



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/40617/2013

THE IMMIGRATION ACTS

Heard at Field House
On 21st October 2014

Decision & Reasons Promulgated
On 12th January 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE BAIRD

Between

MS FLORENCE HENEWAA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Khan - Solicitor

For the Respondent: Mr Melvin - Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by Ms Florence Henewaa a citizen of Ghana born 11th December 1983. She appeals against the decision of the Secretary of State made on 4th September 2013 to refuse to grant a residence card as the spouse of an EEA national exercising treaty rights in the United Kingdom.

2. The Appellant appealed against that decision and the appeal was heard by First-tier Tribunal Judge Walters who allowed it under the Immigration (European Economic Area) Regulations 2006 and set out his reasons in a determination issued on 2nd April 2014. The Secretary of State sought to appeal against that determination. Permission was granted and on 4th June 2014, having heard submissions, I found that there was a material error of law in the determination of Judge Walters and I set it aside with no preserved findings of fact.
3. The Secretary of State refused the application because she was not satisfied that the Appellant and her partner Mr Duah are in a durable relationship.
4. The Appellant had entered the UK on 16th June 2009 as a dependant on her previous husband who was here as a student. His name was Mr Ofori. She had a visa valid until 31st August 2009 and was subsequently granted an extension of stay until 30th August 2011 by which time her relationship with Mr Ofori had broken down and he had returned to Ghana. The marriage was dissolved on 4th April 2011. She met Mr Duah on 4th July 2011 in the UK and they undertook a Ghanaian customary marriage by proxy on 14th February 2012. Mr Duah is a citizen of the Netherlands and also of Ghana.
5. The couple were interviewed by the Home Office on 8th August 2013 and in deciding to refuse the application the Secretary of State relied on discrepancies in the answers given to the questions asked at interview.
6. I have a statement from the Appellant which is undated in which she deals with the issues raised by the Secretary of State about the responses given at the interview. She states the following:
7. She did have a customary marriage with Mr Ofori then they divorced. She describes how she met Mr Duah. Her first application for a residence card was refused. Her solicitors advised her not to appeal that decision but to make a fresh application and she did this. It is the refusal of that application that is the subject of this appeal. She complains that the Home Office relied on internal checks conducted by them but never produced any evidence of those checks to her so she had not been able to comment on them. Discrepancies in the address on the payslips of Mr Duah arose because he had not had a chance to notify his employers that he had changed his address. Sometimes his payslips were sent to her address and sometimes they were sent to his workplace where he went to pick them up. They bought rings after their customary marriage ceremony. They were not wedding rings. Mr Duah did not understand the question as being about wedding rings. She disputes other answers that were founded on by the Home Office, saying that some of the answers she gave were not right because she was pregnant and feeling very stressed and had travelled a long way late at night from Luton to Liverpool. She does indeed give a very detailed response to the matters raised by the Secretary of State. She says that the age gap between her and her husband is irrelevant. They were asked about the colour of their bedding. Her partner gave the colour of the bedding in the hotel in which they had stayed the night before and she gave the colour of the bedding in their home. Some of the questions they had not understood properly. Points were

made about answers to questions they gave about her employment. They had nothing to lose by not telling the truth about that. Their answers were misinterpreted. Answers that she gave were omitted such as that at question 90 she did say that she worked for Collinson House and this was not noted.

8. With regard to DNA testing which had been ordered by the First-tier Tribunal she says that Mr Duah had a previous experience where he found out, following DNA tests, that a child he thought was his was not. They have evidence of this from Holland. Mr Duah divorced the mother of the child. He found the whole thing absolutely devastating. He had spent fourteen years of his life believing he was the father of this child and then found out he was not. He is not therefore willing to undertake a DNA test again.
9. I have a statement from Mr Duah who also goes through the interview and deals with the various discrepancies raised by the Home Office, in essence repeating what the Appellant said in her statement. It is indeed virtually the same statement, identical in its explanations for the alleged discrepancies and gaps in their evidence.
10. I have bank statements and payslips.
11. I heard oral evidence from the Appellant who adopted her statement. She was tendered for cross-examination and told Mr Melvin that she had met her husband in July 2011 by chance in Luton town centre. It was about five months later that they decided to get married and they underwent a proxy marriage in Ghana. She had married her first husband in Ghana but she had attended that wedding ceremony. She and Mr Duah had no money to have a celebration of their wedding in the UK and they did not exchange gifts. There is no doubt in her mind that he is the father of her child. Since they married he has travelled to Holland and Ghana. He has two children in Holland aged 12 and 10 and has visited them three times since their marriage. He is divorced from their mother with whom the children live.
12. I heard evidence from Mr Duah who also adopted his statement.
13. In cross-examination he confirmed that he has been working in the UK since 2007 when he came here. He works as a warehouse assistant. He became a citizen of the Netherlands in 1999 the year he was divorced from his previous wife. When he was asked how many children he had in Holland he said he had one and when asked to explain this said that the child's mother is taking him to court saying that one child is not his. He sends money to them and visits them. He said that due to financial difficulties he and the Appellant do not go out very much and do not have money for birthday presents. With regard to the DNA testing the child in Holland was born in 1997 and he has looked after him for fourteen years. He would be devastated if the same thing happened again and would be unable to cope with it. At his previous hearing he broke down in tears because he was asked about DNA.
14. In his submissions Mr Melvin said that there is insufficient evidence of a traditional proxy marriage in this case. He submitted that the Appellant does not meet the requirements of Regulations 7 or 8(5) of the Immigration (European Economic Area) Regulations 2006. The emails that have been produced are not detailed enough to

substantiate the marriage. In any event there is no evidence that the relationship is durable. They claim to have been together for three years but they know nothing of each other. Mr Duah has money to go to Holland but not to buy the Appellant a birthday present. He asked me not to accept the explanation for not undergoing DNA testing.

15. Ms Khan sought to rely on her skeleton argument in which she submits that the requirements of the EEA Regulations are met. She relied on the decision **TA and Others (Kareem explained) Ghana [2014] UKUT 00316** submitting that there is cogent evidence in the bundle which shows that efforts were made to contact the Dutch Embassy in London whose response was to refer the Appellant to the Dutch Civil Code at Section 10, a copy of which is in the bundle. This shows that marriages conducted overseas are recognised under the Dutch Civil Code if the place where they are conducted recognises it. Ghanaian customary marriages conducted by proxy are recognised in the UK so they would be recognised in Holland. The marriage of the Appellant and the Sponsor is therefore valid. The couple are in a genuine relationship. The Appellant moved in with her husband at his address in Luton in September 2011. Evidence that they cohabit has been provided. The couple have clarified the points raised by the Secretary of State arising from the interview. The inconsistencies identified are very small. They are not significant. The marriage is not one of convenience. This has not been established. The Appellant was seven months pregnant at the date of interview and was not at her best. This was not taken into consideration.
16. The couple have expressed their dissatisfaction with the conduct and behaviour of the interviewing officer. Reliance is placed on the decision **Papajorgji (EEA spouse - marriage of convenience) Greece [2012] 38**. In that case it was said that there is no burden on an applicant to prove that a marriage to an EEA national is not a marriage of convenience, and only where there was evidence justifying reasonable suspicion that the marriage was entered into for the predominant purpose of securing residence rights, is there a burden on the applicant to rebut it. It is not proper in the Appellant's case that the Respondent relied on a small number of minor inconsistencies in the interview to suggest that the marriage is one of convenience. Even if the marriage is not accepted there is ample evidence to show that they are in a durable relationship and thus meet the requirements of Regulation 8.
17. In oral submissions she said that the Home Office ought to have made a home visit and that would have assisted with resolving the issue.

My findings

18. I have given very careful consideration to all the evidence put before me in this case.
19. As far as the EEA Regulations are concerned the burden of proof is on the Appellant and the standard of proof is on the balance of probabilities.

20. I accept that here is some evidence that the Appellant and Sponsor live together. There are utility bills, bank statements etc addressed to each of them individually at the same address and there is a Council Tax bill in their joint names. I accept that the birth certificate of the child shows the Sponsor as his father. I accept that the Sponsor is exercising Treaty Rights in the UK.
21. I do however have serious concerns about the relationship and the evidence of it. There are discrepancies in the evidence and some elements of their account are arguably implausible, such as the fact that the Appellant appears to know nothing about the Sponsor's previous relationship and the reasons expressed by both of them in identical terms for the fact that his children, who he visits in Holland, know nothing of the Appellant and she does not want to meet them. I accept that some of the discrepancies in answers given at the interview are minor and indeed that people interpret questions in different ways but looking at the accounts of the Appellant and Sponsor and the evidence in the round, serious questions arise about the genuineness of their relationship. I do not accept the submission of Ms Khan that the inconsistencies in the responses given to the questions at interview are minor to the extent that the Respondent had no grounds to justify a reasonable suspicion that the marriage is one of convenience.
22. The factors I take into account in reaching this conclusion are:
 - i) The Appellant's relationship with her first husband ended in February 2011 and they divorced in April 2011. She met the Sponsor in July 2011 and the day after they met he took her to his home, a house in which her previous husband, an EEA national, had apparently lived between December 2008 and August 2009, the time during which she had applied for leave to enter the UK as his partner. The Appellant's explanation for apparently being unaware of this was that she had only come to the UK on 16th June 2009 and did not know where her previous husband lived between December 2008 and August 2009. She gives a different address that she lived at with him from June 2009 but it is inconceivable that if she was making an application to come to the UK she would not have known her husband's address here. I do accept that the Respondent has not produced documentary evidence of this but I must assume that the Respondent has a record of the Appellant's previous husband and that that information would be available to the Respondent.
 - ii) When the officer at the interview asked the Appellant and Sponsor about telephone contact they said that that they do not text each other and do not call often as they live in the same house, but they both worked, were presumably thus apart all day and she was pregnant. She said she could not remember the last time she phoned him or he her. The interviewing officer then asked to see their phones and noted that the only calls recorded were one from the Appellant to her husband at 11.34 pm on the night before the interview, the night they were staying at the Premier Inn, and one from the Sponsor to the Appellant at 8.00am on the day of the interview. The explanations were that the call the night before was just an accidental call to the Sponsor's number and the one in the morning was the Sponsor calling the Appellant's phone to locate it

because she could not find it. In her statement her response to this is that it is perfectly possible for a couple to be in the same hotel and call each other or to call each other accidentally. She also asks why would she make that call if she was not with him which does not make a lot of sense. I would also say that I find it odd that despite claiming to phone each other only rarely each was able to recite the mobile number of the other at the interview.

iii) iv) Despite the fact that the Sponsor claims to have sent £1000 to Ghana for the proxy marriage in 3 instalments the Appellant appears to be unaware of this and said he had only sent the fee of £100.

v) The Appellant said they did not have wedding rings. She has a ring but it is not a wedding ring. The Sponsor said they both have wedding rings – they went separately to buy them after they got the wedding documents. In the Appellant's response she said that the Sponsor did not understand the question to be about wedding rings. This makes little sense as her husband's response to the question, 'Do you both have wedding rings? Was 'Yes, we both have wedding rings'. His explanation for not wearing the ring to the interview was that he was wearing a silver bracelet and the gold ring did not match.

vi) The Sponsor refused to have a DNA test to establish that he is the father of the Appellant's child. The reason given is that a child of his first wife who he brought up for fourteen years was found following DNA testing not to be his and he was devastated. He could not bear to go through that again. He said that there is evidence of this in the bundle that is in Dutch and that it would be translated. What I have is a divorce certificate. The translation provided is of only one page out of two. There is no evidence of the DNA results and nothing from the mother of the child to confirm the situation. I am not even sure how many children he has had. I do not accept that in the circumstances that the application for leave was refused the Sponsor would refuse to have a DNA test done.

vii) The Sponsor has not in my view been candid about his previous relationships. I have tried to unravel the information and evidence before me but it has been very difficult and I cannot understand why this element of the evidence was not properly and clearly presented. The Sponsor said at one point that he had two children aged 12 and 10, then that he had one. When it was put to him that he had said he had two, he then said that there is a 14 year old who he thought was his but was found not to be after DNA testing was done. The partly translated divorce certificate refers to a marriage in 1993, and a child born in 1997. It is said that they have this child 'together' and the wife is named as Millicent Keerdijk. He said in his recent statement he is divorced from the mother of the two children he visits in Holland. He said in an earlier statement that after he divorced Millicent in 1999 he had a relationship with Dina Fei between 2003 and 2007 but they were not married. He then said at paragraph 23 of his second statement that the Appellant would not know anything about 'his ex-wife who is the mother of his children'. At paragraph 24 he said that the children were only 9 and 10 at the time of the interview. If this

is so the children's mother is presumably Dina Fei since they must have been born around 2002-2004, more than three years after his divorce from Millicent. In his interview he responded 'no' to a question of whether he was married to Millicent.

viii) Discrepant evidence was given at the interview about who lives in the same house as the Appellant and Sponsor. The explanation of the Appellant for this was that she was stressed by her pregnancy and the journey to Liverpool.

23. As I have already said there is evidence in this case of a relationship and indeed of cohabitation but I have had reason to question this evidence. In addition to the points raised above I have taken into account the following factors.
24. There are several discrepancies in the interview answers that I have been urged to treat as inconsequential. While some of these are minor I would note simply that the question about the bedding was very clear and specific as was that about the number of the television sets in the house.
25. Mr Tarlow made much of the fact that the Appellants had not celebrated their marriage and did not exchange Christmas or birthday presents. That of itself can be given limited weight but the fact is that according to the payslips provided the couple earned around £2000 per month and yet said they had no money to go out and no money for presents. The sponsor said they have money problems but there is no evidence of that. They just seemed disinterested in the idea of celebrating their marriage or exchanging gifts and surprised to be asked about it. They said they had no common interests and speak about each other and their child but the Appellant could not name any of her husband's workmates and had never met any of them. They have never gone on a trip. They never phone or text each other during the day despite the pregnancy and now the existence of a child. They could not mention a single thing they do or enjoy together. They appear to have lived at several different addresses and despite having moved in together in December 2011 they are still living in shared accommodation with their child. There is no sense of permanency in their description of their relationship.
26. I formed the view in the course of oral evidence that there was a reluctance on the part of both the Appellant and the Sponsor to give any details of their relationship. Everything they said was shrouded in vagueness and no picture of a married or shared life emerged. I find it very difficult to understand why they would both have mobile phones but never use them even when both were working and the Appellant was pregnant. I question how if they rarely use them each knew the other's number by heart and I question why the only two calls on the phone were recorded late the night before and early on the morning of their interview when they claim to have been together in the Premier Inn. I do not accept the explanations given for these calls especially in the circumstances that the phones were rarely used.
27. I do not accept that this is a genuine relationship. I agree with First-tier Judge Walters that there are issues arising from the Dissolution of Marriage document relating to the Appellant's previous marriage. I do however make no finding on the validity of the marriage because I conclude that it was a marriage of convenience, undertaken

solely to enable an application for leave to remain in the UK under EEA law. In reaching this decision I take account of the Appellant's immigration history and the couple's account of how they met and embarked on a relationship. I take account of all the factors mentioned above. I do not accept that the Appellant and Sponsor are in a durable relationship. I do accept that they have a relationship of sorts and that the Appellant has a child. There is no evidence that the Sponsor is the father and while the fact that his name is on the birth certificate gives rise to a presumption that he is the father that presumption is outweighed by the lack of credible evidence of a genuine and subsisting relationship. I do not accept that what they have is either a genuine marriage, a relationship akin to marriage or an enduring relationship.

28. Given my findings I find that Article 8 ECHR is not engaged.

Notice of Decision

The decision of the First-tier Tribunal having been set aside is replaced with this decision.

The appeal is dismissed.

No anonymity direction is made.

Signed

Date: 6th January 2015

N A Baird

Deputy Judge of the Upper Tribunal

TO THE RESPONDENT

FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date: 6th January 2015

N A Baird

Deputy Judge of the Upper Tribunal