Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/53637/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 29 September 2014	**On 3 October 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

MR DAVID ASARE KUMAH
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: none
For the Respondent: Ms Alex Everett, Specialist Appeals Team

DETERMINATION AND REASONS

1. The appellant appeals to the Upper Tribunal from the decision of the First-tier Tribunal (Judge Watters sitting at Glasgow on 12 February 2014) dismissing his paper appeal against the decision by the SSHD to refuse to issue him with a residence card as confirmation of his right to reside in the

United Kingdom as the spouse of an EEA national exercising treaty rights here.

2. The appellant is a Ghanaian national, and his sponsor is a Hungarian national. As evidence that he was married to the sponsor, the appellant relied on a marriage certificate showing that he had contracted a customary marriage with the sponsor in Accra on 10 February 2013. The certificate purported to bear the signature or thumb-print of the bride and the bridegroom.

3. A statutory declaration made on 30 April 2013 conveyed the information that it had been a customary marriage by proxy. It did not state where the bride and groom were residing at the date of the marriage.

4. The SSHD gave lengthy reasons for refusing the claimant's application. The burden was on him to prove that his asserted customary marriage was valid, and he had not discharged this burden. He had not shown that all the requirements for a valid customary marriage, including the payment of a dowry, which had been identified by the expert in **NA (Customary marriage and divorce – evidence) Ghana [2009] UKAIT 0009** had been met, in particular the requirement that both parties to the marriage were of Ghanaian descent. He had also not shown that the marriage had been validly registered in accordance with Ghanaian law. The application for the registration of the marriage had to be accompanied by a statutory declaration which stated, among other things, the places of residence of the parties at the time of the marriage. This had not been done.

5. The Ghana COI report of 11 May 2012 highlighted problems with forged and fraudulently obtained official documents, such as birth certificates. The signatures of husband and wife on the marriage certificate did not match those on their passports.

6. The SSHD went on to consider in the alternative whether the appellant could be considered as an unmarried partner under Regulation 8(5). To assess whether their relationship was durable, she would expect to see evidence of cohabitation for at least two years. No evidence had been provided that they had resided together as a couple prior to the issue of their marriage certificate, or even that they knew other or had met prior to the issue of the certificate.

The Decision of the First-tier Tribunal

7. Judge Watters quoted extensively from the refusal letter. He said he had taken into account the appellant's bundle running to 70 pages, but the appellant had not discharged the burden of proof, and so he dismissed the appeal on all grounds raised.

The Grant of Permission to Appeal

8. On 22 August 2014 Judge Osborne granted the appellant permission to appeal. It was arguable that in an otherwise concise and focused

determination the judge had paid insufficient regard to the documentary evidence in the appellant's bundle. There appeared to be no allegation of fraud and the appellant appeared to be in possession of a genuine entry in the marriage register. It was further arguable that the judge had failed to consider the appeal adequately under Article 8.

The Hearing in the Upper Tribunal

9. At the hearing before me, there was no appearance by the appellant. I was satisfied that notice of the hearing had been sent to him at his last known address, which is the address given by him in his application for permission to appeal. So I proceeded in his absence.

10. Ms Everett submitted that the appeal was always doomed to fail, citing **TA and others (Kareem explained) Ghana [2014] UKUT 00316 (IAC)**, which was heard at Field House on 10 June 2014.

Discussion

11. The judge found, following **NA**, that a Ghanaian customary marriage can only be contracted between Ghanaians. Although this was the evidence given by the expert in **NA**, there is other evidence and judicial dicta which supports a less restrictive view.

12. But the judge also specifically relied on the objection that the statutory declaration did not comply with the Customary Marriage and Divorce (Registration) Law 1985. I do not consider that the documents in the appellant's bundle engage with this objection, or provide an adequate answer to it.

13. There is also no satisfactory answer given to the simple point made in the refusal letter about the marriage certificate. It is a document which tells a lie about itself (i.e. a false document) as the signatures which appear on it are not those of the appellant and the sponsor (as they were not in the country to sign the register). But the message given to the reader of the document is that the signatures in question are the genuine signatures of the couple. This is not an objection specifically relied on by the judge, but it is relied on in the refusal letter – and so it enables the judge not to take at face value the documentary evidence cited by Judge Osborne in his grant of permission.

14. The appeal against the refusal to recognise him as a spouse under Regulation 7 was bound to fail in any event, as the appellant had not brought forward any evidence to show that the purported customary marriage by proxy was recognised in Hungary, the sponsor's country of nationality.

15. In **TA** UT Judge O'Connor gave detailed reasons for concluding that it is always necessary to undertake an examination of the validity of the disputed marriage in the context of the national legislation of the EEA sponsor's country of nationality. He accepted that paragraph [68] of

Kareem (proxy marriages – EU law) [2014] UKUT 24 read in isolation appeared to provide support for the two stage approach (i.e. only to look at the national legislation of the EEA sponsor's country of nationality *if* there was a doubt over recognition in the country where the marriage took place) but he referred to earlier passages in **Kareem** which refuted such an approach. For instance, at paragraph [17] the panel held:

> In light of the connection between the rights of free movement and residence and the nationality laws of the Member States, we conclude that, *in a situation where the marital relationship is disputed* (my emphasis), the question of whether there is a marital relationship is to be examined in accordance with the laws of the Member State from which the Union citizen obtains nationality and from which therefore that citizen derives free movement rights.

16. The appellant's bundle contains an earlier unreported decision of UT Judge Rintoul which supports the two stage approach. But I prefer the reasoning of Judge O'Connor, and in any event his decision has the imprimatur of being a reported decision of the UT, and thus it will have been approved by an editorial panel of the UT as representing good law.

17. There is no error of law challenge to the judge's finding that the appellant has failed to show that he is in a durable relationship with the sponsor, and hence that he has failed to show that he qualifies as an extended family member under Regulation 8(5).

18. It was open to the judge to find that there was little evidence of private life, and to hold that the Article 8 claim did not get off the ground as there was not a valid marriage and a durable relationship had not been proved. In the circumstances, it was not an error of law for the judge not to apply the **Razgar** test; and it was not an error of law for the judge not to consider whether the interference was disproportionate. Following **Gulshan**, the judge did not have to consider an Article 8 claim outside the rules unless there were compelling circumstances disclosed by the evidence which were not sufficiently recognised under the Rules. It is not suggested in the grounds of appeal that there are any compelling or compassionate circumstances.

Decision

I dismiss this appeal.

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.

Signed Date

Deputy Upper Tribunal Judge Monson