



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/50765/2013
Oral judgement

THE IMMIGRATION ACTS

Heard at Field House
On 26 June 2014

Determination Promulgated
On 2 July 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE MCWILLIAM

Between

SAMUEL OBENG

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L Appiah, Counsel instructed by Kilic & Kilic Solicitors
For the Respondent: Mr S Whitwell, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Ghana and his date of birth is 30 September 1969. He made an application on 21 October 2011 for a residence card on the basis of his marriage to an EEA national exercising free movement rights pursuant to the

Immigration (European Economic Area) Regulations 2006 (hereinafter referred to as the "2006 Regulations").

2. The appellant's application was based on his marriage to a citizen of the Netherlands, Peace Osei. He produced a marriage certificate dated 4 October 2011 purporting to establish that he and the EEA national married by proxy in Ghana on 12 August 2011.
3. The application was refused by the Secretary of State in a decision of 19 November 2013. The reasons for the decision are that the appellant had not established that the marriage is recognised in Ghanaian law and it was not accepted by the respondent that the relationship was durable.
4. The appellant appealed against the decision of the Secretary of State and the appeal was dismissed by Judge of the First-tier Tribunal D Dickinson, following a hearing, in a determination that was promulgated on 3 April 2014. The appeal was dismissed because the First-tier Tribunal found that the marriage was not recognised in Ghanaian law and that the relationship was not durable. The Judge made the following findings at paragraphs 21 to 23:

"21. Having regard to Regulation 8 of the Immigration (EEA) Regulations 2006 and in particular Regulation 8(5) I am not satisfied that the appellant is by definition an extended family member and I reach that conclusion for the following reasons.

22. I am not satisfied that the appellant and the EEA national were residing together as a couple at the same address prior to the date of the customary marriage certificate. This is because the only documentary evidence produced to support such a claim that they were residing as a couple, comes in the format of one page of a copy tenancy agreement (page 44). However after having examined the said document I am not satisfied that it either demonstrates that the parties were living together or were in fact party to such an agreement. This is because the tenancy agreement document has not been signed by the EEA national, whilst the signature of the appellant does appear to differ significantly from his signature on later correspondence (29 March 2012). Further without any other documents to corroborate the claim that the parties have been in a relationship I am not satisfied that the parties either knew each other or had even met each other prior to the date of the customary marriage certificate being issued.

23. Further, I am not satisfied that the parties have been living together, in a durable relationship, since the date of the customary marriage certificate was issued. This is because no documents have been produced to satisfy me otherwise of this fact."

5. Permission to appeal was granted to the appellant on 14 May 2014 by Judge of the First-tier Tribunal Grant-Hutchison. The grounds seeking leave to appeal argue that the First-tier Tribunal did not take into account a letter dated 14 January 2014 from the Ghana High Commission relating to the recognition of the marriage in Ghanaian law. It is also argued that the Judge, in reaching his conclusion that the appellant and the EEA sponsor were not living together at the time of the marriage, applied the wrong test. In addition it is argued that he failed to take into account material evidence linking Peace Osei to the address where she resided with the appellant.

Submissions

6. Ms Appiah accepted that the appellant was in some difficulty since **Kareem (Proxy marriages - EU law) Nigeria [2014] UKUT 24** but she was not instructed to withdraw the ground of appeal relating to this issue but would leave the matter to the Upper Tribunal.
7. In relation to the durability of the marriage Ms Appiah argued that the Judge made a material error of law. She referred me specifically to [22] and [23] of the determination (see above). She referred me to a number of documents that had not been specifically referred to by the First-tier Tribunal. These documents are in the respondent's and the appellant's bundle and include the EEA sponsor's employment contract, a letter from her employer and utility bills. In addition there was a letter from the EEA sponsor which was submitted with the application that the First-tier Tribunal, according to Ms Appiah, did not take into account.
8. Mr Whitwell made oral submissions. In his view, there was no error of law. The only evidence produced by the appellant establishing that he and the EEA sponsor lived together as a couple was the tenancy agreement which was referred to by the First-tier Tribunal. The rest of the evidence was evidence that the appellant and the EEA sponsor were living at the same address but this was not evidence that they were in a durable relationship.

Conclusions

9. In my view the Judge did not err in law. The appeal had to be dismissed under Regulation 7 of the 2006 Regulations because the appellant had not established that the marriage was recognised in the Netherlands (**Kareem (Proxy marriages - EU Law)**). In relation to durability the Judge I do not accept that the Judge did not take into account the evidence before him relating to the sponsor living at the same address as the appellant. The point that the Judge made in relation to the tenancy agreement was correct. It is the only document on which the appellant and the EEA sponsor's names are shown. The Judge's finding about the reliability of this piece of evidence is not challenged (it was not signed by the sponsor). The Judge is not obliged to make findings on each and every piece of evidence. It is clear why the Judge reached the conclusion he did. There is no error of law.

10. It was open to the Judge to find that there was no persuasive evidence that the appellant and the EEA sponsor were in a durable relationship on the evidence before him. He did not apply the wrong test. It is clear from [22] and [23] that the Judge was not satisfied that they were living together in a durable relationship at any time. There was no oral evidence from the EEA sponsor and there was no evidence from friends and family relating to the durability of the relationship.
11. In my view the grounds do not disclose an error of law and the decision to dismiss the appeal under Regulations 7 and 8 of the 2006 Regulations stands.

Signed Joanna McWilliam

Date 1 July 2014

Deputy Upper Tribunal Judge McWilliam