Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number
IA/04064/2014

THE IMMIGRATION ACTS

Heard at Sheldon
On 14th August 2014
Prepared 15th August 2014

Determination Promulgated
On 18th August 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

ANTHONY ASARE
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: No appearance
For the Respondent: Mr N Smart (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant, a citizen of Ghana, applied for a residence card on the basis of his marriage to his wife, a French national, under the EEA Regulations. The application was refused in the Refusal Letter of the 27th of December 2013, it was not accepted that they were genuinely married or in a durable relationship. The Refusal Letter notified the Appellant that an application under article 8 of the Immigration Rules should be made separately.

2. The Appellant appealed to the First-tier Tribunal by Notice and Grounds of Appeal of the13th of January 2014. The grounds assert that the marriage documents had been duly issued and if information was missing it was not the fault of the Appellants. It was also stated that the decision was ultra vires and that the wrong standard of proof had been applied.

3. The Appellant's appeal was heard by First-tier Tribunal Judge Freer on the 27th of March 2014 and allowed in a determination of the 31st of March 2014. In the determination the Judge found that there was an error of law and the appeal was allowed under the EEA Regulations.

4. The Secretary of State sought permission to appeal on the basis that the Judge had erred in not having regard to the case of Kareem (Proxy marriages – EU Law) Nigeria [2014] UKUT 24 (IAC) where paragraph 14 indicated that the law of the EU nationals home state applied. Permission was granted by Judge Grant on the 7th of May 2014.

5. Directions for the hearing were sent out to the Appellant, Edward Marshall Solicitors and the Secretary of State on the 26th of June 2014. These indicated that the hearing before the Upper Tribunal was on the 13th of August 2014 at Sheldon and that the parties were to be prepared in the event that the decision was set aside and remade by the Upper Tribunal.

6. Neither the Appellant nor the representatives attended the hearing. On the 1st of April 2014 the Appellant's representatives had written to the First-tier Tribunal indicating that the original address for correspondence, in Stratford, was closing and to use the head office address which is that given on the Upper Tribunal notice of the 26th of June.

7. The court clerk contacted the representatives who stated that they had no knowledge of the case and that the lawyer named was on holiday. There was no application made by them. The Appellant had been served at the address given, which is in central Birmingham and easily accessible from the hearing centre. There was no contact from the Appellant explaining his absence or seeking an adjournment.

8. In the absence of any contact from the Appellant and bearing in mind that the appeal had been a paper appeal, the Appellant having elected not to have an oral hearing, it was decided to continue with the appeal in the absence of the Appellant.

9. The complaint of the Secretary of State can be dealt with briefly. The determination contains no consideration of the issues to be considered following the case of Kareem and with there being nothing that addressed the position of the Appellant under French law there is a clear error in the determination. In the circumstances the determination is set aside with no findings being preserved.

10. Given that the Appellant had elected to have his appeal considered on the papers and the function of the Upper Tribunal is to correct an error of law I decided to remake the decision on the basis of the evidence that was contained within the Upper Tribunal file. The Home Office were not called on to make submissions.

11. The Appellant's application was made on the 28th of June 2014. It is based on his proxy marriage to the Sponsor. There is no evidence from the Appellant to show that this marriage is recognised in France as a legal marriage and accordingly on that basis the Appellant cannot show that he is entitled to a residence card on this basis.

12. So far as the position of the marriage in Ghana is concerned the Appellant submitted a number of documents. The first 3 documents from the Republic of Ghana appear to confirm the signatures and stamps on other documents. The statutory declaration of the 14th of February 2013 baldly states “That all the requisite customary rites in respect of the marriage aforesaid were duly performed for the purpose of our son and daughter to be related as husband and wife.” It does not state what those customary requirements were or how they were met. This is as helpful as stating that the a person will be maintained and accommodated adequately without stating what funds or accommodation is actually available. The evidence does not satisfy me that the Appellant and Sponsor are married according to Ghanian law.

13. Other documents have been submitted including a P60 for Magalie Doyon whose relation to the case is not apparent. There is a letter from Victoryline UK Ltd of the 25th of June 2013 stating that the Sponsor started work on the 11th of February 2013, it does not state her role, hours or wages. At the base of the letter the word email is presented as “EMAIL” and then “Email”. Wage slips for April, May and June 2013 have been provided but these do not cover the full period of the Sponsor's employment and bank statements showing her pay entering her account have not been provided. I am not satisfied, applying Tanveer Ahmed, that the documentation is reliable and cannot find that the Sponsor is exercising treaty rights.

14. There is no evidence relating to the relationship of the Sponsor and the Appellant and no basis for finding that they are in relationship let alone that it could be regarded as being durable. The Secretary of State has served a notice on the Appellant to the effect that if he wishes article 8 or the Immigration Rules to be considered a separate application is required and accordingly I have not considered those issues.

CONCLUSIONS

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

I set aside the decision and I re-make the decision in the appeal dismissing the appeal of Anthony Asare.

Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I make no order.

Fee Award

In dismissing this appeal I make a no fee award.

Signed:

Deputy Judge of the Upper Tribunal (IAC)

Dated: 15th August 2014