Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers:
OA/20895/2012

THE IMMIGRATION ACTS

Heard at: Manchester	**Determination Promulgated**
On: 5th August 2014	**On: 6th October 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE BRUCE

Between

Yaya Jallow

Appellant

and

Entry Clearance Officer, Accra

Respondent

For the Appellant: Dr Mynott, Latitude Law
For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a national of The Gambia date of birth 11th November 1976. He appeals with permission[1] the decision of the First-tier Tribunal (Judge Devlin) to dismiss his appeal against a decision to refuse him entry clearance as the spouse of a person present and settled in the United Kingdom.

[1] Permission was initially refused by First-tier Tribunal Wellesley-Cole on the 28th February 2014, but granted upon renewal by Upper Tribunal Judge Chalkley on the 2nd April 2014

2. The Sponsor is a Ms Jarrai Jarrow. The Appellant submitted that he and Ms Jarrow had married according to Islamic law in 2005, that marriage being registered in accordance with the Gambian civil code in 2007. This was the Appellant's third application for entry clearance as Ms Jallow's husband. It was made on the 15th June 2012 and was considered under paragraph 281 of the Rules.

3. It was refused on two grounds. The Respondent was not satisfied that this was a genuine and subsisting marriage, nor that there would be adequate maintenance for the parties to the exclusion of public funds.

4. As to the latter issue the determination of the First-tier Tribunal contains no reasoning save to say that if the matter had been considered it would have been resolved in the Appellant's favour[2]. The First-tier Tribunal did not however accept that this is a genuine and subsisting marriage. The determination sets out the evidence presented by the Appellant at paragraph 60. He relied upon his own statement, a statement by a family friend, various phone bills and international call cards, the Sponsor's passport, a letter from her father, a letter from the Appellant to the Sponsor, money transfer receipts, two photographs and of course, the oral evidence of the Sponsor. The determination then sets out why the Tribunal declines to place significant weight to any or all of these pieces of evidence. The statements from the Appellant, his father-in-law and family friend were all relatively out of date and had not been tested under cross-examination. The photographs were poorly reproduced and could not be seen clearly. The Sponsor's passport only showed one trip to Gambia, in 2006, and did not support her claim to have made several visits, the most recent of which was in 2011. The money transfer receipts referred to two transactions, one undated and the other from 2011: they were of little evidential value in establishing this to be a genuine marriage. The Tribunal found the Sponsor's evidence to be vague and contradictory. As to the evidence of telephone contact the determination gives some consideration to the Upper Tribunal authority of Goudey[3]. It then analyses the evidence and finds little to support the claim that there is frequent contact between the parties. In respect of countervailing factors the determination notes that Ms Jallow had a child with another man in the UK in 2009. The Judge found her evidence about her relationship with that child's father to be unsatisfactory. Findings that there was not sufficient evidence to discharge the burden of proof the appeal was dismissed.

5. The grounds of appeal are that the First-tier Tribunal erred in failing to apply Goudey correctly, and in failing to deal with Article 8 and in particular the Appellant's relationship with his British citizen step-children who reside in the UK.

[2] Paragraph 91

[3] Goudey (subsisting marriage) Ghana [2006] UKAIT 00046

Error of Law

6. This determination contains a detailed and lengthy analysis of the decision in Goudey wherein the First-tier Tribunal appears to take issue with the central *ratio* of that case. As Mr McVeety observed, these 20 paragraphs are entirely irrelevant. The point made in Goudey is simply this. If there is *no reason to doubt* the sworn statements of two people that they intend to live together as man and wife, international call cards can serve as corroboration of telephone contact, even if these items cannot definitively prove that person A called person B on a particular number. In this case there *was* good reason to doubt the declarations of the parties. The Judge gave numerous reasons for finding the evidence unsatisfactory, and there was of course the fact that the Sponsor had given birth to another man's child four years after she married the Appellant. Even if, as Dr Mynott contends, the Judge was wrong to disregard evidence before him capable of establishing that there was telephone contact between the parties in this case, this would not have been sufficient to discharge the burden of proof. The reasons that the Tribunal has given for doubting the remaining evidence are unchallenged and disclose no arguable error of law.

7. In granting permission Judge Chalkley considered it arguable that the First-tier Tribunal applied too high a standard of proof. For instance at paragraph 82 the Tribunal finds the Sponsor's evidence about her husband's relationship with his step-children to be "unconvincing": Judge Chalkley points out that the Judge did not need to be convinced about anything. Further at 76 he did not find the Sponsor to "be an entirely satisfactory witness": she did not need to be "entirely' satisfactory to discharge the burden of proof. These turns of phrase are unfortunate. However having considered the determination as a whole I am not satisfied that the Tribunal did apply too high a standard. Where the Tribunal has given sound reasons for declining to place weight on virtually every piece of evidence before it, it is an inevitability that the appeal will be dismissed, whichever standard of proof is being applied.

8. The grant of permission also mentions the failure of the First-tier Tribunal to deal with section 55 of the Borders, Citizenship and Immigration Act 2009 in the context of Article 8 ECHR. I do not consider that omission to be an error of law such that this decision should be set aside. The Tribunal had clearly rejected the parties' claims to be in a subsisting relationship. There was very little, it any, evidence before it to support the contention that the Appellant has a meaningful relationship with his stepchildren over and above any relationship that he might have, or have had, with their mother.

Decision

9. The determination of the First-tier Tribunal does not contain an error

of law and it is upheld.

Deputy Upper Tribunal Judge Bruce
23rd September 2014