

THE IMMIGRATION ACTS

Heard at Field House
On 15 July 2013

Determination Promulgated
On 17 July 2013

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

EMMANUEL AGYEMANG

Appellant

and

SECRETARY OF STATE

Respondent

Representation

For the appellant: No appearance

For the respondent: Mr E Tufan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This appeal comes before the Upper Tribunal following the grant of permission by Upper Tribunal Judge Chalkley on 13 May 2013.
2. The appellant is a citizen of Ghana born on 15 September 1980. He arrived in the UK with the help of an agent in 2006 and has remained without authorisation ever since. On 27 July 2007 he sought a residence card as the extended family member of one Mr. Franklin Agyeman which was refused on 20 March 2008. On 11 November 2010 he applied again for a residence card as the cousin of the same individual and this was refused again on 4 March 2011.
3. On 7 April 2012 the appellant applied for an EEA residence card as the spouse of Melissa Sophie Larochelle, a French national, whom he claimed to have married by

proxy in Ghana on 7 January 2011. According to the statutory declaration accompanying the marriage certificate, the sponsor's parents are also both French nationals. On 8 October 2012 this application was also refused. The respondent noted that this marriage was not registered until 13 March 2012, after the required three months registration period. Furthermore, the data on the statutory declaration did not accord with the date on the marriage certificate, the former giving the date in 2012 and the latter in 2011. The respondent raised concerns about the authenticity of the marriage certificate. It was also considered that no documentary evidence of the sponsor's residence in the UK had been produced other than a photocopy of a single bank letter. In the absence of any original evidence, it was not accepted that she was residing in the UK.

4. An appeal was lodged against the decision but an oral hearing was not requested. The matter came before First-tier Tribunal Judge Prickett who determined the appeal on the papers and dismissed it by way of a determination promulgated on 4 April 2013. Permission to appeal was sought but refused by First-tier Tribunal Judge Easterman on 24 April 2013. It was however granted upon renewal by the Upper Tribunal solely on the basis that "*a Panel of the Upper Tribunal are shortly to consider the issue of customary and proxy marriages*". On 31 May 2013 the respondent prepared a response to the grounds of appeal under Rule 24 and maintained that the grant of permission did not identify any arguable error of law and that the reasoning of the judge based on the evidence available had been open to him to make.

The hearing

5. There was no attendance by the appellant, the sponsor or his representative when the appeal came before me on 15 July 2013. I note that the same solicitors had instructed Counsel in a similar type of appeal heard earlier in my list. There being no appearance and no message received by 11:15 AM, I proceeded with the appeal in the appellant's absence.
6. I heard submissions from Mr. Tufan who submitted that the judge had been entitled to reject the reliability of the appellant's evidence. He took me through the Lloyds TSB bank statements, purportedly pertaining to the sponsor, that had been submitted by the appellant in support of his earlier appeal showing her address as 2 Cliff Walk, London E16. He pointed out that not only did the figures not add up to the totals and balances shown, but that the statement at C15 related to transactions between 13 November and 13 December 2013. In the circumstances, he submitted that it was open to the judge to reject the reliability of the appellant's evidence and to dismiss the appeal.
7. Mr Tufan also pointed out that the Customary Marriage and Divorce Act of Ghana required both parties to be Ghanaian nationals but there was no evidence that the sponsor was anything but French and the evidence showed that her parents were French too. He asked that the decision of the judge be upheld.

Findings and Conclusions

8. The grounds argue that the judge erred in requiring the marriage to be registered within three months of taking place. It is argued that this requirement does not exist under Ghanaian law and that all the requirements of the law had been met. The situation is, however, not that clear cut and the grounds do not fairly represent what the judge decided in his determination.
9. The judge did not dismiss the appeal because the marriage had not been registered in time but because he did not believe it had taken place. There is a significant difference between the two.
10. According to section 2(2) of the Customary Marriage and Divorce (Registration) Act 1985, there is a legal obligation to register customary marriages within three months. A failure to do so does not invalidate it but that is not the issue the judge was concerned with. The appellant's evidence was that the marriage was registered. Why it was registered some 15 months after the event is not clear, nor is it clear why he waited 16 months after the marriage to apply for his residence card or why, if he had known he was about to get married, he would have made an application for a residence card as the family member of his cousin. If the reference to the date of marriage as 2012 on the statutory declaration was an error, it is not explained why evidence from the parties who prepared it was not obtained to confirm their mistake. The judge was entitled to expect such evidence could be easily obtained. With regard to all the requirements of the law having been met, that is not established as the law requires the parties to be Ghanaian nationals and there is no evidence that the sponsor is a dual national. It also requires consummation by cohabitation and I shall come to the evidence of residence later. These are however issues that were not relied on by the judge in any event.
11. It is also argued that the burden was on the respondent to prove that the marriage certificate was not an authentic document. That is quite correct and the judge did indeed direct himself accordingly, finding at paragraph 8 that the respondent had not discharged the responsibility of proving the document was a forgery.
12. It is maintained that cohabitation was not required under the Regulations. That is also correct but the respondent had not been satisfied that the sponsor was residing in the UK, which is a different point.
13. I do not follow the argument in paragraphs 9 and 10 of the grounds. It is maintained that the error of the date of marriage was corrected but the grounds do not clarify where this may be seen. It is said that the marriage certificate shows the correct date of 2011. I have addressed these issues above at paragraph 10.
14. The appellant has not considered it necessary to attend this hearing or to instruct his representative to attend on his behalf. Given the judge's concerns about the credibility of the claim, one might have expected that he would have attended along

with his sponsor but in his absence I have considered the grounds and all the evidence with care.

15. The reliability of the claim as a whole was questioned by the judge and had he examined the documents even more carefully than he did he would have found even more reasons to support his conclusions. Having looked at the documents myself and having been directed to certain matters by Mr Tufan, I am satisfied the judge was fully entitled to find that the appellant's claim was not made out. It is of great concern that the appellant has, through his representatives, submitted bank statements which on the face of it are wholly unreliable.
16. I do not accept that Lloyds TSB Bank would have issued statements with incorrect sums or indeed relating to transactions and balances at a date some five months in the future. The originals have not been produced and it may be seen that the sections bearing the sponsor's name and address differ in font to the rest of the statement and in certain part show distortion whereas there is no corresponding distortion on the rest of the document. Furthermore, at C14, the bank statement shows a debit card payment to Selfridge's of London spelt as Selfirdges. The statements are wholly unreliable as evidence of the sponsor's residence in the UK.
17. The pay slips of the sponsor strangely each bear the same net payment. The dates on the payslips do not accord with the deposits of those amounts as shown in the bank statements. The Sky statement at B3 of the appellant's bundle purports to have been issued on £ 29 November 2012. The insertion of the £ sign is most unusual. The same anomaly applies to the statements of 29 December 2012 at B2 and 29 January 2013 at B1. Additionally, the payments for Sky as shown in the bank statements do not accord with the bills that have been adduced.
18. The appellant has argued in his statement and indeed in the grounds that the Secretary of State had retained his original marriage certificate and therefore prevented him from having it authenticated. However there is evidence from the respondent to show that, contrary to what the appellant maintains, the original certificates and affidavit were returned to him at his alleged address on 7 February 2013 before he prepared statement and long before the grounds were prepared. The sponsor's statement prepared at the same time and in almost identical terms to be appellant's also makes the same unjustified complaint.
19. I was also referred to the appellant's tenancy agreement which is described as a short-term six-month contract however the duration of the tenancy has been given as three years. This anomaly also remains unresolved. Further, the rent as shown on the tenancy agreement of £75 per week inclusive of bills does not correspond to the amount of £325 per calendar month on the accompanying letter from Crown Lettings and the signatures on that letter and on the two tenancy agreements for the landlord, Mr Martin, who also seems to be the agent at Crown Lettings are completely different. Different telephone numbers are also given for Mr. Martin at D4 and at D1 despite the same address being given.

20. I note further that the endorsement of Alexander Kofi Baah on the statutory declaration describes his occupation as a barrister, solicitor, notary (sic) public and a management consultant. I do not accept that he would use an endorsement that incorrectly spells his position as a Notary Public.
21. It is not explained how the signatures of the appellant and sponsor appear on the marriage certificate given that they were not there when it took place or when it was registered.
22. For all these reasons I find that the judge was justified in questioning the credibility of this claim. No errors of law are disclosed in his determination. If anything, he did not go far enough in his findings and conclusions. Given the major difficulties with almost all the appellant's documents, it is perhaps not surprising that he did not attend court. What is surprising is that his representatives agreed to submit and rely on them.

Decision

23. No errors of law have been found. The determination to dismiss the appeal is upheld.

Signed:

Dr R Kekić
Upper Tribunal Judge

16 July 2013

NB: Upon completion of this determination I was handed a letter dated 12 July 2013 (received on 16 July) from the appellant's representatives confirming they were without instructions and were no longer representing the appellant.