



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: EA/11976/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 14 August 2018

Decision & Reasons Promulgated  
On 22 August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE FROOM

Between

JOSEPHINE ONYEBUCHUKWU KERRY  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr S Kumar, Counsel

For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

**DECISION AND REASONS ON ERROR OF LAW**

1. The appellant is a citizen of Nigeria born on 12 March 1973. She entered the UK as a visitor in 2007 and overstayed. On 19 January 2016 she applied for a residence card as the family member (spouse) of [SO], an Austrian national ("the sponsor"). The application was refused on 13 September 2016. Reasons were given why the proxy marriage which the appellant entered into in Nigeria was regarded as invalid. In the alternative, consideration was given to whether the appellant was in a durable relationship with the sponsor. However, it was decided that insufficient evidence had been provided to show this.

2. The appellant appealed and her appeal was heard by Judge of the First-tier Tribunal Ruth at Taylor House on 13 March 2018. The appellant attended and gave evidence but the sponsor did not. The appellant did not argue her marriage was valid but maintained she was in a durable relationship with the sponsor. The judge was not satisfied by her evidence and stated as follows: *"I have absolutely no doubt whatsoever that [the appellant] is a witness entirely devoid of credibility and has never been in any kind of relationship with this sponsor. It is no exaggeration to say that her testimony entirely collapsed under cross-examination."*
3. Permission to appeal was granted by the First-tier Tribunal on a single ground. It was arguable the judge had erred by failing to make a finding as to the weight to be attached to the sick note which the appellant had produced to explain the non-attendance of the sponsor. This stated that the sponsor was not fit for work from 5 to 19 March 2018. The judge had drawn an adverse inference from the failure of the sponsor to attend, finding this was "very damaging" to the appellant's case.
4. The respondent has filed a rule 24 response opposing the appeal. This points out there was no application to adjourn and the judge had been entitled to proceed.
5. I heard submissions as to whether the judge made a material error of law. Mr Kumar could not say why there had been no application to adjourn. His submissions essentially followed the grounds. Ms Isherwood argued there was no material error in the decision. No application had been made to adjourn and the sponsor had not attended the Upper Tribunal hearing either despite the direction that the appeal would be remade if the First-tier Tribunal's decision were set aside. The sick note only referred to the sponsor being unfit to work.
6. The appeal is dismissed because I do not find the decision contains any material error. My reasons are as follows.
7. As said, I have noted that the sick note did not state that the sponsor was unfit to attend the tribunal to give evidence. All it said was that he was unfit to work during a two-week period. The sponsor made a statement on the same day the sick note was issued, 5 March, but made no mention of suffering from stress in that statement. Likewise, the appellant's statement was silent about the sponsor's health, although the judge recorded her oral evidence to the effect that the sponsor had developed stress-related difficulty because of "arguments in the marriage". The judge was entitled to find that the sick note did not adequately explain the sponsor's non-attendance. Moreover, no application was made for an adjournment, which would have raised inevitable concerns in the judge's mind as to whether the sponsor continued to support the appeal.
8. The judge dealt with the sick note at paragraph 20, agreeing with submissions made by the presenting officer that the sponsor's non-attendance was "very damaging" to the credibility of the appellant's case. He continued by noting, *"there was no attendance by any other friend, family member, acquaintance, work colleague, neighbour or any other person [who] could attest to the disputed nature of this relationship."* He did not therefore

rely solely on the non-attendance of the sponsor as a reason for his adverse credibility finding.

9. In fact, the judge went on to consider whether the appellant's own evidence, consistent with the documentation submitted, could be sufficient to establish the issue. He found it was not, giving two cogent reasons for disbelieving the appellant generally.
10. I consider the judge has done more than enough to explain his decision and, within this, his reliance on the non-attendance of the sponsor despite the provision of the sick note. A fair reading of the decision as a whole shows the judge did not believe the sponsor was in a relationship. In all the circumstances, he was perfectly entitled to reach that conclusion.

### **Notice of Decision**

The Judge of the First-tier Tribunal's decision dismissing the appeal does not contain a material error of law and shall stand.

No anonymity direction is made.

Signed

Date 14 August 2018

**Deputy Upper Tribunal Judge Froom**