



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

Appeal Number: EA/05204/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 13th February 2018**

**Decision & Reasons
Promulgated
On 8th March 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

**MR JOHN YEBOAH
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Mupara, Counsel, instructed by Quality Solicitors Orion

For the Respondent: Ms A Brocklesby-Weller, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Ghana, appealed to the First-tier Tribunal against the decision of the Secretary of State of 29th April 2016 to refuse his application for a residence card based on a retained right of residence following his divorce from an EEA national. The Appellant's appeal was dismissed by First-tier Tribunal Judge Abebrese in a decision promulgated on 2nd October 2107. The Appellant now appeals to this Tribunal with permission granted by First-tier Tribunal Judge Boyes on 22nd November 2017.

2. The background to this appeal is that the Appellant entered the UK on 6th October 2008 with leave to enter as a visitor for six months. He claimed that he met Ms Natacha Borges in January 2009 and that they married in February 2010 by way of a proxy marriage carried out in Ghana. The Appellant applied for and was granted a residence card by the Secretary of State on 1st November 2010 valid until 1st November 2015. The Appellant claimed that the couple divorced on 4th September 2015. On 7th October 2015 he applied for a residence card as confirmation of his retained right of residence.
3. Following that application Immigration Officers undertook a visit to the address given on his application form on 6th April 2016. It is said in an Immigration Officer's report that they spoke to a resident of that dwelling, who claimed that he had been resident there since August 2002 and when shown photographs of the Appellant and Sponsor he said that he did not know or recognise either of them. The Appellant was then called for an interview, which he attended on 21st April 2016. As a result of alleged inconsistencies in that interview the Secretary of State concluded that the Appellant had entered into a marriage of convenience.
4. The Secretary of State accepted that the Appellant had submitted evidence that his former spouse was exercising her treaty rights at the time of the divorce, that they had resided in the UK for at least one year and that their claimed relationship had lasted for the required three years. However, it was not accepted that the relationship was genuine and accordingly the Secretary of State decided that the Appellant did not qualify under Regulation 10(5) of the Immigration (EEA) Regulations 2016.
5. The judge considered the Appellant's appeal and found at paragraph 17 that the Appellant had given inconsistent and contradictory answers to questions put to him in his interview and had been unable to provide accurate information in relation to the date of the marriage to his former spouse, which also undermined his claim that that marriage was genuine. The judge concluded that the Appellant had not provided an adequate explanation as to how he came into possession of his spouse's documents issued after the time of the divorce.
6. The judge said at paragraph 19:

"I also find it that the evidence from the tenant resided (sic) near the premises where the Appellant and his former spouse allegedly resided for several years to be credible in that he could not recognise the Appellant or the Sponsor from photographs provided and he had resided on the premises for several years and could not recall them living on the premises."

The judge took into account that the Appellant had not provided direct evidence from the former landlord, relying just on a tenancy agreement. The judge concluded that the Appellant had not shown that the marriage was genuine.

Error of Law

7. In his submissions Mr Mupara acknowledged, as identified in the grant of permission to appeal, that Ground 3 was the main ground on which he pursued his argument that the decision of the First-tier Tribunal was tainted by a material error of law. It was contended that the judge attached weight to evidence from a neighbour without any signed witness statement or oral evidence and no evidence as to where this person lived in relation to the Appellant and his wife and the fact that the photographs said to have been shown to this man were not exhibited. It was impossible, in his submission, to know whether these were photographs of the Appellant and his ex-wife at all.
8. In her submission Ms Brocklesby-Weller considered that the matter of the neighbour's evidence was a matter of weight and that the judge dealt with this issue at paragraph 19. She submitted that the judge's conclusion was based on the report from the Immigration Officer who called at the address given on the Appellant's application form (at T1 in the Respondent's bundle).
9. I note that the name of the person the Immigration Officer spoke to has been redacted from the report. The report states that photocopied images of the Appellant and Sponsor were shown to the person who answered the door and that he did not recognise them. It says that the person stated that he had lived at the address since August 2002 in a multi-occupancy dwelling that contained five rooms, that he knew all of the current occupants and he did not know or recognise the name or image of either the Appellant or the Sponsor. The Immigration Officer concluded that the address is not the claimed address for the Appellant.
10. I agree with the submissions made on behalf of the Appellant that this report does not identify the person who opened the door nor does it identify the photographs shown to this man. This document is therefore of very limited weight, if any, and I accept that the judge erred in attaching what appears to be significant weight to this document at paragraph 19.
11. Mr Mupara also relied on the second Ground of Appeal, in which he submitted that the relevant interview form identified in the case of **Miah (interviewer's comments: disclosure: fairness) [2014] UKUT 00515 (IAC)** was ICD.4605. It appears that at the hearing a transcript of a recording of the interview on ICD.4604 was produced. The Respondent's bundle contains a copy of ICD.4605 at section Q. Mr Mupara submitted that the Appellant had not received this document, that it was not in the Respondent's bundle sent to the Appellant. He submitted that this was not an issue at the hearing because the Appellant did not know that this document existed. However the index of the PF1 identifies that the bundle contains ICD 4605 at section U. Mr Mupara did not submit any evidence to show that there had been any request to obtain this document. This issue should have been clearly identified at the First-tier Tribunal.

12. In any event, I accept that there are some issues in relation to the transcript of the interview on the ICD.4604. This is the only contemporaneous record of the interview. I accept that there are elements to the Appellant's responses in the interview that were either inaudible or spelt phonetically. In particular I note the answers to questions 57 and 94, which relate to the names of the Appellant's ex-wife's parents. When considering this evidence it is difficult to see how the judge concluded at paragraph 17 that during the course of the interview the Appellant provided inconsistent and contradictory evidence and "he also did not know the Christian name of his former spouse's parents and I would have expected that a couple in a genuine for the period of time alleged would have been able to provide this information without much difficulty". Looking at the transcript it is not at all clear that the Appellant did not know the Christian names of his former spouse's parents as the answers to these questions are recorded as inaudible. Accordingly it is not right to say that the Appellant provided contradictory evidence in relation to the names of his ex-wife's parents as alleged.
13. In my view, these two errors are material to the assessment of the evidence as a whole and I consider that the judge's findings on the facts are therefore infected by error of law and I set them aside.

Remaking the decision

14. As Mr Mupara claimed to have not seen the ICD.4605 I gave him time to consider this document and take instructions from the Appellant. When the hearing resumed later I heard oral evidence from the Appellant in English and he was cross-examined by Ms Brocklesby-Weller. I heard submissions from Ms Brocklesby-Weller and Mr Mupara.
15. In his evidence-in-chief the Appellant said that he could not explain why his age was given as 23 at the time of the marriage whereas in fact he would have been 24. He could not explain either why his wife's age was given as 23. The marriage certificate, which is at pages 6 and 7 of the Appellant's First-tier Tribunal bundle, gives the names of two witnesses which, the Appellant said, were extended family members who witnessed the marriage on his behalf. He said that he and his ex-wife were not in Ghana for the wedding. He said that the person who had witnessed his ex-wife's signature he did not know who that was.
16. He said in oral evidence that his wife's father had travelled to Ghana on behalf of his ex-wife. He said that his name was signed at the bottom of the statutory declaration confirming that a customary marriage had taken place (page 4 of the Appellant's bundle). He said that the other signatory was his father. He was asked why in his witness statement and interview he said that his ex-wife's mother went to Ghana. He said that his ex-wife told him that her mother went to Ghana and that she did not tell him her father went.

17. In cross-examination the Appellant said that he had received the marriage certificate and other documents in 2010 and he was asked why he had not asked his ex-wife about why her father had witnessed the documents and he said that she kept on saying that it was her mother who had done so. He was asked when he had found out that it was in fact her father who travelled to Ghana and he said that it was only recently. Initially he said that it was when he made the application but then he said that it was after he received the refusal letter. He was asked who had confirmed that it was her father who had gone to Ghana and he said that he had asked one of his ex-wife's friends, called Andrea, what the names of his ex-wife's parents were and she told him the names and he realised that it was her father who had gone to Ghana.
18. The Appellant went on to say that he was going to ask Andrea to provide a witness statement as to the genuineness of the marriage but that when he tried to phone her again she would not take his calls. When asked when he had last had contact with his ex-wife the Appellant said it was before the divorce. When asked what year that was he was unable to answer. The Appellant said that he was in a relationship with the Sponsor from 2009 until 2014 but he said that he knew the parents' names but because they were Portuguese names and his ex-wife always called her father Luis and her mother Ana but he did not know their names. He said that they did not have a party in the UK for the wedding, they intended to go to Ghana but were unable to as they were subsequently separated.
19. He was asked why there were no photographs of him and his wife and he said that when she was leaving she took all the photographs of them. He was asked how he was able to provide P60s up to the 2015 tax year and he initially said that his ex-wife had not taken them with her and then he said that the P60 came to the address after she had left. He said that he did not have any contact details to send them on to her.
20. I asked the Appellant a number of questions. I asked him if he had spoken to his brother, with whom he claimed in the interview that the Sponsor's wife's mother had stayed with, and he said that he had not. He said that he had not spoken either to his father about who had come to Ghana to represent the Sponsor at the wedding. He said that his father did not say who had come. He said that he was unable to speak to his father as he was so busy working. The Appellant said that his ex-wife had left him on 20th May 2014. He said that he did not know whether she was still working, she could have been because that is why the payslips kept coming to the address. He knew she worked in catering but did not know where. He said that he left the address they had been living at together on 14th February 2015.
21. In submissions Ms Brocklesby-Weller accepted that the only issue is whether this was a sham marriage, a marriage of convenience. She submitted that the Appellant was not credible and that therefore the relationship was not genuine. She referred to deficiencies in his oral evidence. She said it was not credible that the Appellant had never asked

his wife why her father was in Ghana for the statutory declaration rather than her mother, as claimed. This is further compounded by the fact that he did not speak to his father about this. She submitted that it was inherently not credible that the Appellant would not have discussed this with his father.

22. She submitted that there were no photographs in relation to the marriage and no photographs of the couple over the years of their marriage. Although the Appellant was in contact with a friend of his ex-wife's for a number of years it was only when he received the reasons for refusal letter that the contact ceased. She submitted that this was not credible. She also pointed to the fact that the P60 from 2015 would not have been received until after the end of March 2015 but the Appellant said that he left that address in February 2015 and therefore his evidence that the P60 had come to the house and that was how he obtained it was not credible.
23. She submitted that the Appellant's claim that he did not know the names of his ex-wife's father and mother was not credible nor did he know the date when he last saw her. In her submission the Appellant had failed to provide cogent answers to the questions asked. In her view the Appellant had failed to demonstrate that the relationship was genuine. The utility bills were largely in the Sponsor's name. There was little to link him to the address, for example co-bills. The names were handwritten on the lodger licence agreement and in her submission this was not sufficient to show that the Appellant was genuinely a resident at that address. She submitted that the Appellant therefore had not discharged the burden of proof upon him.
24. Mr Mupara submitted that the Appellant had answered any inconsistencies found in the documents. In his submission the marriage was conducted in 2010 and the Secretary of State had issued a residence card on 1st November 2010, having seen the documents. In his submission, in preparing the application based on the retained right of residence, the Appellant had reasonably assumed that there would be no questions in relation to the validity of the marriage. That might explain why the inconsistencies in the documents were never dealt with.
25. In any event, he submitted that the Appellant had explained the discrepancies in relation to his age and that of the Sponsor at the time of the marriage. He submitted that there was nothing unusual about the signature appearing on the marriage certificate of the bride and groom on a Ghanaian proxy marriage certificate. He submitted that there were three different dates in relation to the proxy marriage, the date it was conducted, 20th February 2010, the date the statutory declaration was issued, 25th May 2010, and the date on which the statutory declaration was certified, 26th May 2010. Therefore, in his submission, it could easily be seen how the dates could be confused and this does not mean that the marriage is not genuine.

26. He submitted that the Appellant had explained that the Sponsor's father, not the mother, had attended. He explained that he had not had conversations with his father or brother as he was busy working. He submitted that it does not matter how the Appellant came about the P60s and that he could get mail even though he had moved house, he could go back there to get mail. In his submission this was a plausible explanation. In his submission the Appellant had discharged the burden of proof, which was to answer the allegations made by the Respondent. He submitted that if it were found that the relationship was genuine all other aspects of the Regulations had been met.

Remaking the Decision

27. At the hearing before me Mr Mupara did not contend that the Respondent had not discharged the burden of proof as set out in the case of **Papajorgji (EEA spouse - marriage of convenience) Greece [2012] UKUT 00038 (IAC)**. In my view it is clear from the evidence at T1, U1 to 4 and in the record of interview ICD.4604 that there were sufficient questions raised about the marriage to support a conclusion that the marriage may be one of convenience. I note in particular the answers to question 59 where the Appellant said that he had met the Sponsor's mother "because she was at our marriage in Ghana". The fact that he said that his mother stayed for two weeks (question 87), the Appellant's confusion in relation to the dates of marriage and statutory declaration and the registration of the marriage was sufficient evidence to raise a suspicion as regards the marriage.
28. In these circumstances I accept that there is an evidential burden on the Appellant to address evidence justifying reasonable suspicion that the marriage is entered into for the predominant purpose of securing residence rights (**Papajorgji**).
29. In my view, considering all of the evidence there are serious questions about the Appellant's credibility such as to undermine his claim to have entered into a genuine marriage with Natacha Borges. The most significant discrepancy in the Appellant's oral evidence before me is that the Appellant now says that it was his Sponsor's father who went to Ghana in May 2010 to make the statutory declaration and attend the marriage registration. I do not find it credible that he would not have discussed this matter with the Sponsor or indeed with his father and brother had anyone genuinely travelled to Ghana from the Appellant's Sponsor's family. The Appellant's explanation that he was too busy working to discuss this with his father is not credible. This is a significant issue which goes to the very core of the Appellant's case.
30. There are no photographs of the Appellant and the sponsor over the years together. This too undermines the credibility of the claim that theirs was a genuine marriage.

31. The Appellant has failed to give a coherent explanation as to how he received the sponsor's P60 from 2015, after their separation. The Appellant claims to have left the couple's shared address in February 2015 therefore his evidence that the P60 had come to the house and that was how he obtained it was not credible.
32. The appellant's oral evidence as to his ex-wife and when he last saw her was vague I note that the utility bills were mainly in the name of the Sponsor and that there was little evidence of the Appellant's residence at the claimed shared address. There was a real dearth of documentary evidence as to the relationship or the claimed cohabitation.
33. On the basis of all of the evidence before me I am satisfied that the Respondent has discharged the burden of proof upon her in relation to the marriage. The Appellant's evidence to rebut that evidence has in itself raised further issues of credibility. In my view the Appellant has not established that his marriage was genuine from the very outset.
34. In these circumstances I conclude that the Appellant entered into a sham marriage under the provisions of the EEA Regulations. Accordingly the Appellant's appeal against the decision of the Secretary of State to refuse to issue a residence card on the basis of a retained right of residence is dismissed.

Notice of Decision

The decision of the First-tier Tribunal contains a material error of law and is set aside.

In remaking the decision I find that the Appellant's appeal is dismissed.

No anonymity direction is made.

Signed

Date: 6th March 2018

Deputy Upper Tribunal Judge Grimes

TO THE RESPONDENT **FEE AWARD**

I have dismissed the appeal and make no fee award.

Signed

Date: 6th March 2018

Deputy Upper Tribunal Judge Grimes