



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

Appeal Number: IA/42783/2014

THE IMMIGRATION ACTS

**Heard at Birmingham
On 18th November 2015**

**Decision & Reasons
Promulgated
On 11th December 2015**

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR STEVEN NANA NIMAKO
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr I Richards, Home Office Presenting Officer
For the Respondent: Mr V Onipede

DECISION AND REASONS

1. I shall refer to the Appellant in this appeal to the Upper Tribunal as the Secretary of State and the Respondent as the Claimant. On 3rd October 2014 the Secretary of State took a decision refusing to issue the Claimant with a residence card as confirmation of his right to reside in the United Kingdom. In a determination promulgated on 26th February 2015, the First-tier Tribunal allowed the Claimant's appeal against that decision.

Thereafter, the Secretary of State was granted permission to appeal to the Upper Tribunal and, after a hearing which took place on 15th October 2015, I set aside the decision of the First-tier Tribunal. The reasons for my doing so are contained in a determination promulgated on 28th October 2015 but, essentially, I concluded that the First-tier Tribunal had failed to consider a number of material matters which it was obliged to consider before deciding whether or not the requirements of Regulation 10 of the Immigration (European Economic Area) Regulations 2006, as amended, had been met. Accordingly, the appeal came before me by way of what is sometimes referred to as a continuance hearing, so that the decision could be re-made. At that hearing I heard oral evidence from the Claimant and received oral submissions from both representatives.

2. The Claimant's account was to the effect that he had validly married one Centia Julceleia Cardoso Pereira De Miranda (Ms Miranda), by way of a customary proxy marriage in 2007. Ms Miranda was said to be a Portuguese national who had been exercising treaty rights in the UK. His initial application for a residence card, based upon the claimed marriage, was successful and one was issued to him which was valid until 22nd January 2014. On 16th January 2014 he applied for a further residence card on the basis of retained rights as a former spouse. He said, pursuant to that application, that he and Ms Miranda were now divorced but he claimed to meet the requirements contained within Regulation 10.
3. The Respondent's position was that, although she had previously issued a residence card (as noted above), there had not, in fact, been a marriage at all. She relied, for the purposes of the remaking the decision, upon a determination of the First-tier Tribunal (Judge Turquet) promulgated on 24th January 2013, but to which the Claimant himself was not a party, indicating that Ms Miranda had never been married to the Claimant and had, in fact, validly married a third person. Further, there was no evidence to suggest that even if a marriage had taken place in Ghana it was recognised under Portuguese law. It had also been said that the Claimant had failed to show that Ms Miranda was a qualified person on the termination of the claimed marriage.
4. It is fair to say that the major point of argument before me revolved around the question of whether there had been a customary proxy marriage between the two persons at all. I have concluded, after carefully considering all of the documentation which has been placed before me, the oral evidence and the submissions of the two representatives, that the Claimant has failed to show that any such marriage ever took place.
5. The Claimant, in this context, has consistently said that there was such a marriage. I give him some credit for his consistency as to that central issue. He has relied upon some documentary evidence which he says shows that such a marriage did take place in Ghana and that there was a subsequent customary divorce which, again, took place in Ghana. I have had regard to those documents and have considered whether I can place reliance upon them in light of what has been stated in **Tanveer Ahmed 2002 UKIAT 439**. I have also taken into account the fact that the

Claimant has produced some documentation said to relate to Ms Miranda albeit that she told Judge Turquet that some of her ID documentation had, at one point, been lost or stolen.

6. I set out my reasons for my adverse credibility conclusion below.
7. The Claimant gave oral evidence to the effect that he first entered the UK as a visitor. He told me that he had then returned to Ghana. He told me that he had then come back to the UK as a working holidaymaker. However, he accepted that after his leave as a working holidaymaker had expired, he subsequently overstayed. When asked why he had done so he said that it was because he had, by then, commenced his relationship with Ms Miranda and did not wish to leave her.
8. It is clear to me that the Claimant, on the basis of his own evidence, took a deliberate decision to remain in the UK unlawfully rather than to return to his home country and make any application to return which might have been appropriate. That is an indication and indeed acceptance of past dishonesty on his part. It does not mean, of itself, that he is seeking to mislead about other matters but it certainly indicates that he is capable of dishonesty.
9. The Claimant was asked, in cross-examination before me, as to why if he and Ms Miranda had been in a genuine relationship which had been conducted in the UK, they had not simply married in the UK rather than having a customary proxy marriage in Ghana. He made it clear that neither of them had, in fact, travelled to Ghana but said that they had been “represented by family”. He said that they had not married in the UK because “we believed in customary marriages in Ghana”. I do not find that to be an adequate explanation. Ms Miranda, on the Claimant’s own evidence, is not a national of Ghana. She had been born in Mozambique and even according to the Claimant “has no relatives in Ghana” though he did add that she has a cousin who is married to a man from Ghana. He said that Ms Miranda had been “just interested in getting married” and was not concerned as to where the marriage would take place. I have to say I find that evidence to be unconvincing. The Claimant was not able to properly explain why Ms Miranda might have wanted a customary proxy marriage in Ghana given her lack of ties to that country and its traditions and customs and did not properly explain why there had not been a marriage in the UK or, perhaps, in Portugal.
10. The Claimant has provided very little by way of background detail about the commencement of the relationship, its development and its subsequent break up. He was well aware of the fact that the genuineness of the claimed relationship was in issue when he gave evidence before me. Nevertheless, he did not provide any additional witness statement for the purposes of the final hearing before me dealing with the detail of such matters, he provided only a very brief witness statement for the purposes of his appeal before the First-tier Tribunal and he did not provide any significant detailed information about such matters in his evidence-in-chief. It would have been reasonable to expect more detail and, in light of

that, I do conclude that the lack of detail is a matter which causes some further damage to his credibility.

11. Further, the Claimant has provided very little evidence to suggest that he and Ms Miranda did ever live together. His claim is that they did so, after the marriage, until a time in 2011 when the relationship got into difficulties. The only documentation he did provide, for the purposes of the hearing before the First-tier Tribunal, was a written tenancy agreement naming both of them. I do not think that that document, in isolation, carries much force in demonstrating that they did ever live together or have a genuine relationship. Further, one would have expected some other documentation evidencing cohabitation to have been available and to have been produced. That might have been in the form of, for example, joint bank statements or joint utility bills. No documentation of that sort has been provided. The failure to provide further documentation as to cohabitation points to the two not having cohabited.
12. Finally, there is the determination of Judge Turquet. Mr Richards did not contend, bearing in mind that the Claimant was not a party to the proceedings, that I was bound by the findings and conclusions set out in that determination which were to the effect that Ms Miranda had never been in a relationship with or married to the Claimant. However, he did stress that it was apparent, from the determination, that Ms Miranda had been prepared to give evidence to him, and subject herself to cross-examination, about all of that. He urged me to accord some weight to her preparedness to do so. I agree it is appropriate to do that and it seems to me that this is, therefore, another factor weighing against the Claimant with respect to the credibility of his claims.
13. I have born in mind the points made in the Claimant's favour by Mr Onipede. However, much of that amounted to assertion that the Claimant had been "very credible" and that Ms Miranda is "a very dishonest person". Those assertions, of themselves, do not take matters very much further in my view. Mr Onipede made the point that it was up to the parties where they chose to marry and that it should not count against them that they had decided to have a customary proxy marriage in Ghana. I accept Mr Onipede's point as far as it goes that a couple are free to marry howsoever they wish. My point of concern, though, is that there has been no proper explanation, against the factual background set out above, as to why the couple would choose to and particularly why Ms Miranda would choose to have a customary proxy marriage in Ghana when, from her point of view, there were other obvious alternatives such as a marriage in the UK or in Portugal. Mr Onipede said that the Claimant had been able to provide some employment documentation which appeared to relate to Ms Miranda and, indeed, there are some wage slips and form P60s. However, there is no evidence from HMRC regarding her claimed employment as said to be evidenced by those documents and I am not able to rely upon the documents provided by the Claimant, in light of **Tanveer Ahmed**, bearing in mind my general view as to his credibility.

14. In light of all of the above, therefore, I have reached a conclusion to the effect that the Claimant has failed to show he has had a genuine relationship with or any form of marriage to Ms Miranda. I accept Mr Richard's submissions in that regard. Clearly, in the face of that conclusion, the Claimant has failed to show that he can bring himself within the 2006 Regulations.
15. In remaking the decision, therefore, I dismiss the Claimant's appeal against the decision of 3rd October 2014 refusing to issue him a residence card as confirmation of his right to reside in the United Kingdom.

Conclusions

The decision of the First-tier Tribunal has been set aside.

In remaking the decision I dismiss the Claimant's appeal against the Secretary of State's decision of 3rd October 2014.

I make no anonymity direction.

Signed

Date

Upper Tribunal Judge Hemingway

TO THE RESPONDENT FEE AWARD

As I have dismissed the Claimant's appeal I make no fee award.

Signed

Date

Upper Tribunal Judge Hemingway