



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/18516/2012

THE IMMIGRATION ACTS

Heard at Field House
On 14th August 2013

Determination Promulgated
On 21st August 2013

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

PATRICIA MARCIA DALE RHODEN

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr A Balancy, Counsel, instructed by Forward & Yussuf Solicitors
For the Respondent: Mr G Saunders, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is the Appellant's appeal against the decision of Judge Robinson made following a hearing at Hatton Cross on 14th May 2013.

Background

2. The Appellant is a citizen of Jamaica, born on 8th September 1974. She applied for leave to come to the UK as a the spouse of Norman Rhoden but was refused entry clearance on 24th February 2012 on the grounds that the Entry Clearance Officer was not satisfied that the marriage was subsisting, nor that the accommodation would be adequate, nor that the maintenance requirements of the Rules could be met.
3. The judge heard oral evidence from the Sponsor. The couple had married in October 2004. He had been married before, in 1979, and had two children from that marriage. However, since the marriage he had had a child with a former girlfriend who was born in 2006.
4. The judge recorded that the Sponsor said that he and his wife spoke about four times a week on the telephone and that he had visited her in Jamaica. There was also evidence of money transfers.
5. However the judge stated that the Sponsor provided no information about his married life with the Appellant in Jamaica, and there was no evidence of letters, emails or phone calls between the couple. No wedding photographs were produced. The Appellant did not provide a statement for the appeal hearing and gave no reasons for the delay of eight years before making application for settlement. Apart from details of the Sponsor's travel to Jamaica there was no information about his relationship with her or their future plans. There was no independent evidence from family members, friends or acquaintances. The judge concluded that there was very little evidence to suggest that the couple were in a genuine subsisting relationship.
6. With respect to maintenance, he said that the Sponsor's monthly net income from benefits was approximately £112 per month. His housing costs are his rent of £780 per month and council tax, details of which were not given. This represented a monthly figure less housing costs of £332 which he said was not adequate to maintain the family without recourse to public funds.

The Grounds of Application

7. The Appellant sought permission to appeal on the grounds that, whilst it was accepted that the Appellant did not provide a statement, there was no legal obligation on her to do so and the fact that she submitted an application to join the Sponsor and pursued the matter until appeal was indicative of her intent.
8. Secondly, the judge had failed to take into account the cultural norms of the Appellant in that it was entirely conceivable for them to have an age gap and on some occasions children born out of marriage. There were photographs and oral evidence of the Appellant that the children were known to the Appellant and had met her on the last holiday in Jamaica. The judge failed to consider the case of GA (Subsisting marriage) Ghana [2006] UKAIT 00046, in particular that evidence of telephone cards was capable of being corroborative of the contention of the parties that they communicate by telephone even if the data cannot confirm the particular

number. The Sponsor continued to provide for the Appellant and remained in touch by regular phone calls and the Appellant wished to adduce further evidence to put her case forward which was admissible since it showed the true position of the parties as at the date of decision.

9. Finally, the judge had been wrong in his treatment of the issue of maintenance. The housing benefit would remain the same whether or not the Appellant came to the UK. It was accepted that the Sponsor received pension credit which was £142.70 per week which was well above the income support level.
10. Permission to appeal was granted by Upper Tribunal Judge Deans on 3rd July 2013 for the reasons stated in the grounds.
11. On 12th July 2013 the Respondent served a reply defending the determination.

Submissions

12. Mr Balancy said that he had a bundle of evidence which he wished to adduce should an error of law be found in relation to the subsistence of the marriage. He relied on his grounds and said that there was sufficient evidence before the judge to allow the appeal. The Appellant had not been able to join the Sponsor before because she had to care for her mother who had died in 2011. There was evidence of regular visits, telephone calls and financial support which was enough for the judge to approach the question differently.
13. With respect to maintenance, he said that the income available to the couple exceeded the benchmark established by income support and the judge had erred in his calculations.
14. Mr Saunders submitted that the judge had looked all of the evidence and come to a conclusion open to him. The couple had married in 2004 but since that time the Sponsor had had a relationship with another woman and had another child. Against that background the judge ought properly to have closely examined whether the marriage was subsisting. He accepted that telephone cards were capable of corroborative evidence but were not determinative. The judge was entitled to find that the dearth of evidence from the Appellant herself cast doubt on the subsistence of this marriage and whilst it was acknowledged that the Sponsor had visited Jamaica, that did not necessarily mean that he had visited her.
15. The Sponsor's weekly income was £290.40 which exceeded the income support level for a couple and two children of £241.43. However income support was a gateway to other benefits, and given the lack of a schedule of the Sponsor's expenditure, the Appellant had failed to demonstrate that the funds available were sufficient to meet the test as set out in KA and Others (Adequacy of maintenance) Pakistan [2006] UKAIT 00065.

Findings and Conclusions

16. Given that the figures show that the Sponsor's income exceeds the income support level, the reasons given by the judge for dismissing the appeal on maintenance grounds are not adequate. Indeed he appears to have made a mistake in his calculations. However any error is immaterial because his decision as to whether the marriage was subsisting was plainly open to him.
17. This is a case where there has been an eight year delay between the marriage and the application for entry clearance. The reason given by the Sponsor was that the Appellant had to look after her mother, but she died in 2011.
18. There was a dearth of evidence from the Appellant herself. The judge was entitled to observe that the Sponsor was much older than the Appellant, and given the lack of evidence from her he was not satisfied that the burden had been discharged.
19. There was evidence of the Sponsor visiting Jamaica, but it appears that in 2010 he did not live with the Appellant and stayed in a hotel. In any event, the judge took into account the fact that the Sponsor had travelled there. The judge was entitled to place significant weight upon the lack of evidence from the Appellant herself whose intentions are central to this appeal. He was also understandably concerned about the dearth of evidence from any family or friends who might have been able to corroborate the Sponsor's evidence that this was a subsisting marriage.
20. The Appellant has not identified in the grounds any relevant evidence which the judge did not take into account. Given these circumstances, particularly since the Sponsor had a child with another woman after he had entered into marriage with her, it is entirely unsurprising that the judge was not satisfied that this was a subsisting marriage.

Decision

21. The judge did not err in law and the decision stands. The Appellant's appeal is dismissed.

Signed

Date

Upper Tribunal Judge Taylor