Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: OA/06169/2015**

THE IMMIGRATION ACTS

Heard at Glasgow	**Determination issued**
On 3 August 2017	**On 15 August 2017**

Before

Mr C M G OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE MACLEMAN

Between

M G KABIRU

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Robb, of Gray & Co, Solicitors
For the Respondent: Mr M Diwyncz, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals against a decision by First-tier Tribunal Judge Hussain, promulgated on 5 April 2016, dismissing his appeal against refusal of entry clearance to join his wife in the UK for settlement.

2. The principal ground of appeal to the UT is that the Judge erred by dealing with the case "on the papers", and failing to adjourn for an oral hearing.

3. The Judge expressed concern at ¶11 - 12 that the *sponsor* had not requested an oral hearing, and reflected on how useful oral evidence might have been in enabling the Judge to form a view of the nature and quality of a relationship. The ground of appeal founds upon those observations.

4. The absence of an offer to lead oral evidence from the sponsor was a rational point for the Judge to take, although any request for her to give such evidence would have had to come not from her but from the appellant, whose case it was, accompanied by the fee for an oral hearing.

5. The evidence which the appellant did place before the tribunal included a letter from the sponsor dated 29 March 2015, which says at the end, "I hope this information is enough." There is and was no witness statement from her expressing a wish to give oral evidence.

6. The choice to have the case dealt with "on the papers" was the appellant's. There was nothing before the Judge to indicate that it might be an error of law, or constitute procedural unfairness, to proceed as the appellant said he wished to do.

7. The appellant has tendered no witness statements to demonstrate that the evidence might have been any different if an oral hearing had been offered.

8. The duty on Judges is generally to resolve cases on the evidence which parties elect to place before them, not to offer parties unsolicited adjournments and guidance on how to improve their cases. It is seldom wrong in law or procedurally unfair to proceed to decision. We see nothing in this case whereby the Judge was not right to proceed as the appellant asked.

9. The conclusion drawn by the Judge was that the evidence fell short of establishing a subsisting relationship. That conclusion is unimpeachable as a matter of law. It disposes of all the grounds.

10. As the Judge observed at ¶13, the appellant might choose to reapply and provide further evidence. If the situation is as he claims, that is the appropriate course. Failure to put evidence before the FtT does not translate into error of law or procedural unfairness by way of an obligation on the FtT to invite the appellant to make a better case.

11. The decision of the First-tier Tribunal shall stand.

12. No anonymity direction has been requested or made.

3 August 2017
Upper Tribunal Judge Macleman