



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/50693/2013

THE IMMIGRATION ACTS

Heard at Field House
On 14th January 2015

Decision & Reasons Promulgated
On 26th January 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD

Between

MR BENEDICT EKOW-DADZIE GHANSAH
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Garrod, Counsel, instructed by Justice Law Solicitors
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Ghana who applied for a residence card as confirmation of a right to reside here in respect of his marriage to his partner Agatha Wippich who is a German citizen.

2. This appeal has a long history and I shall summarise it. His application was refused in a decision dated 27th November 2013. A subsequent appeal was dismissed by First-tier Tribunal Judge Boyd. Grounds of application were lodged to that decision and permission to appeal was granted. I heard the appeal at Field House on 22nd October 2014 and on 19th November 2014 found errors in law sufficient to set aside the decision of Judge Boyd in its entirety. Thus the matter came back before me on the above date.

Preliminary Matters

3. Mr Garrod indicated that the issue before the Tribunal was whether or not the parties were in a durable relationship. It had not been possible in the time available to secure evidence that the marriage was recognised in Germany.
4. It is helpful to set out the witness statements of the Appellant and his partner.

Witness Statement of the Appellant

5. He is a Ghanaian national who came here on 26th January 2004 on a visitor visa and overstayed. He subsequently met his partner in February 2012 and they agreed to get married on 1st July 2012. They made arrangements for the ceremony to be performed in the presence of elders of both families and their marriage took place by proxy on 25th August 2012 in Accra, Ghana. They could not personally attend their ceremony due to their financial circumstances. They married under Ghanaian customary law. The marriage is genuine.
6. He loves his wife and they intend to live in the UK as husband and wife as they are in a durable and subsisting relationship.

Witness Statement of Agatha Wippich

7. She is Ghanaian by birth and a German by naturalisation. She came here on 15th September 2007 to join her daughter who is German and was attending school. She has continued to reside here. She met the Appellant in February 2012 and they agreed to marry in July 2012. The necessary arrangements were made for the marriage ceremony to be performed in the presence of elders of both families. They could not personally attend their marriage ceremony due to their financial circumstances as she was the only breadwinner in the family.
8. They married under Ghanaian customary law.
9. His statement mirrors that of the Appellant.
10. She loves her husband and they intend to live in the UK as husband and wife and they are in a durable and subsisting relationship.

The Oral Evidence

11. The Appellant's evidence is as noted in my Record of Proceedings and he adopted his statement as true. He was in a lasting relationship with his wife.
12. In cross-examination he said he did not look into the possibility of getting married in the United Kingdom. He attended the Immaculate and St Thomas Church (Cathedral) in Northampton. He was a Catholic and went every week with his wife. His wife had one child who he had not met and who was not on good terms with her mother. It is a family problem. The daughter was married. He did not know if she had children. He was not working. She was and sometimes gave him money namely £20 - £50. It was not a fixed sum. When asked as to whether he gave her a Christmas present he said that they went out for dinner on Christmas Sunday. It was a Mandarin buffet. He had paid. He had saved money for it. She worked from 10 a.m to 7 p.m. Monday to Friday and left the house at about 9 a.m. getting a bus to work. Sometimes they would eat together in the evening. Last night they had yam and stew. There was no re-examination of the witness.
13. Agatha Wippich gave evidence as noted in my Record of Proceedings and adopted her statement as true. She intended to live with her husband for ever.
14. In cross-examination she said that they did not get married in the UK because she was the only person working and they could not afford to do that. They might have a church wedding but it was not yet planned. She went to church with her husband, namely the Immaculate and St Thomas Cathedral. She had a daughter but there was a problem and it was a long story. The daughter did not love her. She worked 30 hours a week, namely 10 to 2 on a Monday and 10 to 7 on Tuesday, Wednesday and Thursday. She was off on a Friday. She left the house at 9 o'clock and took a bus to work. She gave her husband money. For example she would sometimes give him cash if he was going for a haircut. Sometimes he would ask her for money. She could not give him much. Asked at Christmas whether she gave him a present she said that she gave him a card. He gave her a card. As for dinner, they went out with friends. It was a Chinese buffet. He contributed to the cost - she had paid. They normally did the cooking together. Last night they had rice and stew. Her husband had a son whom she had not met. There was no re-examination of the witness.

Submissions for the Home Office

15. Reliance was placed on the reasons for refusal letter.
16. The question was whether the relationship was durable. There were discrepancies in the accounts. There was a difference over the financial arrangements in that he said the amount was not fixed.
17. There was a material difference in the evidence in the meal that they had enjoyed - he said that it was a Christmas gift for her which he had saved money and for which he paid. She said that they were out with friends and that she had paid. There was a

difference about whether they hoped to have a church wedding in Ghana. There was some difference in the terms of her working hours.

18. There was no expert evidence that the marriage was accepted as valid according to the laws of Germany and accordingly the appeal could not succeed on that basis.
19. If I considered if there was a durable relationship then the matter should be remitted to the Secretary of State for the exercise of her discretion under paragraph 17(4) of the 2006 EEA Regulations.

Submissions for the Appellant

20. The issue was one of fact. There was considerable corroborative written evidence from the Appellant and Sponsor. The application had been ongoing for about two years. They had a joint household contents policy – see page 142 of the Appellant’s bundle.
21. While not all of their oral evidence was entirely consistent, most of it was and any differences were probably down to their perception of events rather than as a matter of memory.
22. I was asked to allow the appeal and remit the matter to the Secretary of State.

Conclusions

23. Ultimately the only issue which I have been asked to decide is whether or not the parties are in a durable relationship. If they are not then the appeal must fail and if they are then I understood the parties to be in agreement that the matter should be remitted to the Secretary of State to consider whether to grant a residence card. The burden of proof is on the Appellant and the standard is the balance of probabilities.
24. I am firmly of the view that the parties are in a durable relationship. Their written statements are corroborative of each other’s account and it is some two and a half years since they agreed to marry. The documentary evidence at page 142 being a letter from Barclays dated 11th January 2013 indicates that they have a home contents policy together at the address at 118 Elliston Gardens, Northampton.
25. In their oral evidence they were thoroughly tested in cross-examination and most of the answers given supported the other’s account. For example, they gave identical evidence on which church they attended and whether they went together. The evidence about the contact with the Sponsor's daughter was the same. The hours of work of the Sponsor were slightly different although reasonably similar and they agreed that she left for work at 9 a.m. and took the bus. They were agreed that they did not give each other a Christmas present. They agreed that they went out to a Chinese buffet although the evidence was different as to who paid for that. They agreed that last night they had had “stew”. Furthermore, I thought their evidence had the ring of truth about it.

26. It is not disputed that Agatha Wippich is a German national exercising treaty rights here and that the Appellant is entitled to apply for a residence card if he is in a durable relationship with her.
27. I deal with matters as they stand at the date of the hearing and, as stated, I am holding that the parties are in a durable relationship because I believe the evidence they have given to that effect.
28. This does not, in itself, indicate that the Appellant is entitled to a residence card as in terms of Section 17(4) of the Immigration (EEA) Regulations 2006 the Secretary of State "may issue a residence card" once she has conducted "an extensive examination of the personal circumstances of the applicant" - see Regulation 17(5).
29. It follows that to that limited extent this appeal must be allowed. No doubt the Secretary of State will consider the circumstances of the Appellant given that he has now been found to be in a durable relationship.
30. There is no need for anonymity order and I am not making a fee order as I was not asked to do so and much of the evidence resulting in the finding that the parties were in a durable relationship only came after the application was refused.

Decision

31. The appeal is allowed to the limited extent that the Secretary of State exercises her discretion under Section 17(4) of the Immigration (European Economic Area) Regulations 2006.

Signed

Date

Deputy Upper Tribunal Judge J G Macdonald

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal (in part) I considered making a fee award but have decided not to make an award for reasons given above.

Signed

Date

Deputy Upper Tribunal Judge J G Macdonald