



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/08495/2015**

THE IMMIGRATION ACTS

**Heard at Field House
On 8 February 2016**

**Decision & Reasons
Promulgated
On 12 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

**MERCY BAWE DOMBO
(NO ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Coleman of Counsel

For the Respondent: Mr Staunton a Home Office Presenting Officer

DECISION AND REASONS

Background

1. The Respondent refused the Appellant's application for asylum or ancillary protection on 14 January 2015, and her application for an EEA Residence Card as confirmation of the right to reside as the spouse of an EEA Citizen on 19 May 2015. Her appeal against both was dismissed by First-tier Tribunal Judge Wyman ("the Judge") following a hearing on 11 November 2015.

2. I have lifted the anonymity order previously made pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber)

Rules 2014 as the Appellant's asylum and ancillary protection claim has been dismissed and there is no application to appeal that decision.

The grant of permission

3. First-tier Tribunal Judge Cox granted permission to appeal (15 December 2015). He said it is arguable that the Judge's factual error regarding the Appellant having applied for the EEA Residence Card prior to (as asserted by the Appellant) rather than after (as found by the Judge) the refusal of her asylum and ancillary protection claim could have affected the outcome of whether she had entered a marriage of convenience such as to defeat her EEA Residence Card application. All grounds could be argued.

Appellant's position

4. Ground 1 asserted that the Judge ignored that over 85% of the 850 answers given by the Appellant and Mr Dey had been answered correctly, and she ignored the evidence of cohabitation prior to their move to Dagenham.
5. Ground 2 asserted that there was good reason for the Appellant's siblings not attending the hearing (the death of their mother) and it was not therefore open to the Judge to make adverse findings due to their non attendance.
6. Ground 3 asserted that the Judge's factual error regarding when the Appellant applied for the EEA Residence Card could have affected the outcome of whether she had entered a marriage of convenience.
7. Ground 4 asserted that in failing to listen to the CD of Mr Dey's marriage interview she erred as his German accent was of relevance to the alleged discrepancies in the interviews.

Respondent's position

8. Mr Staunton relied on the rule 24 notice. Numerous and cogent reasons had been given for finding it was a marriage of convenience, namely a lack of documentary evidence showing them residing at the same address [109], an inconsistency in the statutory declaration of the marriage in that it was purportedly been signed by the Appellant's father despite him having been dead for 17 years [110], the lack of production of easily available evidence [111], and the interview discrepancies [105/106].

9. He added orally that credit was given for correct interview answers [105], and that the findings were open to the Judge on the evidence.

Discussion

Ground 1

10. Ground 1 has 2 parts. In relation to the interview the Judge gave credit for consistent answers [105]. She noted inconsistencies [105] some of which were accepted by Mr Coleman [106], and some of which were explained [107, 108]. The Judge does not explain why she finds the unexplained inconsistencies material given the extremely high percentage of consistent answers or state whether she accepts the explanations given for others. I am satisfied that this amounts to a material error of law as the Appellant does not know why she has been disbelieved in relation to the answers given in interview. That is particularly so given Ground 4 below which may have led to the Judge reaching a different conclusion.
11. In relation to the documentary evidence, the Judge noted the limited evidence of their current address and found this surprising and unusual [109]. She appears to have ignored the documentary evidence showing them living together at their previous address which they only left 3 months prior to the hearing. That is a material error of law as it impacted on the assessment of the length and therefore the nature of their relationship and an explanation is required as to why no weight was to be attached to that.

Ground 2

12. The Judge said [110];

“Whilst I understand that the siblings may indeed have been busy in preparing for the funeral in Ghana, neither of them wrote a letter of support to the Tribunal explaining why they could not attend and confirming their support for the appellant’s application.”
13. I am satisfied that this was observation was open to the Judge. It was not their lack of attendance but their lack of supporting evidence that undermined the Appellant’s claim. This was a finding open to the Judge and was not a material error of law.

Ground 3

14. There was a clear error of fact in that the Judge wrongly found [112];

“that the appellant did not apply for leave to remain on the ground of her marriage until her asylum application had been refused.”

15. The EEA application was made on 4 November 2014. Her asylum application was refused on 14 January 2015.

16. This error of fact was taken into account by the Judge [112] when she determined it was not a genuine marriage. She compounded it when she said [113],

“I believe the appellant on receiving the refusal of her asylum claim then decided that she would make a separate application for leave to remain as she was determined not to return back to Ghana in any event.”

17. That assertion was factually incorrect as her EEA claim preceded the asylum refusal. I am satisfied that this error of fact was so significant that it amounted to an error of law.

Ground 4

18. I have dealt with this within Ground 1 at [10] above.

Conclusion on error of law

19. I am therefore satisfied that the Judge made the material errors of law as identified above.

20. Mr Staunton and Mr Coleman agreed that it was appropriate for me to remit the matter to the First-tier Tribunal. That was because the errors of law were interlinked, extracts of the CD of Mr Dey’s interview may need to be listened to, and oral and documentary evidence for example from family members and up to date documentary evidence such as utility and financial documents may well assist the Tribunal in determining whether it was a marriage of convenience.

Decision:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law in relation to the EEA appeal.

I set aside the EEA decision.

The matter shall be remitted to the First-tier Tribunal at Taylor House on the EEA appeal only, not before Judge Wyman, with a time estimate of 3 hours given the potential number of witnesses and potential need to listen to extracts from Mr Dey’s interview.

Signed:
Deputy Upper Tribunal Judge Saffer
9 February 2016