



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

Appeal Number: IA/39233/2014

THE IMMIGRATION ACTS

**Heard at Taylor House
On 8 October 2015**

**Decision & Reasons Promulgated
On 9 October 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

**IRFAN RAMZAN
(NO ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No representation

For the Respondent: Mr Nath a Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. The respondent notified the appellant of her refusal to issue him with an EEA residence card as confirmation of a right of residence under European Community law as the spouse of Lesley Christelle Moeson, a French national exercising treaty rights in the United Kingdom, on 5 October 2014 due to his failure to produce valid evidence of their marriage or involvement in a durable relationship.

2. His appeal against that decision was dismissed by First Tier Tribunal Judge Mozolowski (“the Judge”) following a hearing on 16 January 2015. This is an appeal against that decision.
3. On 7 October 2015 the appellant applied to adjourn the hearing as he and his wife have such personal problems they cannot attend the hearing. The application was refused that day by Upper Tribunal Judge Dawson as no reasons were given as to why attendance was not possible. The application was not renewed before me. No one attended the hearing. The hearing had originally been listed to take place at Field House. A notice to that effect was sent out by the Tribunal on 15 September 2015. I was informed by the respondent that the parties had been notified by the Tribunal by way of a notice of the change of venue on 22 September 2015, that being confirmed by the History Report printout I caused to be obtained from the Tribunal.
4. I decided to proceed in the absence of the appellant as no good reason had been given for the failure to attend, none of the matters of concern to Upper Tribunal Judge Kopieczek (see below [6]) when he granted permission to appeal have been addressed, and it appeared to me that it would be unfair not to proceed given the long standing failure by the appellant to meaningfully engage at any stage with the appeal process through the production of documents or attendance at hearings. I cannot help but note that the application to adjourn has once again been made at the very last minute and that every other appellant and representative in the 3 other cases in my list that day attended having received the hearing venue alteration notification.

The grounds of this application

5. The grounds of this application are that the Judge wrongly refused to adjourn to enable the Appellant’s wife to attend the hearing, and failed to consider documents.

The grant of permission

6. Upper Tribunal Judge Kopieczek granted permission to appeal (14 July 2015), it having been refused by Designated Judge Macdonald (23 March 2015). Upper Tribunal Judge Kopieczek stated that

“Although all the circumstances are not at the moment clear, it appears that on 12 January 2015, prior to the hearing, the appellant sought an adjournment on the basis that his “wife” was out of the country. I cannot see any indication from the Tribunal’s file that that application was ever dealt with. The appellant failed to attend the hearing before the First-tier Tribunal on 15 January 2015. The First-tier judge decided to proceed to deal with the appeal on the basis of the absence of the appellant from the hearing, but not apparently considering the earlier adjournment request on the basis of the claimed absence of his wife from the UK.

It is to be noted that on 9 January the appellant's solicitors withdrew representation (at the appellant's request) so the appellant was not represented on 15 January.

It is also to be noted that there is an endorsement on the Tribunal file flap as follows "Adjourned prior to hearing due to lack of judiciary", and dated 13 January 2015. That endorsement may be irrelevant since the appeal was in fact put before the First-tier judge on 15 January, but it is a matter that may require further exploration.

Aside from the question of the adjournment, the appellant complains that the First-tier judge "ignored all the evidence and supported (sic) documents regarding proof of relationship", although it is not apparent that there was much by way of evidence before the First-tier judge. In addition, the appellant would have to have established the validity of his marriage with reference to reliable evidence, which the judge was not satisfied had been done.

Nevertheless, I consider it arguable that there was procedural unfairness in the First-tier judge proceeding to determine the appeal in the absence of the appellant given the matters highlighted above. The appellant will need to explain however, why he did not attend when he seems to have known about the hearing, why his wife left the country when there was an appeal pending, as well as proof that she was in fact out of the country. It will also need to be established how the judge's decision could have been any different even if both he and his wife had attended."

Respondent's position

7. The respondent asserted in her reply (11 August 2015) in essence that;
 - (1) The Judge directed herself appropriately,
 - (2) It is unclear whether the Judge would have adjourned the hearing and therefore the appellant ought to have attended the hearing, and
 - (3) The respondent has not seen the documents allegedly submitted regarding the relationship and reserves her position until those documents have been reviewed.
8. Mr Nath submitted that whatever the merits of the grounds, the application could not succeed in any event given TA and Others (Kareem explained) Ghana [2014] UKUT 00316 (IAC) (see below [15]).
9. I note here that the only documents ever submitted by the appellant were listed in the application as including 2 photographs of the appellant, 5 photographs of the wife, the wife's passport, a contract of employment/employer's letter, 2 wage slips, a utility bill, a marriage certificate together with translation, a letter from the Ambassador of the Republic of Guinea, a TV license, and a tenancy agreement.

Findings and conclusions

Ground 1 - Refusal to adjourn

10. I bear in mind [Nwaigwe \(adjournment: fairness\) \[2014\] UKUT 00418 \(IAC\)](#) which guides me to the view that where an adjournment refusal is challenged on fairness grounds, it is important to recognise that the question for the Upper Tribunal is not whether the First-tier Tribunal acted reasonably. Rather, the test to be applied is that of fairness: was there any deprivation of the affected party's right to a fair hearing.
11. Despite the observations of Upper Tribunal Judge Kopieczek I still have no information as to "why he did not attend when he seems to have known about the hearing, why his wife left the country when there was an appeal pending, as well as proof that she was in fact out of the country." I also have no submission from the appellant as to "how the judge's decision could have been any different even if both he and his wife had attended". I am not satisfied that it has been established that the appellant was deprived of a fair hearing as he chose not to attend a hearing he could not possibly succeed in (see below [15]) and has given no cogent reason for his failure to do. The fact that the adjournment application made on 12 January 2015 does not appear to have been considered does not absolve the appellant of his obligation to attend the hearing or give explanations for the matters of concern helpfully raised by Upper Tribunal Judge Kopieczek.
12. In my judgement there was therefore no material error of law in the Judge refusing to adjourn.

Ground 2 - non consideration of documents

13. The Judge noted [5] that she took into account the appellant's grounds of appeal and the respondent's bundle of documents. No other documents appear to have ever been filed. The Judge does not have to slavishly list every document received and considered. At [8] the Judge summarised the grounds of appeal. At [9] she referred to the letter from the Ambassador of Guinea. At [15] she referred to the lease and TV license, those being the only ones other than a copy of the passport in the Respondent's bundle. It is unclear how the individual identification of any other documents that were submitted could possibly have made a difference to the outcome. The photographs are of individuals as opposed to a couple, and the work related documents are not evidence of co-habitation but of employment.
14. In my judgement there was therefore no material error of law in the manner in which the Judge dealt with the documents.

Other matters

15. I note the observation made by Upper Tribunal Judge Kopieczek regarding the Tribunal file flap note "Adjourned prior to hearing due to lack of judiciary" dated 13 January 2015. I am not satisfied that this has any bearing on the matter as there is no evidence I can see that the appellant was ever aware that there may have at some point been an adjournment (that was obviously rescinded) on that or any other basis or notified of it. It appears that whatever temporary listing problem there may have been was speedily resolved without the parties being notified there was ever a problem.
16. In any event, the appeal could not possibly have succeeded given TA which guides me to the view following Kareem (Proxy marriages - EU law) [2014] UKUT 00024 (IAC), that the determination of whether there is a marital relationship for the purposes of the Immigration (EEA) Regulations 2006 must be examined in accordance with the laws of the Member State from which the Union citizen obtains nationality. This was clearly in the Judges mind given her reference to its guidance in [13] of her determination. Upper Tribunal Judge Kopieczek helpfully reminded the appellant of this requirement when he said "the appellant would have to have established the validity of his marriage with reference to reliable evidence". Despite that, there is still no evidence that the marriage is recognised as being valid in France.

Decision:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

Signed:
Deputy Upper Tribunal Judge Saffer
9 October 2015