Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/17819/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 22 August 2014	**On 3 September 2014**
Prepared 22 August 2014	

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT
(ANONYMITY ORDER NOT MADE)

Appellant

and

MS RHODA BADU AWUAH

Respondent

Representation:

For the Appellant: Ms Julie Isherwood, Senior Presenting Officer
For the Respondent: Mr Liam Loughlin, Counsel instructed by Charles Allotey & Co Solicitors

DETERMINATION AND REASONS

1. In this determination the Secretary of State, who is the Appellant, is referred to as the Secretary of State and Ms Awuah is referred to as the Claimant rather than Respondent.

2. The Appellant, the Secretary of State, determined on 25 April 2013 that the Claimant's application for a residence card should be refused with reference to the absence of evidence to show the Claimant was a relevant person for the purposes of Regulation 7 of the 2006 Immigration (European Economic Area) Regulations (the Regulations 2006).

3. The basis of that refusal was that the Claimant had failed to produce appropriate documentary evidence to confirm the registration of a customary marriage as required under Ghanaian legislation in that under the requirements of paragraph 3(1) of part 1 of the Ghanaian Customary Marriage and Divorce (Registration) Law 1985 three requirements for registration were set out. First, the names of the parties to the marriage were contained within the statutory declaration, secondly the places of residence of the parties at the time of the marriage should be set out; and thirdly, that conditions essential to the validity of the marriage in accordance with applicable customary law had been complied with. It was said that the statutory declaration dated 23 March 2012 was defective in that it did not contain the places of residence of the parties to the marriage. Accordingly it was said that the UK Border Agency did not accept the registration of the marriage or statutory declaration submitted as being valid, lawfully issued and evidence of the relationship. Although it is poorly worded that reasoning does not exclude there being a valid customary marriage under Ghanaian marriage laws but rather simply the UK would not recognise it as a registered marriage.

4. The appeal by the Claimant against that decision came before First-tier Tribunal Judge Blackford who, on 15 May 2014, allowed the appeal on the basis that the documentation provided showed that the marriage had been registered by the Ghanaian authorities and in the circumstances that was sufficient.

5. It is unfortunate that the judge in reaching that conclusion makes reference to a letter from the High Commission, dated 17 March 2014,

which in fact does no more than confirm the signatures on relevant documentation recited in the letter. Also provided seemingly to the judge was a letter dated 27 March 2012 from Sayuti Yahaya-Iddi, Director II, Legal and Consular Bureau, Ministry of Foreign Affairs and Regional Integration of the Republic of Ghana, who certifies that the signature of a person being the First Deputy Judicial Secretary of the Ministry's signature covering the signature of Alexander Kofi Baah, Notary Public, appearing on the joint statutory declaration by Kwame Akoto-Kankam and Kwame Badu Awuah dated 23 March 2012 was the true and certified signature of John Bosco Nabarese.

6. Unfortunately the relevant statutory declaration having been carefully examined with the parties does not contain any covering signature from Mr Nabarese. On the contrary, there is nothing from him on the document supplied either it seems to the Respondent or to the judge or indeed to me. It is thus unexplained how in March 2014 Mr Nabarese's signature could be confirmed. Further, there is the copy of a registration form for the marriage which is photocopied and incomplete but nevertheless the signatures and the witness to the wedding on 3 January 2012 at Kumasi was signed in the register by the registrar of marriages at Kumasi. There is nothing to indicate that the stamp and/or the signature was that of Mr Nabarese.

7. The judge also had, although no particular reference is made to it, a letter from the High Commission dated 28 March 2014 and comes under the hand of Mr Bennet G Yeboah, a Counsellor for the Ghanaian High Commission dealing with consular affairs. The letter is written on the Republic of Ghana headed notepaper for the consular section. The letter gives no particulars of Mr Yeboah's legal experience or expertise on the issue of legality of marriage and the letter is ultimately somewhat unfortunately lacking in clarity. The letter asserted as follows:

> "Concerning the statutory declaration accompanying the registration of the marriage the omission of the place of residence of the couple at the time of the marriage does not invalidate the marriage."

In this respect it may well be right that a marriage where the formalities are not entered into still remains a valid customary marriage. That is not the same thing as whether or not it is for the purposes of UK considerations a valid marriage, meeting the requirements of registration for entry clearance purposes. Mr Yeboah further cites a case of Owusu Ameyaw which is recited for the proposition that because the form of register of customary marriage that accompanied the statutory declaration states the place of residence of the couple and authenticated by the Ghana High Commission that the marriage was properly registered in Ghana, and the Appellant has proved beyond doubt that the marriage is genuine.

8. Why it is his place to make such assertions is unclear but again the letter is ambiguous. The premise is that there was a statutory declaration which stated the place of residence and was appropriately authenticated. That does not seem to me would have been of any assistance to the judge.

9. Finally Mr Yeboah asserts:

> "The competent authorities in Ghana have confirmed that the marriage was properly registered in accordance with the Customary Marriage and Divorce (Registration) Law 1985 and Amendment Law 1991".

I do not know how and in what way the competent authorities have confirmed it was properly registered, nor would the judge in looking at this letter have been able to conclude that there was a validly registered marriage. However, the judge on the basis of the information provided decided of course that the appeal should be allowed.

10. Permission to appeal that decision was given by First-tier Tribunal Judge Saffer on 3 July 2014.

11. The grounds of application essentially relied upon two aspects, first whether or not there was a valid marriage and whether the certificates issued were reliable. Secondly the issue that it was still for the Appellant to show that her marriage to an EEA national was recognised in that national's country by the member state and not simply an issue of what the host country had to say about it.

12. Reliance was therefore placed by the Secretary of State upon the cases of Kareem (Proxy marriages - EU law) [2014] UKUT 24 and thereafter TA [2014] UKUT 316 (IAC) 18 June 2014. It is clear from paragraphs 16, 17 and 18 of Kareem and paragraph 20 of TA that whatever other issues may arise as to the validity of the marriage it will need to be shown that there was a marriage recognised in the Netherlands bearing in mind this was a double proxy marriage relied upon.

13. Both Kareem and TA and Others deal with marriages in the Netherlands. It is common ground by the parties that there was no evidence before the judge nor is there any evidence before me to go to show that a proxy marriage, let alone a double proxy marriage, is recognised in Netherlands law as a valid marriage.

14. The documentation provided to the judge did not support, as he thought, the conclusion that the authenticity of the statutory declaration of 23 March 2012 and the certification of the marriage was necessarily a valid marriage.

15. The judge does not address the issue that the statutory declaration before him was not countersigned by the covering signature of Mr Nabarese.

16. Similarly there is no evidence to show that as a matter of Ghanaian law the absence of the places of residence in the statutory declaration could be remedied by the contents of the registration document itself.

17. Having heard the submissions made I am satisfied that there may well have been a valid customary marriage for Ghanaian law purposes but the evidence does not show to discharge on a balance of probabilities that there was compliance with the registration requirements. I have considerable concern that the letter of the High Commission dated 17 March 2014 does not show anything other than that the signatures were genuine. Even the reliability of that document is open to considerable doubt as it refers to a countersignature by Mr Nabarese which simply on the face of it is not in existence and no-one has sought to explain where such reference could have arisen from let alone how the relevant ministry could have issued the letter on 27 March 2012 and/or failed to address why the copies do not have any countersignature upon them.

18. Ultimately therefore it seems plain to me that it was as a matter of fact and law an error of law was made by the judge in assessing the evidence and its reliability or the extent to which it demonstrated that the statutory declaration was an “authentic document” let alone as to the reliability of it or its contents.

19. I accept that there was an error of law by the original Tribunal and the original Tribunal’s decision could not in the ordinary course of events stand. The further representations helpfully presented by Mr Loughlin with reference to the text of a paper produced by a Mr Raymond Atuguba, Associate Executive Director of Legal Resources Centre, Accra simply does not overcome the problem faced by the documentation actually provided.

20. In those circumstances I also find therefore that the original Tribunal’s decision is set aside and the matter must be remade. I do so as agreed by the parties on the information before me.

21. In the light of the matters set out above I find that the documentation at best shows a customary marriage was entered into but it does no more than that and does not meet the UK requirements of the information to be provided to evidence the same.

22. I further find that for the purposes of Kareem there is no evidence to be provided confirming the validity of the marriage so far as the Netherlands authorities are concerned and therefore the application failed in any event.

23. Whilst this latter point did form part of the grounds of appeal and had not been considered by the Respondent in the Reasons for Refusal Letter that makes no difference. Accordingly the appeal fails in any event. If the Claimant wishes to pursue the matter again then plainly they are going to have to produce evidence from an appropriate source confirming the validity of the marriage so far as the Dutch authorities are concerned.

DECISION

The Original Tribunal's decision is set aside.

The appeal of the Claimant is dismissed.

ANONYMITY ORDER

No anonymity order is required in this case.

FEE AWARD

The appeal has failed and no fee award is appropriate.

Signed Date 22 August 2014

Deputy Upper Tribunal Judge Davey