

IN THE UPPER TRIBUNAL

IMMIGRATION AND ASYLUM CHAMBER

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

BEFORE THE HONOURABLE MRS JUSTICE FOSTER DBE

BETWEEN:

Mr Emmanuel E ONUIRI

Applicant

- v -

THE SECRETARY OF STATE FOR
THE HOME DEPARTMENT

Respondent

ORDER

UPON handing down judgment on 31 August 2022:

1. Judgment for the Applicant.
2. The Decision of 30 December 2020, which reconsidered decisions to revoke and maintain the revocation of Indefinite Leave to Remain granted in March 2015 to the Applicant on the basis of his marriage to a Ms Karley Watkinson, is quashed.
3. The Respondent is to pay the Applicant's reasonable costs to be assessed if not agreed.
4. Permission to appeal is hereby refused.

Alin Foster

The Honourable Mrs Justice Foster DBE

Dated 14 September 2022

OBSERVATIONS

1. This application regarding an appeal falls to be considered under Rule 44(4B) of THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULTES 2008 (S.I. 2008 No 2698) (automatic consideration).
2. The case was decided by the application of well-established general principles to the facts of the case. It raises no novel issue of law nor point of general public importance. There is no other reason why permission should be given.
3. Amended this 22 day of September 2022.



Case No: JR/302/2021

IN THE UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

Field House,
Breams Buildings
London, EC4A 1WR

31 August 2022

Before:

THE HONOURABLE MRS JUSTICE FOSTER DBE

Between:

THE QUEEN
on the application of
ONUIRI

Applicant

- and -

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Guy Davison

(instructed by Nandy and Co Solicitors), for the applicant

Emily Wilsdon

(instructed by the Government Legal Department) for the respondent

Hearing date: 17 February 2022

JUDGMENT

Judge Mrs Justice Foster DBE:

INTRODUCTION

1. This is an application for judicial review of a decision of 30 December 2020 in which the Secretary of State for the Home Department (“SSHD”) reconsidered but maintained a decision of June 2020 (initially made in 2015) by which she failed to acknowledge the Claimant’s previous grant of Indefinite Leave to Remain (“ILR”) on the basis of his marriage, and which she subsequently revoked.
2. The case has a convoluted history, involving a number of compromised challenges since the 2015 decision but the point now before this Court is short and relatively straight forward, concerning the public law integrity of the latest refusal to rescind the revocation of ILR.
3. The relevant parts of the history are as follows.
4. On 12 July 2009 the Claimant Mr Onuiri, a Nigerian national, born on 31 January 1984, entered the UK on the basis of entry clearance as a Tier 4 General Student valid until 31 October 2012. On 30 March 2015 he was granted ILR following his marriage to Ms Karly Watkinson a British Citizen in February 2012. Mr Onuiri’s case is that he met her in 2010 and they cohabited as a couple but, following a number of difficulties, including infidelity on both sides, and the birth of a child to her by another man, the couple separated in April/May 2015. They eventually divorced, and, indeed, Mr Onuiri later married another person. He has in fact been granted ILR on the basis of that second relationship, but he challenges the previous revocation of ILR on the grounds that the ILR was honestly obtained, that it materially affects the date on which he may apply for British Citizenship, and the revocation is a blemish on his immigration record.
5. It has always been his case that his first marriage was genuine, but the time came in 2015 when he left the UK for a short while for family reasons in Nigeria and, when returning to the UK on 28 November 2015, was stopped by the Border Force and detained, and following inquiries the Defendant decided that his ILR had been procured by a sham marriage.

6. He was detained for a total of 31 days, and interviewed twice between 29 November 2015 and 3 December 2015 in the course of which he was asked questions concerning the subsistence of his marriage. Mr Onuiri explained that his marriage had broken up due to his wife's infidelity. He gave a phone number to contact her in the course of the first interview. There was also contact between her father and the immigration authorities in the course of which her father said he did not know Mr Onuiri; Karly Watkinson was contacted and said it was a sham marriage.
7. In the event, on 10 December 2015 Mr Onuiri was refused entry to the UK under Immigration Rules 321(1) and (2) which decision was upheld on administrative review on 20 December 2015. He was released on the 29 December 2015, and a series of challenges followed, were compromised, and then, in 2020 a reconsideration took place. That reconsideration is the challenged decision in this case.
8. There has been progressive disclosure of the materials upon which the Defendant relied against Mr Onuiri, with the internal memoranda being recently produced in the current judicial review, from which a picture of the early decision-making emerges. The Secretary of State in this case seeks to defend her (very) succinctly expressed current decision in part on the basis that it must be read with the original decision made in respect of Mr Onuiri in December 2015. It is therefore instructive to trace the earlier decision-making process.
9. The *initial* letter giving notice of cancellation of leave to enter (effectively the revocation of Mr Onuiri's ILR) is based upon the interviews that were conducted with him and the striking statement of Karly Watkinson. It contained however certain errors or misunderstandings. The letter stated,

"You stated that both of Ms Watkinson's parents were present at the ceremony, but Border Force Officers have spoken to her father, and he has provided a statement categorically stating that he has never even heard of you."

In fact, that is not what Mr Onuiri said. His interview records clearly that he

said neither parent was present at the ceremony.

10. The letter went on to say that he had lived with Ms Watkinson between 24 February 2012 until April or May 2015 but despite that, he was unable to provide her children's names. In fact, he had provided one of the names but volunteered he could not remember with respect to the other child, whom, he said, did not live with them.
11. In 2015 the Defendant also said that "*taking into consideration Ms Watkinson's statement and the lack of congruence in your account with the known facts*" she was satisfied that the marriage was contracted solely for the purposes of obtaining lawful immigration status. Mr Onuiri did not ever have the intention of living permanently with Ms Watkinson and therefore the application for Leave to Remain in 2012 and for Indefinite Leave to Remain in 2015 "*was clearly based on deception*", and his "*applications were also supported by false documentation which was advanced solely to bolster your claim to be in a genuine relationship*". No further detail was given.
12. The underlying materials contain an initial record from the immigration officer which says:

"PAX sought entry as a returning resident H/O record that there was suspicion as to whether his marriage to a GB national was subsisting - granted ILR on the basis of this marriage. PAX could not provide tel number of wife and attempted to give me non-existent number said they split up in 2015".

13. It is specifically noted that ILR had in fact been granted notwithstanding and subsequent to this intel information which apparently had been provided by an independent source. It turns out in fact that the intel that the Home Office had been aware of, and, it was later said, was not to be officially recorded was, according to the later internal notes:

"... simply that, at the time of the marriage, the registrar did not believe the relationship to be genuine. We still at the time of ILR a

year later, felt it was."

14. The Claimant had before these proceedings asked the Defendant why he had been stopped in the first place. It appears this may have been the reason.
15. The reference to the Claimant's wife Karly Watkinson by Mr Onuiri was followed up by the Border Force, and a phone number rung, but it is noted her phone initially went straight to voicemail.
16. A handwritten note of a phone conversation with Karly stated she was asked how she knew Mr Onuiri. She said she was married in 2012 and then she said that she did not know him before the wedding. Asked why she married him, she said her life was in turmoil, and asked whether he paid her she said, "*Not him directly, I don't know their names. I was paid a thousand pounds*". She could not remember where she got married but she did remember the date; she said she had never lived with him, and she last saw him at Christmas 2014. When asked did they ever live as husband and wife, she said "No". She said she was worried about herself. She was asked what happened after the ceremony and she said she just went home. She was not aware of his correct address, and she was not in a relationship.
17. At 02:20 am on 29 November after interviewing Mr Onuiri there is a note in the file:

"Agreed that at this point we do not have the required written statement from PAX's wife to reinforce a robust refusal and cancellation of ILR."

18. Then it states:

"... At this point, I am satisfied the PAX has practiced deception to obtain his ILR and has continued to use deception upon arrival. However, in the absence of a written statement from his wife to confirm the sham marriage it would be unwise to RLE and cancel the

ILR. I am not satisfied that RLE at this stage could pass scrutiny if the PAX went to JR following RLE."

The notes thereafter record multiple attempts to contact Karly Watkinson over the next few days.

19. The notes show a telephone call was made but there was no answer, and it is stated the Border Force were:

"... not completely satisfied with the credibility of Ms Watkinson as BF have not been able to contact her since she gave the statement against her "husband"".

20. A call was apparently made to her father, and an email of 29 November 2015 at midnight records that in that telephone call he had told the Border Force that he had spoken to his daughter who told him the marriage was not genuine and she was paid, the reason for the marriage and whether the father knew (he said did not). The email invited Karly's father to confirm this as the gist of what was said, which he does. They also spoke to her mother, who said that she did not have contact details for Karly as she regularly changed her number.

21. The father confirmed that Karly Watkinson would set up an email address. Later that day an email from the Border Force went to Karly Watkinson saying:

"As you are aware I've been liaising with your father, Burt Watkinson, with regard to your marriage to Nigerian national Emmanuel Enyinna Onuiri. Your father has verbally admitted and reiterated in an email that you entered into a marriage with Mr Onuiri for money. He clarified that that was not a subsisting marriage, and you did not at any point live with this man. I'm sure you can understand the magnitude of this situation. It is now imperative that you now reply to this email and provide details of your marriage and confirm that this was merely a marriage of convenience. Should you not cooperate, the prosecution route may be considered."

Emphasis added.

22. In reply to the Border Force Karly Watkinson confirmed what she had said before.
23. A few days later the note records that it is unclear from the minute what intel the Defendant had prior to the ILR being granted. They had looked at the CID records which reflected the fact that the Home Office were entirely satisfied that the couple were living together at the time of the ILR application in 2013. They refer to tenancy agreements were in joint names; Karly supplied her GB passport and bills in her name addressed to the marital home. They also note that Karly had not said why, given her claim now was that she had never lived with the PAX, she had helped him obtain ILR by providing the documents detailed above.
24. They record that the Passenger claimed that she was indeed being malicious, and recalled that the Home Office had been satisfied and granted ILR even after the "*intel*" was received. It is then said, "*Is Karly's statement alone sufficient to warrant revoking PAX's ILR?*"
25. The mother had said that in February 2012 at the time of the marriage she was living at home and moved out shortly after to a place called 'Marsden Avenue' where she spent "*many months*" before returning home. She had visited her at Marsden Avenue and there was no man living there. The officer notes the home address was 'Brook Dean Road' not Marsden Avenue. In 2013 she had a second child with the same man, and they lived together for a while. They said this contradicts the Passenger's claim that he lived with Karly until May 2015, but it was interesting that he knew her current address. It then notes that if they had lived together, how does he explain the second child? A further note says they needed to provide intel evidence and Karly Watkinson must be called to ask her about her address since the marriage and the date of the second child's birth, and how the Passenger had her passport in 2013 and the tenancy agreements in joint names.
26. The Border Force say they still needed to contact Karly and they note the

passenger had not been asked how, if he lived with Karly until May 2015, he claimed he had never lived with her children one of whom was born in 2013. Ms Watkinson claimed the two children have always lived with their mother. The note then records a telephone call was made but there was no answer, and it is stated they were:

“...not completely satisfied with the credibility of Ms Watkinson as BF have not been able to contact her since she gave the statement against her “husband””.

27. It was eventually on 7 December 2015 in a telephone call that Karly Watkinson said she would send an email confirmation of what she had said on the phone, as above.
28. The note records Karly was rung but the number apparently did not exist. A message was left on another number with a request to call back. It is also recorded that HMRC checks showed that she was “partnered up” with another person in 2014/15 for Child Tax Credit, suggesting she was not living with the passenger at that time.
29. It was put to Mr Onuiri in the later interview that Karly Watkinson had said his marriage was no longer subsisting: he had said she was not telling the truth. It was also put to him that monies were offered to her in exchange for getting married which he denied, saying she must be seeking to get back at him. When told that she said it was a marriage of convenience, he answered he did not know why she would say this but, *“She was always going away and doing things unproductive to our marriage so I don’t know, may be to get back at me”*.
30. Mr Onuiri applied for an administrative review of the refusal on 17 December 2015. Removal Directions delivered on 22 December 2015 were rescinded.
31. When the time came for the administrative review to recognise his ILR Mr Onuiri gave details referring to the documentation again and the fact that the materials were in front of the Home Office in March 2015 when ILR had

been granted. The original passport and her other documents were there, she was not forced to produce them. He said the problem with the decision was there were mere allegations and no actual evidence, he suggested there had been inadequate investigation. After two years his wife had supported his application for ILR and he explained his wife had been taunting him, she wanted a baby and could not get pregnant and she made racist comments against him "*and the moment that the Applicant got a girlfriend, and the wife discovered she went burst [sic]*".

32. He stated that his wife had made very malicious allegations against him; and he gave further detail of the timeframe of her departure from the matrimonial home.
33. In the course of the following years various challenges were made and compromised, and most significantly, a two page signed handwritten statement with a declaration of truth, dated 15 November 2016 was made by Karly Watkinson "*in support of my ex-husband Emmanuel Onuiri*". It was a detailed comprehensive retraction of her previous telephone allegations.
34. In it she said everything she had said and claimed was not true, it was malicious and out of order and said because of her deep hatred for him at the time. She gave as the reason the fact that Mr Onuiri had left her for someone else, after all she had done for him. She said she thought the fact her cheating and having a son, which was not his, had been resolved, but it was not. He had apologized to her for the way he treated her during their time together and she stated in terms:

"He never offered and [I] never received no money for marrying him. We knew each other intimately when we were dating, we had a good sex life before and during our marriage apart from the last [month]".

35. She explained that it was serious for her that she could not have a child with him, and she decided her son should not stay with them in the marital home. She describes in her own words but to similar effect what Mr Onuiri had described about her illegitimate child and the eventual end of

the marriage. She says her marriage was genuine and she is now divorced. Her ex is not a bad man, and at the moment he was suffering, and she hoped that he got better and picked up the pieces of his life.

36. Further materials including a tenancy agreement bearing the names of both Mr Onuiri and Karly Watkinson with the date of 6 February 2012 (about two weeks before their marriage) was produced to the Defendant. Council Tax materials from January 2015 addressed to both of them, again at the same address, and for 2014; and two summonses for non-payment of Council Tax, one against each, at the same address are exhibited and materials that went back to August 2012. A bank account in the names of Mr E E Onuiri and Mrs K Onuiri was produced for November and December 2012, showing usual household expenses and payroll payments; this covered the years 2012 to 2015. Materials addressed in Ms Watkinson's single name and also addressed to her as Karly Onuiri for Sky were submitted.
37. In the Defendant's internal notes latterly produced, is an entry indicating (in 2018) that there were no further details to show that evidence had been sought after the time of refusal, rather, reliance was being placed on the spouse's statement and unconvincing replies in interview from Mr Onuiri. The continuous note, the GCID case record sheets, show there were question marks from lawyers on behalf of the Defendant about whether there was any other information concerning the sham marriage. There was a grant of permission for a judicial review in February 2019 which was the subject of a Consent Order. A further internal note from late September 2019 does mention the 2016 statement from Karly Watkinson. It records that:

"It appears the Applicant has now sought to have his "spouse" at the time provide a witness statement to the contrary of what she stated when the decision to cancel his leave was made. This casts considerable problems on the evidence used as the main criteria for the port's decision as the time and was fundamental to the process, along with the fact Mr Onuiri arrived at port with another female (GBR) who was not his wife. This led to the investigations that followed."

38. By letter dated 17 October 2019 Mr Onuiri's solicitors wrote to the Heathrow Casework Hub with a set of materials supporting his claim for settlement with Mrs Chanel Cox but also relating to his relationship with Ms Watkinson. Those included her interview notes, his interview notes and her letter dated 15 November 2016.
39. Mr Onuiri's application to the Secretary of State to reinstate his indefinite leave was accompanied by a long detailed statement in the course of which he explained the circumstances of his coming to England to study business management in Greenwich, how he met Ms Watkinson in a pub and how their relationship developed, and they moved in together after about a year and lived there together until the day before they married. Her parents did not attend, and he set out how she had a child from a previous relationship, and he said learnt quickly not to ask questions about him or his father and Karly had struggled to raise the child. He explained how they had tried for a child, and she failed to get pregnant: obviously, they understood the problem was his as she already had a child. The relationship deteriorated significantly, and his wife became unfaithful to him, she was angry. She eventually became pregnant, but she told him the child was not his and he was not "*a real man*". He said there was a very bad argument, he asked her to have an abortion and was concerned what people would say in his family and in his community. He said she refused the abortion but agreed to the child being brought up and living with her parents. She moved to her parents' house in the last few months of her pregnancy. Thereafter she gave birth and returned to their house. They sought to put this episode behind them and continue as normal. She supported his application for ILR, and she helped him with the revision for the tests he had to sit. However, in May they separated. He said the marriage was just simply not working and neither of them was trying to salvage it, she moved out and he remained in the marital home.
40. He goes on to explain how he started a new relationship with Chanel Cox whom he had met in May 2014 when they had both started working at Bowes School. They spent a lot of time together although he did not act on his desire to be with her until May 2015 and he moved in with her. He explained his trip to Nigeria on 18 November 2015 because he needed to

perform last rites for his father. He went with Chanel so she could meet his family.

41. Mr Onuiri set out that when he was asked about how he obtained his residence card on return on Saturday, 28 November 2015 he told the immigration officer but also explained openly that he was no longer with his wife. He had interpreted the statement by Karly Watkinson as made because she must have found out he was seeing somebody else and had travelled abroad with her. The letter that Karly wrote in November 2016, he says, corroborates this.
42. This judicial review also produced a Consent Order. Under the terms of the Consent Order the Secretary of State agreed to review the decision withdrawing ILR. The decision of June 2020 was the product of that decision making process. The reconsideration of the June decision in December 2020 is the subject of this judicial review. It indicated that the SSHD would consider the position of the applicants ILR and whether it should be reinstated. In a letter of 30 December 2020, the SSHD declined to do so.

THE DECISION under CHALLENGE

43. The December re-considered decision dealt with the matter in the following way:

"With further regard to your client's marriage to Karly Watkinson, it is noted that when your client was interviewed on 29 November 2015 he stated that he knew Karly Watkinson had two children however he could only give the name of one child - Taylor and stated he did not know the name of the other child. This is despite the fact that when he applied for ILR on 4 February 2015 - three years after he married on 24 February 2012 and ten months prior to the interview, your client provided documentation to show he was still residing at the same address as Karly Watkinson. It is viewed after residing with Karly Watkinson for three years, your client would have known the names of both her children. In addition, your client also stated that he lived at

44 Brook Dene Rd, Plumstead SE18 1EJ with Karly Watkinson until the end of April/beginning May 2015. However, when asked to specify the dates as it would help his case your client was unable to do so.

"Full regard has also been given to the further evidence that you submitted as part of the Judicial Review, which was sought on 23 September 2020 however, it is not accepted that any of the submitted evidence confirms that your client's marriage to Karly Watkinson was genuine."

Emphasis added.

44. The underlined passage represents the totality of the reasoning on all of the new material submitted in support of the application to rescind the revocation of ILR.
45. The Upper Tribunal judge's grant of permission to apply for judicial review included the following:

"...It was claimed that he could not confirm during interview (1) ... where he got married, who was present at the wedding or the names of Ms Watkinson's children; (2) in the renewed grounds the Applicant asserted that Ms Watkinson had retracted her allegation, which had been false: the documents evidencing co-habitation cast doubt on her now withdrawn assertion: that the Applicant's lack of knowledge of Ms Watkinson's children was explicable as he was not their father, they were not resident with the couple and he did not have caring responsibilities for them. In breach of her own policy, the Respondent had failed to explain why it now declined to accept Ms Watkinson's retraction of her allegations, but continued to accept the original allegations. The Respondent had, through HMRC, access to various services that revealed a digital footprint and could verify the claim of co-habitation. There had also been partial and inaccurate disclosure of records, and the Applicant had previously offered to tender Ms Watkinson to give witness evidence. The Applicant had clearly stated during the interview the place where he got married. The judge

decided it was at least arguable that the Respondent's process in reaching her decision (including arguably inaccurate records) and her analysis and explanation for not accepting Ms Watkinson's claimed retraction of her evidence is arguably unlawful on public law grounds."

46. The scope of this judicial review is therefore a challenge to the legality of the decision making in respect of the new indefinite leave to remain determination when the Secretary of State declined to retract her revocation of ILR. The Consent Order dated 19 October 2020 reached after Mr Onuiri's application for permission to challenge the first decision of 30 June 2020 on the basis of inadequate reasoning, contained an agreement to reconsider the decision and stated:

"... the reconsideration will consider the position of the Applicant's ILR and whether it should be reinstated".

THE LEGAL FRAMEWORK

47. There was initially an issue as to the provisions under which the Secretary of State was purporting to withdraw Mr Onuiri's ILR. It is now agreed that the appropriate provisions arise under the immigration rules, namely as the Respondent said in their detailed grounds of defence:

"In their Revocation Letter the Respondent intended to base their decision on paragraph 321A of the Immigration Rules."

48. In fact, what was stated was that his leave under paragraph 321(1) and 321(2) was referred to. 321A(1) and 321A(2) provide:

"Grounds on which leave to enter or remain which is in force is to be cancelled at port or while the holder is outside the United Kingdom.

...

"321A

...

"(2) False representations were made or false documents were submitted (whether or not material to the application, and whether or not to the holder's knowledge), or material facts were not disclosed, in relation to the application for leave; or in order to obtain documents from the Secretary of State or a third party required in support of the application [...]."

49. It is (now) agreed that the Respondent's decision is subject to review on traditional public law grounds.

50. Although it is accepted that the existence of a sham marriage is not a matter of precedent fact that requires to be established on the balance of probabilities, but rather a matter of the Defendant's discretion under the Immigration Rules, nonetheless, in my judgement, as submitted by the Applicant, the grant of ILR is a matter of moment. Its removal is a therefore serious matter also and a proper factual investigation will regard strong new evidence in favour of a Claimant's claim, as obliging the Secretary of State to consider it, and/or investigate it as a matter of public law fairness. By the same token new materials require to be addressed and the reasoning in an important decision of this nature should be exposed. A would be entrant holding ILR in the position of Mr Onuiri is entitled to a cogent and coherently reasoned decision.
51. There was no discernible disagreement with these basic propositions nor as to the disagreement as to the public law framework for considering this decision, the burden of the submissions was that the Secretary of State's decision was perfectly adequate in public law terms. The requirements of fairness and proper process had been met in this case.

THE ARGUMENTS

52. The Home Office case is that the Mr Onuiri had entered a sham marriage with Ms Watkinson. The Defendant in her written materials in the case relied upon:

- (1) Telephone calls and email correspondence on 28 and 29 November and later 8 December from Ms Watkinson. She said in this correspondence she had been paid a thousand pounds to enter into a marriage with the Applicant, had not consummated it and felt pressured to go ahead. She said she had never lived with Mr Onuiri and provided a list of addresses where she had resided between 2012 and 2015.
 - (2) There were calls and emails with her father, Mr Watkinson, who said his daughter had not lived with the Applicant and he had never met him.
 - (3) The Secretary of State relied on the fact that the last of Ms Watkinson's children was born in 2013 but despite being married to her at the time the Applicant was not the father.
 - (4) The fact that in 2014 Ms Watkinson was in receipt of tax credit linked to a partner other than the Applicant.
 - (5) The Applicant's failure when asked in interview to name both of Ms Watkinson's children despite saying they were a couple between 2010 and 2015.
 - (6) The Applicant's inability to recall which of Ms Watkinson's family members had attended the wedding either their names or their relationship.
 - (7) The Applicant's inability to state when he left the marital home despite him saying it was six months before the interview.
53. The Secretary of State also said there was a telling absence of photographs, telephone records, messages etc which would be expected from a genuine relationship and that Mr Onuiri's documentation did not undermine the Respondent's case. She denied there was inadequate investigation - investigation had thrown up the Child Tax Credit information with HMRC.

54. Mr Onuiri provided to the Secretary of State a volume of materials in support of his case that the marriage had always been genuine. The Secretary of State was invited also to consider that the initial spouse application and indeed the subsequent application for ILR, which must have been investigated and must have satisfied the Secretary of State on evidence, had been accepted. The Claimant had asked the Secretary of State to provide those applications and the supporting materials. The ILR was granted in March 2015 – and it was pointed out this was close in time to the date when the allegations were made. Clearly, the information which had satisfied the Secretary of State a few months earlier, would have been material.

55. Of the materials submitted to the Secretary of State by Mr Onuiri relevant ones included:

- (1) The full retraction statement from Ms Watkinson saying she acted out of malice and her allegations made to the Secretary of State were untrue.
- (2) A tenancy agreement.
- (3) Council Tax documents.
- (4) Banking documents showing payments into the family account by Mrs K Onuiri.
- (5) Three bills for Mrs K Onuiri at the address.
- (6) Sky documents in Ms K Watkinson's name.

56. Mr Onuiri observes that although the initial statement made on the telephone when the border officer contacted Ms Watkinson was never the subject of a sworn statement, nor was the email she sent shortly afterwards, her retraction was made by way of a witness statement which was sworn to be true. He observes also that no reason is given for rejecting this evidence. This observation is correct - it is not even

mentioned in the Decision Letter

57. He points also to the fact that the revocation of a grant of Indefinite Leave to Remain is not to be undertaken lightly. Similarly, whilst proof may be required on the balance of probabilities, approaching the fact finding task the Secretary of State should have reminded herself that a finding that a person has been deceitful and dishonest to the extent that he is denied settlement is a very serious finding with serious consequences.
58. The Claimant states that the Secretary of State ought to have indicated searches made to establish the couple's digital footprint, including HMRC records. The absence of any evidence that the Respondent sought to verify the claims in this manner revealed an unlawful approach to decision making in this context.
59. He relied upon the guidance on investigations into marriage which emphasises that the evidence used must be factual – not just an allegation, and disclosable in court, and able to stand up to scrutiny if legally challenged. Such evidence was required to show on the balance of probabilities the marriage or civil partnership was a sham.
60. Previous concerns about answers given by Mr Onuiri were sought to be allayed by him in his further evidence. The Secretary of State relied upon the fact that he did not know the name of one of his wife's children. He reminded the Secretary of State that the marriage had broken down due to his wife's infidelity. The child in question did not live with the couple but with her parents. He also recalls that his interview started at 12:40 am and concluded at 02:25 am on 29 November 2015. The interview record shows that he knew one of his ex-wife's children was called Taylor and the other lived with her "*Gran*". She had had this other child with another man. All of these circumstances are highly relevant he says to the weight the Secretary of State ought to have placed upon his alleged relevant omission regarding the child's name. Similarly, his inability to state the exact day on which he had left the property. He submits that the documentation he has produced makes it completely clear that he lived there. The Secretary of State said Mr Onuiri did not mention the birth of

this child in interview.

61. I note from the interview that he answered as follows: Question: “*Does Karly have any children?*” Answer: “*Yes, two children I don’t know their ages one is very young.*” When asked whether the children lived with them both and if not, why not he answered, “*Karly said they were living with their Gran*”.
62. Mr Onuiri also points to another part of the policy which states, “*where a partner to a suspect marriage or civil partnership admits it is not genuine this must not be relied on alone in case it is later withdrawn*”.
63. When the Pre Action Protocol Letter was sent in respect of the judicial review of 30 December 2020 decision, it related the immigration history and stated:

“Following receipt of your PAP Letter the SSHD decision dated 30 December 2020 was reviewed and it is deemed that your client’s case was carefully and lawfully concluded, and that the decision arrived at was correct. It is considered that the issues raised in your PAP Letter were fully addressed in the decision of 30 December 2020.

“The SSHD reconsidered your client’s application in light of the consent order dated 19 October 2020. Please note that an undertaking to re-consider a decision should not be interpreted as confirmation that a different outcome will be achieved...

“... your client was previously granted ILR as the spouse of Ms Karly Watkinson, a British citizen. However, this marriage was later seen to be a sham when he re-entered the UK. Your client has now been granted 30 months leave to enter on the basis of his marriage to Channel [sic] Cox. As explained in the Decision Letter your client has an option to apply for ILR on the same basis in the future. [This did happen].

“Consequently, the decision dated 30 December 2020 is correct and

therefore maintained."

64. Mr Onuiri stated in conclusion that his first marriage to Karly was genuine.

It was not happy or successful, but they were genuinely husband and wife. A statement from Mrs Cox attests to the genuineness of their relationship – which, of course, has not been challenged by the Secretary of State.

65. Mr Onuiri made a further statement on 9 November 2021. He explained

again the basis of his meeting Ms Watkinson and that it was a genuine marriage. He said he contacted her again more recently, and she had said that he could go over and speak to her about the case. He had been to see her on 27 October 2021. He asked whether she would confirm again what she had put in her letter of 15 November 2016 and whether she would speak to his solicitor. She said she had not seen him for four years, that they were divorced, and she did not want any more to do with him as she had already given him the letter to confirm the position. She did not now wish any further contact.

66. The Secretary of State notes in the first instance that on 4 December 2021

Mr Onuiri was granted Indefinite Leave to Remain albeit under a different route. She raises a query whether or not the challenge is not therefore academic. The Secretary of State submits:

- (1) The Respondent did not revoke ILR solely on the information received from Ms Watkinson but there was reliance upon “several inconsistencies” in the Applicant’s account in interview. These “inconsistencies” were an inability to provide the names of both of the wife’s children – he knew only one, named Taylor. Further, information from HMRC showed that Ms Watkinson had given birth to a child in 2013 when they were purportedly married and co-habiting to which the Claimant was not the father and she had received Child Tax Credit in 2014 linked to a different partner. That matter was not mentioned by the Applicant in interview, he could not guess the child’s age notwithstanding what it would have done to the marriage – that was extraordinary.

- (2) The further evidence was looked at “*none of the evidence confirms the marriage was ... genuine*”.
- (3) There was an absence of photographs, telephone calls, messages, letters, or other souvenirs one would expect from a genuine relationship over five years and no new evidence to support such has been adduced.
- (4) The Secretary of State noted, “*the lack on congruence in your account with the known facts*”.

67. The Secretary of State describes this as a “*constellation of features*” upon which it was not irrational to rely when revoking the ILR or maintaining the revocation. No mention was made of the December reconsideration in the Secretary of State’s skeleton argument before the Court.

68. A further statement of facts was sworn on behalf of the Secretary of State putting the disclosed internal materials before the Court; that statement was dated 6 December 2021 and refers to a copy of the CID page and various other immigration notes.

CONSIDERATION

69. The Secretary of State by her skeleton argument said it was incorrect to suggest that she had failed to consider material aspects of the claim. It was essential to consider this revocation decision in light of the original decision to revoke dated 10 December 2015. It is denied that she did not follow her own guidance: she did not rely on assertion alone (as is proscribed) it was a revocation *not* based solely upon Ms Watkinson’s material, rather “*several inconsistencies*” in the Applicant’s account.

70. The Secretary of State says that the “*inconsistencies*” are the inability to provide both the names of his wife’s children or their ages.

71. In the first place I observe these are not “*inconsistencies*”. They may be inadequacies in the evidence that the Secretary of State deems to be

inconsistent with a truthful marriage arrangement, but that is different. Mr Onuiri had not been – and has not been inconsistent in his evidence. However, be that as it may, the real vice in this latest reconsideration is that it is opaque and, in large part devoid of detailed reasoning. Even reading, as the Secretary of States exhorts, the earlier decision with this reconsideration it is not possible to spell out a consideration or explanation of why the new materials have been rejected. It is not adequate, given the nature of the new materials presented, and given the importance of the decision simply to say “*Full regard was had*” to material without descending to any detail. What was proffered by the Claimant included a fully signed revocation of the initial information that was the foundation of the primary decision. No attempt was made to explain why this material fell to be entirely rejected- and this is not a matter which speaks for itself, or is obvious: as the judge granting leave observed, Mr Onuiri had given explanations for his apparent lack of knowledge of certain details which had troubled the Defendant. The evidence was not so clear as to make it an obvious case. The internal notes themselves (see above) recognised the difficulties posed by the new material. The policy of not relying simply upon spousal denunciations (because they could later be rescinded) reflects the care needed. At the least in this case in my judgement, the Defendant was obliged to inform herself by inquiry whether there was further material evidence to be gleaned with relation to Karly Watkinson: no enquiries were made save for the HMRC search - which did not investigate her authorship of the retraction.

72. Likewise, there is no mention of the apparently plausible payments into the joint family account by both parties, nor the materials from the local authority.
73. The initial cancellation of ILR said the applications were supported by false documentation and that “*this fresh evidence*” [namely, Karly Watkinson’s initial material and the interview] “*alters the circumstances upon which your application for ILR was assessed to such an extent that now warrants the cancellation of that leave*”. Clearly her statement was central, and a complete retraction warranted investigation and explanation.

74. The statement of the Claimant, the detail of which is set out above, speaks of the causes of the breakdown of the relationship and Ms Watkinson's subsequent pregnancy by another man. This together with his forthright statement in interview that he no longer co-habited with Ms Watkinson and that they had separated, his explanation that the children she had did not live with them, and his explanations that she had wanted him to get her pregnant and he had not, raised a possibly plausible case that required a reassessment and reasoning process dealing with the new material. This was particularly so when Karly Watkinson's retraction of her "sham" allegation was added to the picture.
75. The current stance of the Secretary of State appeared to distance her reasoning from reliance upon Ms Watkinson. However, read with the previous decision, that is not a satisfactory answer to the absence of overt consideration in the decision itself of the later retraction of Karly Watkinson's denunciation.
76. This is so even though, as the Secretary of State observes, "*the tenancy agreement does not ... bear Ms Watkinson's signature*" and that there was a "*telling absence of photographs, telephone records, messages, letters or other souvenirs*". As I have indicated, these incidental points are not so overwhelming that the rationality of the decision speaks for itself without explanation.
77. The Secretary of State defends the very short refusal to reconsider the decision of December 2020 on the grounds the reasoning is adequate, and the Secretary of State was not obliged to go into detail about the new material. In any event, it was submitted orally, the decision would have been the same even if the reasoning was unlawfully flimsy. This is not in the present context a persuasive argument. The core complaint by the Claimant throughout the process was that there was no proper investigation of the facts by the Defendant and without steps being taken in respect of the new material, it is not possible to say that upon investigation, the conclusion thereafter reached would be the same - or that the same decision, if reached, would prove to be defensible as rational and logically coherent in the circumstances.

78. The Claimant pointed particularly to the fact that there had been no further investigation of Ms Watkinson. The underlying notes taken contemporaneously showed in his submission an unwillingness in Ms Watkinson to give the required written confirmation of what was noted to have been said in a telephone conversation. Further, it was worrying and significant that the email which finally produced a response threatened criminal proceedings against her. There is a certain force in these submissions: there were circumstances that somewhat undermined the Defendant's position and the internal notes do in places reflect these uncertainties and queries.

79. The Claimant emphasised that the Secretary of State did not condescend to mention individually the new materials submitted, but dismissed them in a short phrase. The new documentation was wholly consistent with co-habitation and no mention was made of payments into the jointly held bank account, which was evidence of that and of Ms Watkinson's involvement with Mr Onuiri as he alleged.

CONCLUSION

80. In summary in my judgement the level of reasoning, such that it is, in the "*reconsideration*" decision is unacceptable and unlawful. The removal of Indefinite Leave to Remain is a serious matter, it requires careful consideration of cogent materials that raise a case inconsistent with that propounded by the Secretary of State. I regret I cannot see evidence of such consideration here, where there were cogent materials before the Defendant at the time of her reconsideration of the revocation decision. The Secretary of State, apparently initially told by the registrar that he had some doubts about the marriage, had obviously overcome those doubts in granting the first stage and then the final stage of Indefinite Leave to Remain on the basis of Mr Onuiri's first marriage. At that point joint written materials were relied upon - and clearly accepted.

81. It is difficult without any reasoning to assist to see why the material should have been acceptable at that stage and yet was apparently dismissed as of no assistance later (even though augmented by further material). It is

insufficient to point to unclear or unsatisfactory answers in an interview conducted between midnight and 02:00 am and not to explain why Mr Onuiri's later explanations were inadequate. Likewise, to continue to rely upon the earlier, possibly pressured, informal denunciation of Karly Watkinson in the face of a handwritten, signed statement explaining that the earlier denunciation was false, suggests, unless explained properly, the decision-maker may not have had good reasons for doing so.

82. I fully accept, as submitted on the Secretary of State's behalf, that there were other matters also which persuaded her the marriage had not been genuine. However, absent the statement from Ms Watkinson that she had been paid for marrying Mr Onuiri and that they did not live together, the case was wholly different and palpably weaker.
83. In my judgement the Secretary of State is wrong to suggest that because Mr Onuiri did not give full details of what was embarrassing personal material, on his account, concerning his wife's rejection of him and her involvement with another man, he is to be regarded as untruthful. It was submitted "*you might expect him to give a fuller explanation*" and "*he says nothing about the break-up*". In my judgement the answers that he gave, namely that she did things that were unproductive to the marriage, and, indeed, as he stated in his request for a reassessment, she had taunted him for the lack of children, are as consistent with an honest account as they are with a dishonest account. For that reason, it was incumbent on the Secretary of State to make further enquiries.
84. I do not accept as was submitted by the Respondent that mentioning "*the prosecution route*" in an email from the Border Force to Ms Watkinson "*has no effect on the quality of the evidence received*". As I have indicated it undermines it.
85. All of these things conduce to present the Secretary of State with an uncertain picture which she was obliged, certainly on receipt of the retracting document, to investigate further. She did not, nor did she explain in any reasoning of sufficient depth and detail why it was that she now believed all documentation submitted by Mr Onuiri including,

obviously, Ms Watkinson's new letter, was nothing but lies.

86. Accordingly, it is inevitable that her decision to withdraw his ILR on the basis of the first marriage must be quashed.

87. I do not accept as submitted, that this matter is now academic. The Secretary of State is not prepared to accept Mr Onuiri as a man of his word in respect of these matters and yet, she plainly does so on the basis of his second marriage. Whilst there is no true logical inconsistency between these two positions, it does in my estimation call for a more careful analysis by her of that earlier position.

88. Accordingly, the cancellation of Mr Onuiri's ILR is hereby quashed. If the Secretary of State chooses to resurrect her opposition to its continuation she must engage in a more careful and reasoned exercise than hitherto.

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