



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/00411/2013

THE IMMIGRATION ACTS

Determined On the Papers at Field House
On 3 May 2013

Determination Promulgated
On 18 September 2013
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Before

UPPER TRIBUNAL JUDGE KING TD

Between

JANARIUS NNAMDI ONUOHA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS

1. The appellant was born on 16 March 1982 and is a citizen of Nigeria. He applied on 9 October 2012 for a residence card as a confirmation of a right of residence in the United Kingdom under the Immigration (European Economic Area) Regulations 2006.
2. He contends that he entered into a customary marriage with a Miss Barbora Gabcova. He produced certain documents in support of that position.

3. It was his decision that his appeal should be dealt with on the papers and accordingly his appeal was considered by First-tier Tribunal Judge Harris on the papers on 28 February 2013.
4. The judge noted that the appellant had not addressed the issue whether his marriage was by proxy or by other means or whether he indeed had been present with his wife at the ceremony. It was noted that there was no statement from the appellant or sponsor in support of the appeal to explain the documents or provided evidence of a durable or subsisting relationship.
5. Complaint is made in the grounds of appeal that indeed a statement of the appellant had been submitted. It is dated 1 March 2013 and sent to the Tribunal under cover of a letter of 5 February 2013 being date stamped received at Newport on 4 March 2013. It had not made this way to the judge. That fact is not surprising given that the decision was written before the receipt of the statement by the Tribunal.
6. I note from the file that on 5 February 2013 directions were sent to the parties indicating that the matter was to be decided on the papers without a hearing and making a request that any written evidence and submissions must be received "in this office by 05/03/2013". Thus it would seem that the statement was received by the office in accordance with that direction. However for some reason the appeal had been listed for determination on the papers on 28 February 2013. There would seem to be little point in giving a time frame for receipt of evidence that is ignored in the listing process.
7. The matter came before me for hearing on 3 May 2013. Mr Saunders who represents the respondent submitted that even if the statement had been received it added little to the materiality of the evidence and would have made little difference therefore to the outcome.
8. Although I have some sympathy with that submission, justice is to be done and seen to be done. In those circumstances I found that there was procedural irregularity such as to call into question the fairness of the proceedings. Accordingly I set aside the decision to be remade.
9. I asked Mr Wainwright who represented the appellant on that occasion whether the appellant wished to have an oral hearing or whether it should be dealt with on the papers. Somewhat surprisingly he indicated that the appellant wanted the matter dealt with on the papers.
10. I indicated that there was little detail from the appellant as to precisely the procedures which were followed leading to marriage. There were no details as to which relatives were present and why. Little detail is provided as to the amount of any dowry and if so, to whom it was paid and why. It was noted that on a previous occasions the appellant had sought to apply for a certificate of approval to marry but this was not done in this case. The reason for that may or may not be significant.

11. I indicated also that there was no evidence from the appellant's wife as to the circumstances of her relationship with the appellant or as to its detail of continuing nature. I note the comments made by the judge that there was a paucity of information that the marriage was either genuine or subsisting.
12. I stressed to Mr Wainwright that it was of course a matter for the appellant whether or not he chooses to submit further evidence. Fairness demands that he and his representatives be given that opportunity.
13. Accordingly therefore I indicated that I would indeed deal with the matter upon the papers as requested but after 28 days from the promulgation of the decision. I indicated that any further evidence should be in proper form and submitted for my attention no later than 7 days prior to the expiry of the 28 day period so as to enable papers to be properly processed and placed before me.
14. These directions were promulgated on 23 May 2013 and thus as at today's date three months have expired.
15. It is significant that no further documentation has been received from the appellant. The directions were sent to the appellant at his stated address and or his solicitors. In any event Mr Wainwright was well aware of the issues as at 3 May since he was present when I indicated the general nature of the directions which I proposed to give.
16. There would seem to be three issues that fall for consideration. The first is whether or not there has been a lawful marriage as between the appellant and Miss Gabcova who is a Czech national. If indeed there has been a valid marriage, whether that marriage is subsisting. If subsisting, whether or not the spouse of the appellant is exercising treaty rights.
17. The requirement is upon the appellant to shown on the balance of probabilities that he is the family member of an EEA national, sponsor, exercising treaty rights in the United Kingdom as a qualified person as defined in Regulation 6 of the Immigration (European Economic Area) Regulations 2006.
18. The statement of the appellant is to the effect that he has been in the United Kingdom since 2009. He met his wife in September 2011 and got married on 19 January 2012. He asserts that his wife lives in the United Kingdom exercising treaty rights working as a cleaner.
19. He said that he got married by way of traditional marriage in Nigeria and later registered the marriage at the registry office in Nigeria. There were no requirements for the parties to the marriage to attend the ceremony since both relatives were present. I expressed surprise that the Secretary of State questioned the marriage certificate despite the fact that it was obtained from the right source. He encloses

with his appeal the Nigerian Marriage Act and Sections 34 and 325 of the Act supporting the contention that the marriage certificate should not be questioned. He says that he has gone thorough the proper procedures in Nigeria for customary marriages and therefore the marriage should be accepted.

20. Two documents are relied upon, the first being that of an affidavit from James Oghara dated 26 March 2012. He purports to be the brother of the appellant and declares that the appellant got married to Barbora Gabcova on 19 January 2012 with the consent of Mr Roman Gabcova. There is an affidavit purportedly sworn at the Ehor Customary Court Registry. It is not entirely clear what part James Oghara had to play in the procedure and on what basis he has knowledge of the facts which he now claims.
21. There is a Testimony of the Native Law and Customary Marriage also dated 26 March 2012 issued out of the Registry of Marriages in Benin City. It purports to be a certificate by Mr and Mrs Roman Gabcove who are parents of the sponsor indicating that they have given consent to the marriage and that a dowry has been paid.
22. A curious feature of that particular document is that it says "In testimony of my declaration of consent to this marriage I (we) herein under affix my (our) signatures or marks." There is no signature on the document other than a signature from a witness. Without any name for the witness it is difficult to understand who that witness is.
23. The respondent invites me to consider the context in which those documents were presented. The background information from a COIS Report on Nigeria is relied upon by the respondent to show that the marriage is not a valid one in Nigeria. It is said that paragraph 24.23 of the COIS Report records that both parties to the marriages technically must be physically present at the same location with witness to sign certain marriages documents and that proxy marriage have ceased to be valid but still occur. Set beside that is indeed the Nigeria Marriage Act which seems to suggest that certain customary marriages are still recognised as being valid.
24. That having been said, it may reasonably be considered that a customary marriage is still expected to conform with the proper procedure laid down for that type of marriage. There is and remains a paucity of information from the appellant to indicate where it was conducted and how it was conducted. The statement prepared by the appellant would seem to recognise that a form of ceremony is required. He claims that such was satisfied since both relatives were present. It is not entirely clear where therefore this ceremony was conducted and what form it should have taken. It is not apparent from the Testimony of Native Law and Customs that Mr and Mrs Roman Gabcova were actually physically present, the affidavit merely says that it was conducted with the consent of Mr Roma Gabcova.
25. The respondent noted that the appellant had previously applied on 7 August 2010 for a certificate of approval to marry his then British fiancée Miss Lewison Love Ose.

Another application was made by the appellant and refused on 19 October 2011 on the basis of his claimed status as the unmarried partner of a Polish national Miss Danute Radtke. The respondent concluded that the appellant's relationship with Miss Gabcova was of relatively short duration. She found no evidence to show the relationship between the appellant and Miss Gabcova to be durable and subsisting.

26. Apart from the marriage certificate the other documents submitted by the appellant are an expired tenancy agreement for six months from 27 February 2012 showing the names of the appellant and the sponsor, a TV licensing letter dated 20 March 2012 addressed to the appellant at the tenancy address and an electricity bill dated 14 May 2012 in the appellant's sponsor's name at the tenancy address. There is a further letter confirming her employment dated 4 October 2012 and payslips in her name.
27. It is significant, as I so find, that in the witness statement the appellant claims that he met his wife in September 2011 and married a few months later. This is notwithstanding the fact that on 19 October 2011 he was seeking to be married to a Polish national. I find that factor to be indicative that there was in fact no relationship of a romantic or emotional nature with Miss Gabcova. I find further that the pattern of his applications to marry are indicative of the real intention of the appellant to secure residence.
28. I find it significant that although the appellant has been advised of the desirability of providing further evidence as to his marriage and his relationship with the sponsor, he has not done so.
29. Looking at the matter overall and applying the appropriate standard and burden of proof, I do not find that the appellant as established that his claimed marriage to Miss Gabcova was in accordance with any recognised form of customary marriage. The appellant has not given any indication as to why he has chosen a proxy marriage in Nigeria in respect of someone who has no connection with Nigeria. There has been no application to marry in the United Kingdom and there is no indication as to what connection, if at all, there is between the sponsor, her parents and Nigeria. It is also significant and undermining of the claimed relationship that she has made no statement concerning that matter herself.
30. In any event, I do not find that there is any subsisting or durable relationship as between the appellant and Miss Gabcova.
31. I note that the tenancy agreement was signed on 27 February 2012 and any document linking the appellant with that address therefore would seem to be a TV licence payment card for 30 March 2012. An electricity bill dated 28 May 2012 and the various payslips link the sponsor with that address in April to August and September 2012. Such does not show without more cohabitation.
32. The letter from Oscar Cleaning Services dated 4 October 2012 purports to indicate that Miss Gabcova started employment as at 19 March 2012. There is no indication as

to the nature of that employment so far as hours are concerned. It is not entirely clear how much work was expected of her. According to the wage slips of 30 September 2012 there is total pay of £1,355 with no income tax paid. The net pay for that month is said to be £681.52 and the net pay for the previous month £663.04.

33. If that be correct it begs the question as to what she was earning five months previous to those wage slips.
34. I do not find that those wage slips tell an accurate picture as to her earnings.
35. My concerns are also highlighted by the wage slip for April 2012 which again reflects a net pay of £636.62, speaking on that account as to total gross pay of £2,002 what she had only stated in the previous month.
36. I find it difficult to reconcile the figures as set out and for those reasons I find the documentation submitted is unreliable. I bear in mind the principles to be followed under **Tanveer Ahmed**. Once again it of course would be entirely open to the sponsor to have submitted further documentation in support of her working as was highlighted in the directions which I set.
37. Overall I do not find therefore that the appellant or the sponsor are credible as to the facts which they seek to present to the Tribunal. I do not find that they are lawfully married according to the customs of their country. I do not find that they are in a durable or subsisting relationship. I do not find that the sponsor is exercising treaty rights. Looking at the overall context I have little hesitation in concluding that the appellant is seeking to deceive the authorities as to his status and situation in the United Kingdom.
38. The appeal is dismissed.

Signed

Date

Upper Tribunal Judge King TD