



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/18465/2012

THE IMMIGRATION ACTS

Heard at Bradford
On 25th October 2013

Determination Sent
On 6th November 2013

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

GEORGE YEBOAH ACHEAMPONG

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs Brooksbank, Counsel, instructed by Henry Hyams and Company
For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is the Appellant's appeal against the decision of Judge Reed made following a hearing at Bradford on 3rd October 2012.

Background

2. The Appellant is a citizen of Ghana born on 6th September 1984. He appealed against the decision of the Respondent to refuse to grant him an EEA residence card as confirmation of a right of residence in the UK as a family member of a qualified EEA national, Mrs Tutu-Adjei. The Respondent stated that the Appellant's marriage certificate could not be verified as genuinely issued and he had therefore failed to demonstrate that he was genuinely dependent upon his EEA family member. At the hearing before Judge Reed the Presenting Officer stated that the Respondent's position was that even if the marriage certificate was genuine, the marriage was one of convenience. Mrs Brooksbank said that she was in a position to deal with the issue.
3. The judge directed himself to the relevant case law and concluded that the Respondent had not discharged the burden of proof upon her to show that the marriage certificate was a forgery. He then went on to consider whether or not it was reliable evidence of a marriage having taken place.
4. He had before him a previous appeal determination which related to a claim made by the Appellant that he was dependent upon a half brother who held German nationality. In that determination the previous immigration judge noted inconsistencies between the Appellant and his half brother about his family and he found that he was not related as claimed.
5. The judge stated that the previous credibility findings had a bearing upon his own assessment of the credibility of the evidence given by the Appellant and also illustrated that official documents from Ghana may not necessarily be reliable evidence. The previous judge had concluded that the Appellant and his witness were not brothers, in spite of what was stated on the Ghanaian birth certificates produced to him.
6. The judge noted that the marriage registration certificate bore no date of registration. Neither the Appellant nor his witness was present at any ceremony of marriage which meant that they could not give direct evidence of what had taken place. There was a statutory declaration by the Appellant's uncles, but he said that it was significant that the Appellant had given contradictory evidence about his relationship to them.
7. He also considered the certificates from the Ministry of Foreign Affairs in Ghana but they did nothing to demonstrate the veracity of the statements made in the statutory declaration. There was also a document from the Kumasi Metropolitan Assembly purporting to verify the marriage certificate as being genuine. He said that the certificate itself might be genuine but did not provide reliable evidence of something which had taken place outside the direct knowledge of the registrar. He observed that there was no direct evidence or record from any independent or official source that a customary marriage had actually taken place in the manner described by the Appellant's uncles and no documentary evidence of any marriage contract or any other customary formalities having been completed.

8. He noted from the face of the marriage certificate itself that there was a box for the signature or thumbprint of the husband and the Appellant's name had been written and underneath there was a signature. The Appellant said that someone else had written his name and he then signed in the box when the certificate was received by him. The judge said that it was unclear on what authority someone had written the Appellant's name in the space provided for his signature.
9. He concluded, having considered all of the evidence in the round, that there was no reliable evidence that the customary marriage had taken place.
10. He then considered whether, if he was wrong about this, the marriage was one of convenience. He noted that the Appellant and the witness had given a consistent account as to the circumstances of how they met but said that they were vague and inconsistent about when they started living together. Neither could put a date on when cohabitation had actually started. The Appellant in his oral evidence claimed that he lived with his brother for some of the time and with the witness for the rest of the time before the marriage but the witness was clear that no cohabitation had taken place until afterwards.
11. There was documentary evidence from family members of the witness but they did not attend to give oral evidence in support of the appeal and the judge attached no weight to it. Neither did he attach weight to the photographs and greeting cards and emails which he said had been submitted in an attempt to bolster a false case. There was no evidence of any celebration in the UK after the claimed marriage and no reliable documentary evidence from any official sources that they were cohabiting.

The grounds of application.

12. The Appellant sought permission to appeal on the grounds that the Appellant's uncles could not realistically be expected to travel from Ghana to attend Tribunal proceedings in the UK. The judge should have been satisfied that the declarations were reliable.
13. The immigration judge had referred to vague and inconsistent accounts but the Appellant and his wife were not satisfied that the interpretation at the proceedings was accurate. The inconsistencies in the evidence were minor and too much weight had been placed on them.
14. Finally, there was an error with respect to Article 8.
15. On 6th August 2013 Designated Judge Murray stated that the judge had dealt with the evidence in relation to the marriage but granted permission because there was nothing in the determination about the Appellant's or his wife's Article 8 rights.
16. On 21st August 2013, the Respondent served a reply defending the determination.

Submissions

17. Mrs Brooksbank stated that she wanted to make submissions in relation to the marriage issue and was not precluded from doing so by virtue of the grant of permission. I therefore heard her submissions which were two-fold
18. She said that there were serious issues with the interpreter at the hearing and she had raised the issue with the judge, who had made his decision on the basis that the evidence had been inconsistent, but this confusion had arisen because of interpreter difficulties.
19. She also submitted that the judge's views had been tainted by the previous determination and he had placed too much weight upon it. Furthermore, he had made incorrect factual findings, criticising the Appellant for describing his relative as an uncle when it was known that in other cultures this was not descriptive of a particular relationship but a more general term of respect.

Consideration of whether there is a Material Error of Law

20. Because Mrs Brooksbank was alleging that she had raised an interpreter issue with the judge, which had not been recorded, it was necessary to look both at the judge's Record of Proceedings and the notes of the Presenting Officer at the hearing.
21. There is nothing in the judge's record to indicate that an interpreter challenge was made.
22. By chance, Mr McBurney who represented before Mr Reed, was in the building. He appeared before the Tribunal and looked at his notes and confirmed that there was nothing in them that recorded a challenge to the interpretation being made. I asked Mrs Brooksbank if she had made submissions in relation to interpreter issues to Mr Reed and she said that she had no notes of her submissions.
23. I do not conclude that Mrs Brooksbank, as an officer of the court, is seeking to mislead the Tribunal in any way. However, there is no support for her recollection in either the Presenting Officer's note nor that of the judge. Had there been a serious problem with the interpreter I would have expected her to have made an application for an adjournment on the basis that it was not safe to rely upon the Appellant's evidence. It is clear that no adjournment application was made. In these circumstances, I am not satisfied that there was any confusion in the interpretation at the First-tier hearing such that the Appellant's evidence could not properly be relied upon.
24. The judge was plainly entitled to take account of the fact that the Appellant had been found not to be truthful by a previous immigration judge in assessing the credibility of the evidence before him. He was also entitled to observe that, in that case, the Appellant relied upon evidence from Ghana which was inconsistent with the judge's findings.

25. The weight which the judge put on the evidence was a matter for him. So far as the comment regarding the uncle is concerned, it appears to have been the Appellant's evidence that the uncle concerned was his mother's brother. That was in contrast with subsequent evidence that he had no knowledge of how he was really related to him. The inconsistency is clear and the judge was entitled to rely on it.
26. However, the judge did not make any findings with respect to Article 8 and to that extent the decision has to be remade.

Further Submissions

27. Mr Diwnycz submitted that the Appellant was precluded from relying on any claim to have family life in the UK by the findings of the judge. He would have an element of private life, having been in the UK since 2007, but there was nothing to stop him making an application for a family permit upon a return to Ghana.
28. Mrs Brooksbank submitted that the Appellant had significant private life in the UK having been here since 2007, both in terms of his involvement with his local church and the family with whom he lives. He would have difficulty in making a successful application to return.

Findings and Conclusions

29. The Appellant enjoys private life in the UK, having been here for six years, but no evidence of that private life has been submitted. He does not enjoy family life because, on the sustainable findings of the judge, he has no valid marriage and indeed no sustainable relationship with Mrs Tutu-Adjei.
30. Removal would be an interference with his private life in the UK but lawful, since he has no basis of stay here and in pursuit of a legitimate aim.
31. It would also be proportionate. The Appellant has lived for the majority of his life in Ghana and his family live there. If he chooses, he can make an application to return to the UK on the basis of his claimed relationship.

Decision

There is no error of law with respect to the judge's decision under the Immigration Rules. The appeal is dismissed with respect to Article 8.

Signed

Date

Upper Tribunal Judge Taylor