



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: IA/16311/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 20<sup>th</sup> March 2015**

**Decision & Reasons  
Promulgated  
On 24<sup>th</sup> March 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE LINDSLEY**

**Between  
MS IRENE GYPAOMAA ADJEI  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr V Makol, of Maalik & Co Solicitors  
For the Respondent: Ms E Savage, Home Office Presenting Officer

**DECISION AND REASONS**

*Introduction*

1. The appellant is a citizen of Ghana born on 7<sup>th</sup> May 1987. She first came to the UK on 12<sup>th</sup> November 2011 as a family visitor to see her sister. She then overstayed. On 30<sup>th</sup> November 2012 she applied for a residence card as the spouse (via a Ghanaian proxy marriage) and durable partner of Mr John Brown Marfo, a citizen of Portugal born on 5<sup>th</sup> December 1969. This application was refused and the appellant appealed. However the

respondent then withdrew the refusal decision. A new refusal decision was made by the respondent on 13<sup>th</sup> March 2014. The appellant appealed once again on 31<sup>st</sup> March 2014. Her appeal was dismissed in a determination of Judge of the First-tier Tribunal Russell promulgated on 26<sup>th</sup> November 2014.

2. On 22<sup>nd</sup> January 2014 Judge of the First-tier Tribunal Landes found that there was an arguable error of law because Judge Russell had not taken into account documentation provided by the appellant to the respondent in response to the first refusal decision and had found the absence of this material contributed to his finding that she was not in a durable relationship with Mr Marfo. This was arguably procedurally unfair in accordance with MM (unfairness; E & R) Sudan [2014] UKUT 00105.
3. The matter came before me to determine whether the First-tier Tribunal had erred in law.

#### *Submissions - Error of Law*

4. Mr Makol submitted that documents showing cohabitation, letters of support from the church attended by the appellant and Mr Marfo and friends, and photographs of the couple were included in the first respondent's bundle which the appellant had assumed would be before Judge Russell. These items had been specifically noted as missing by Judge Russell at paragraph 17 of his determination and as matters which led him, along with other considerations, to conclude that the appellant and Mr Marfo were not in a genuine durable relationship. This was unfair on the appellant.
5. Ms Savage accepted that there had been procedural fairness as argued for by the appellant in accordance with MM (unfairness; E&R) Sudan.
6. I informed the parties that I agreed with these submissions for the reasons set out below, and I would therefore set aside the decision of Judge Russell.
7. I noted that in MM (unfairness; E&R) Sudan it had been seen as appropriate to re-make the appeal in the First-tier Tribunal however Mr Makol took instructions from the appellant and Mr Marfo and they asked that I remake the appeal in the Upper Tribunal due to the long period during which the appeals relating to this refusal had been going on. The application had been made in November 2012 and since then two years and four months had elapsed, and they understandably wished to have the matter resolved. Ms Savage said she was happy for this to be the way in which the Tribunal proceeded. I therefore agreed to remake the appeal in the Upper Tribunal.
8. There were a large number of documents in the Tribunal file submitted by the appellant. There were five separate bundles: a 50 page bundle, a 72 page bundle, a 169 page bundle and two small bundles submitted by fax

on 10<sup>th</sup> and 12<sup>th</sup> December 2014: the first of which contained the evidence that had been missing from the hearing before Judge Russell and the second of which contained some further evidence. I admitted all of this evidence. Ms Savage did not have all of these bundles so I let her mine for the hearing and she was given time to acquaint herself with the bundles before we proceeded with the remaking hearing.

9. I clarified with Mr Makol before commencing the remaking hearing that there was no evidence from the Portuguese authorities that they accepted that the appellant's Ghanaian proxy marriage was valid in Portuguese law. He confirmed that this was the case and that therefore, in accordance with Kareem (Proxy marriages - EU law) Nigeria [2014] UKUT 24, the appellant only argued that she could succeed in the appeal on the basis of having a durable relationship and thus that she was entitled to a residence card in accordance with Regulation 8(5) of the Immigration (EEA) Regulations 2006 (henceforth the EEA Regulations). The appeal under Regulation 7 of the EEA Regulations was not pursued.

#### *Conclusions - Error of Law*

10. It was a procedural error of law for the letters in support from friends; the letter from the church where the appellant and Mr Marfo met; and the photographs of the appellant and Mr Marfo together submitted by the appellant to the respondent and included in the appeal bundle for the first appeal not to have been considered by the First-tier Tribunal in the ultimate determination of the appeal on the application when they were rightly considered pertinent evidence to be expected by Judge Russell. As stated in MM (unfairness; E&R) Sudan an error of law may be found in circumstances where some material evidence through no fault of the First-tier Tribunal was not considered and this resulted in unfairness.

#### *Evidence and Submissions - Remaking*

11. The appellant attended the Tribunal and gave evidence. She adopted her statement and confirmed that it was true and correct and her evidence to the Tribunal.
12. In summary in her statement the appellant says as follows. She was annoyed that the only issue that had initially led to the refusal on 24<sup>th</sup> June 2013 was the fact that statutory declaration regarding the proxy marriage did not give the address where she and her partner lived. She and her partner obtained a new statutory declaration giving this information but were not allowed to proceed with their appeal in February 2014 as the respondent withdrew their refusal decision. A new decision was then made on a totally different basis. They have provided a letter from the Ghanaian embassy stating that the marriage is valid in Ghanaian law and evidence that shows that Mr Marfo was originally a Ghanaian citizen too.
13. The appellant contended that she is in a genuine relationship with Mr Marfo. They met at Christ Foundation Church in Canning Town where they

were both active members. They followed what was traditional for them in having a customary marriage between their families in Ghana. This took place on 20<sup>th</sup> July 2012, and they have lived together ever since. They have submitted substantial evidence that they have cohabited since this time. Mr Marfo supports the appellant financially, and they provide each other with emotional and mental support.

14. In oral evidence the appellant added that she went to church every Sunday. She had come to the UK to visit her sister and had not returned because she met Mr Marfo and they were in love. She had not intended to overstay but she met the man she loved. She had met Mr Marfo in January 2012; they had decided that they wanted to be together in April 2012 and they had married in August 2012. They had had a proxy marriage as this is the way it is done in her country. They had had a small gathering in their house in the UK with her sister, Bernice and Kwaku after the proxy marriage. She said she had discussed having a church wedding in the UK with her partner when she got her passport back. They were in the UK as Mr Marfo is working here and he is allowed to do this as a Portuguese national. He worked for AJS recruitment. He had started this job in August 2014. Before that he had worked for Greggs as a cleaner. He had done that job for between a year and a year and a half. They liked to do shopping and go to church together. They did other things together such as go to parties. There were others who knew about their relationship: her friend Bernice; her sister Charlotte; Kwaku Mensah and Philomenia who shared their house. Last night they had eaten an African dish called fofou which she had made. Last weekend they had done shopping in Barking on Saturday and gone to church on Sunday. There were three people living in their house: herself, Mr Marfo and Philomenia. Philomenia had two rooms with her partner and she and Mr Marfo had one room. She did not know why the tenancy agreement implied they rented the whole house: they only rented one room for themselves. She only had one sister, Charlotte. Charlotte had met Mr Marfo. Mr Marfo had a brother called Prince who lives in Ghana, whom she had not met. She was very sad the process to obtain a residence card had taken so long.
15. Mr John Brown Marfo attended the Tribunal and gave evidence. He confirmed his name, date of birth and address, and that his statement was true and correct and his evidence to the Tribunal. Most of his statement is worded identically to that of the appellant. He does however add that he would be devastated if the appellant had to return to Ghana as they had been through a lot together and he needed his wife by his side. The appellant supports him in every way. He also confirms he is a Portuguese national exercising Treaty rights in the UK.
16. Mr Marfo gave evidence in identical terms about the history of his relationship with the appellant; his employment; the things they liked to do together; their friends; the celebration they had after their proxy marriage in the UK; the number of bedrooms at their home and the fact that he and the appellant rented just one of these bedrooms; what they ate last night and who made it; what they did last weekend; regarding his

brother and his upset about the delay in resolving this matter. His evidence appeared to differ regarding who lived with him and the appellant as he said this was a man called Addo however when I asked whether Addo had a partner he said this was Philomenia. His evidence differed from the appellant in that he said that he had no idea whether he and the appellant would have another marriage in the UK and that the appellant had a brother called Samuel in Ghana whom he had met last year.

17. Ms Savage relied upon the refusal letter. In relation to Regulation 8(5) of the EEA Regulations this document says that it is expected by the respondent that the appellant show two years cohabitation with the EEA sponsor, and she had failed to provide sufficient documentary evidence to show this was the case.
18. Ms Savage further submitted that there were many documents which showed that the appellant and Mr Marfo lived at the same address but this was not sufficient to show a durable relationship. There was very little evidence that the appellant and Mr Marfo were in a genuine relationship as durable partners. Their claimed living arrangements were also inconsistent with their tenancy agreement which on the face of it showed that they rented the whole of the property not just one bedroom. She submitted that there was an inconsistency over who lived there as Mr Marfo had referred only to Addo living at the property not Philomenia. It was notable that the sponsor had referred to the appellant having two siblings when the appellant herself had claimed only to have one. It was also notable that Mr Marfo said that there had been no decision to have a UK wedding whereas the appellant claimed that this matter had been discussed and that this would take place.
19. Mr Makol relied upon his skeleton argument, however when I pointed out that this document did not seem to contain any submissions on Regulation 8(5) of the EEA Regulations beyond recounting the law and saying that there was documentary evidence placing both the appellant and Mr Marfo at the same address he did not disagree. He argued strongly however that more than two years cohabitation was a strong starting point to show that the appellant and Mr Marfo were in a durable relationship as it was the benchmark used by the respondent.
20. In addition the appellant and Mr Marfo had both attended three Tribunal hearings and had chosen to go ahead and have their case determined today rather than just postpone the matter for more months by having it remitted to the First-tier Tribunal. They were both sad about the appellant's on-going unresolved immigration status. They had made dozens of visits to their legal representative together and produced letters from the friends they had mentioned in their evidence.
21. Mr Makol said that the issue with the living arrangements was not a genuine inconsistency as both parties were clear that they only got one bedroom whatever the tenancy agreement implied and it was clear that

both Philomenia and Addo (who were partners themselves) lived at the address – they had just each focused on one of these partners when giving their evidence. It was possible that the appellant had answered the question about her siblings only in relation to those present in the UK. Whilst she spoke reasonable English she had struggled to understand a number of questions and asked for a question to be rephrased. It may be that the parties differed on the issue of the UK wedding as this was a heat of the moment thing.

22. Overall, considering all of the evidence before the Tribunal, Mr Makol submitted that I should be satisfied that on the balance of probabilities the appellant and Mr Marfo were in a durable relationship. It was only a 51% degree of certainty that was required to allow the appeal.

### *Conclusions - Remaking*

23. I find that Mr Marfo is a Portuguese national who is working in the UK and paid via Smart Tax (UK) Limited. He has supplied recent payslips as confirmation of this fact and this is not contested by the respondent.
24. I accept that the appellant and Mr Marfo had a Ghanaian proxy marriage on 20<sup>th</sup> July 2012 in Accra and that this marriage is binding in Ghanaian law and for other purposes in the UK but that it does not make the appellant a spouse in EU law for Regulation 7 of the EEA Regulations as there is no evidence that the Portuguese authorities accept this marriage as valid. I note that there is evidence (a birth certificate showing that Mr Marfo was born in Ghana and his Ghanaian driving licence) that indicates that Mr Marfo has Ghanaian heritage and thus that a Ghanaian proxy marriage is potentially part of his tradition as well as that of Ms Adjei. The formal marriage documents aside there is also a letter from the appellant's father Yaw Adjei about the process of the appellant and Mr Marfo getting married, and his contact with the parents of Mr Marfo.
25. The appellant and Mr Marfo have a joint bank account with Barclays (although one which appears to just channel money from and to other accounts) and a joint Aviva life insurance taken out and maintained since 2012. I find that there is a limited amount of financial interdependency between the appellant and Mr Marfo on the basis of this evidence.
26. In addition the appellant has provided a great many utility bills (water, T mobile, Dorothy Perkins, Argos Card, Evan's Card Barclay Card, Standard Life,) and medical cards, statements for two further bank accounts for Mr Marfo (Halifax and Santander) and statements for a further account for the appellant with Barclay's bank placing them at their joint address for the years 2012, 2013 and 2014. There are also work documents for the appellant including HMRC documents for her work at City Facilities Management UK Ltd and other documents about her work for Asda, and others that indicate that Mr Marfo used to work for Greggs bakery, as

claimed by both witnesses. A document from a man called Mr Kennedy Owusu-Nyarko, who says he is the landlord at page 38 of the 72 page bundle states that the appellant and Mr Marfo rent only one bedroom at their address. The tenancy agreement was not amongst the papers in the Tribunal file and I assume was inadvertently retained by Ms Savage. I am satisfied that the appellant and Mr Marfo both live at their claimed address on the basis of this evidence.

27. In support of the appellant's marriage to Mr Marfo being genuine there are letters in support from three of the friends the appellant and Mr Marfo named in their evidence, namely: Kwaku Addo-Mensah who also submits evidence he is a German citizen; Bernice Owusu who also submits evidence of her British citizen passport; and Philomenia Mensah who also submits the picture page of her Ghanaian passport. Philomenia Mensah also describes herself as the co-tenant at the appellant and Mr Marfo's address. There are also two letters from Bishop Emmanuel Bamfo of the Christ Foundation Church: the first dated 25<sup>th</sup> November 2012 and the second dated 12<sup>th</sup> December 2014 both describing them as a couple and active members of the church. The appellant's sister, Charlotte Adjei, has also provided a letter in which she confirms that the appellant and Mr Marfo have been living together as a married couple since their proxy marriage and attaches a copy of her British citizen passport. There are also copies of photographs but these were not identified in any way by Mr Makol and are so poor that it is not possible to see who is in them.
28. In addition, as Mr Makol has claimed, the appellant and Mr Marfo have answered a large number of questions consistently in oral evidence. However it is accepted by all that there are three potential inconsistencies, and these raise legitimate doubts as to whether the couple are in the durable partnership they claim. I will examine each of these in detail.
29. The first is not so clear cut and concerns who lives at the property given that the tenancy agreement states that the appellant and Mr Marfo are the only tenants, and then that they both named a different person to be the third tenant. However it would appear that they have named two people who, according to the evidence of Mr Marfo, are in a romantic relationship with each other (and thus plausibly both spend a lot of time at their property) and that an additional letter from the landlord indicates that they have correctly described their rental arrangement as being for one double room.
30. The second is the inconsistency as to whether the couple have discussed and planned a church wedding when the application is resolved and the appellant's passport is returned to her. The appellant seemed sure that this was the case whereas Mr Marfo said he had no idea if they would do this. It is possible that they simply hold different views on what is current agreed on the topic: the protracted nature of the application may also account for this disparity as potentially the idea to have another wedding may have been discussed a long time previously and recalled by the appellant but not by Mr Marfo.

31. The third inconsistency is regarding the appellant's siblings. Mr Marfo has said she has a brother as well as a sister whereas the appellant named her sister in the UK as her only sibling. It is the case that the appellant indicated that she did not understand the questions put to her on a number of occasions throughout her evidence by stating; "I am not getting you" and that questions had to be rephrased. It is possible that Samuel is not a full sibling and thus that Mr Marfo's evidence was inaccurate or that the appellant mistakenly understood the question to be about siblings in the UK as Mr Makol has argued.
32. Ultimately when considering all of the evidence before me I find that the appellant and Mr Marfo should be considered to be credible witnesses given their significant degree of consistency with each other and the documentary evidence; and that their evidence, together with the confirmation from their church leader and the very substantial documentary evidence regarding the proxy marriage and placing them at the same address over three years suffices to show on the balance of probabilities that the appellant and Mr Marfo are in a durable relationship. I thus find that the appellant is an "extended family member" as defined in Regulation 8(5) of the EEA Regulations.
33. As the Secretary of State has not yet exercised discretion as to whether to issue a residence permit, the matter must be remitted to the Secretary of State to exercise discretion under Regulation 17(4) of the EEA Regulations.

### **Decision**

1. The First-tier Tribunal erred in law.
2. The determination of the First-tier Tribunal is set aside.
3. The appeal is remade allowing it to the extent that I find that the decision of the Secretary of State is not in accordance with the law and must be remitted to her to exercise discretion under Regulation 17(4) of the EEA Regulations with regards issuing a residence card to the appellant.

No anonymity direction is made.

Signed

Date 23<sup>rd</sup> March 2015

Judge Lindsley  
Deputy Upper Tribunal Judge

**TO THE RESPONDENT**  
**FEE AWARD**



As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make no fee award as I was not requested to do so and clearly a very substantial amount of evidence has been submitted during the appeal process making the appeal necessary to determine this issue.

Signed

Date 23<sup>rd</sup> March 2015

Judge Lindsley  
Deputy Upper Tribunal Judge