrese was not aware of that fact. But even if the bundle, for some reason, was not actually received by the First-tier Tribunal although sent, in our judgement that is a matter of procedural

fairness which ought not to be visited on the appellant, on the particular facts of this case.

11. Judge Abebrese's decision does not say anything about whether there was an appellant's bundle. His decision is silent about whether any enquiries were made as to what evidence had been provided to the First-tier Tribunal by the appellant. We consider that that was a significant failing on his part. A judge's decision ought to make it clear what evidence from the parties the judge has considered, or to indicate that there was no evidence from one or other party.

12. The appellant's grounds of appeal refer to her witness statement as indicating that the email address provided on the application form for her pre-settled status was a different one from the one that the respondent wrote to. In fact, her witness statement gives precisely the same email address as is on the application form.

13. Nevertheless, given that we proceed on the footing that the First-tier Tribunal was provided with a bundle of documents, albeit that we do not know when, and that bundle was not provided to, or considered by, Judge Abebrese, his decision dismissing the appeal is marred by error of law and must be set aside. As we have already indicated, even if the bundle was not provided we do not consider that in a case where serious allegations are made in terms of the use of false documents and a marriage of convenience, the appellant should be disadvantaged for any apparent failure on the part of her solicitors.

14. Accordingly, we are satisfied that the decision should be set aside and the appeal must be remitted to the First-tier Tribunal. We say more about that later in this judgment.

15. Unfortunately, we feel we cannot leave unsaid a number of things raising concern about Judge Abebrese's decision, which is replete with significant errors.

16. We have already adverted to the fact that he did not explain why the case was dealt with on the papers or whether it was a hearing but with no appearance by either party. There is no reference to the relevant Procedure Rules.

17. It is apparent that Judge Abebrese has not proofread his decision, because there are a number of obvious grammatical and other errors, notwithstanding that the decision only extends to about 25 lines of text, excluding subheadings.

18. We have already referred to the fact that there is no consideration of whether any evidence had been provided by the appellant, and if there was a lack of such evidence what enquiries he made to see whether, by some error, that evidence was not put before him.

19. Furthermore, when considering whether to allow or dismiss the appeal, virtually all one can see in the decision is a short recitation of the respondent's decision and then at paragraph 10 the following:

> "The Respondent also determined that there was no available in respect of a durable partner application and this was also refused." (sic)

20. Having recited the respondent's decision, Judge Abebrese went on without further consideration to state that "This appeal is therefore dismissed on all grounds". That gives the appearance of his simply adopting the respondent's decision without any analysis of his own of the law or the facts.

21. There is barely any reference to any law at all in the decision. The only such reference is the statement that "The appellant bring (sic) this appeal and bears the burden of proof. The appellant must satisfy this burden on a balance of probabilities". Even that, we regret to say, is far short of what is required by way of a self-direction in relation to a decision where there is an allegation that the marriage is one of convenience. In addition, there is no reference in the decision to any aspect of the relevant Immigration Rules.

22. There are other errors in the judge's decision. For example, for some unexplained reason an anonymity order is made. As far as we can determine, there is no reason for the appellant to be granted anonymity. As we indicated at the outset, that anonymity order is lifted.

23. Under the sub-heading "Notice of Decision" there is no decision indicated at all; there is nothing written within that subheading.

24. Although Judge Abebrese dismissed the appeal "on all grounds", under the section dealing with the fee award we find the following:

> "I have allowed this appeal however, I make no fee award." (sic)

25. The obvious inconsistency is in terms of whether Judge Abebrese allowed or dismissed the appeal. It is evident that he dismissed the appeal, but the statement with reference to the fee award that he allowed the appeal is further evidence of a lack of care in the preparation of the decision.

26. The inescapable conclusion is that this decision by Judge Abebrese betrays a lack of diligence in its preparation, a lack of meaningful engagement with or thoughtful consideration of the significant legal issues in the appeal, and an overall lack of care. We hope and expect that the Upper Tribunal will never again have to make similar observations in relation to any decision by Judge Abebrese.

DISPOSAL

27. As we have already said, Judge Abebrese's decision must be set aside for error of law. We have considered paragraph 7.2 of the Senior President's

Practice Statement in terms of whether the appeal should be retained in the Upper Tribunal for a re-making or remitted to the First-tier Tribunal for a fresh hearing.

28. We are satisfied that the appropriate course is for the appeal to be remitted to the First-tier Tribunal. It will be remitted with no findings of fact, such as they are, to be preserved. The appeal will be before a judge other than First-tier Tribunal Judge Abebrese.

29. **We direct** that the appeal before the First-tier Tribunal be an oral hearing, that is to say not to be considered ‘on the papers’. It will be a matter for the appellant and her representatives to decide what oral or other evidence is to be given. No doubt that decision will be informed by the respondent’s view as to the genuineness of the marriage and the genuineness of certain documents that have been called into question.

30. We would add that there was a prospective application on behalf of the respondent under rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 to admit the detail of the evidence which is lacking from the decision letter in relation to what is said to be falsity in bank statements and utility bills. We consider that the appropriate course is for that matter to be dealt with in evidence before the First-tier Tribunal. It is, therefore, not necessary for us to deal with the rule 15(2A) application today since we are not concerned with re-making the decision.

A. M. Kopieczek

Judge of the Upper Tribunal
Immigration and Asylum Chamber

28/03/2024