



**Upper Tribunal
(Immigration and Asylum Chamber)
EA/12704/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 14 February 2018**

**Decision & Reasons
Promulgated
On 5 March 2018**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

**CECILIA AWUAH
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms P Wangui instructed by R Spio & Co Solicitors
For the Respondent: Mr D Clarke, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a decision of the First-tier Tribunal dismissing the appeal of Mrs Awuah against the respondent's decision of 5 August 2015, refusing an application for a residence card. The judge dismissed the appeal. There is the reference, which is perhaps the key point of challenge at paragraph 26, that the normal statutory declaration, confirming the details of the marriage is missing in this case. That is clearly wrong and that is common ground and that is the main basis upon which Mr Clarke, on behalf of the respondent, concedes that the decision does contain a material error of law.

2. The judge was also concerned about discrepancies in the evidence, discrepancies as to the date of the marriage, which was stated in the marriage certificate in contrast to what the appellant said and differing explanations given by the appellant as to why the dates were different; and also a lack of evidence to support the claim that there were two marriages, a customary marriage and an ordinance marriage, which had different dates. That was a matter that was unsupported in the evidence of the judge. However, she did go on to accept that the husband, the sponsor, is a qualified person.
3. Mr Clarke argues that the case should be remitted to the First-tier and Ms Wangui argues that in fact once it is accepted that the judge erred with regard to the statutory declarations, since there was one, then the requirements of a valid marriage are made out in this case and the appeal can be allowed outright. I think though that there are ongoing matters of concern in this case which need consideration. Although it was not in the most immediate decision letter the statutory declaration was subjected to challenge in an earlier decision letter and it is not clear whether that is a matter that is going to require consideration by a judge, in other words it is not clear whether the respondent sticks to those concerns, but there are also the issues about the date of the marriage and the different forms and types of marriage which concerned the judge and I think that those are matters that need to be clarified also.
4. So, although the finding with regard to the fact that the sponsor is a qualified person is preserved, the other matters I think are matters that need further exploration and clarification before the First-tier Tribunal, so the matter is remitted for consideration afresh by another judge in Birmingham, but with that particular finding of the sponsor's qualifying status being preserved.

No anonymity direction is made.



Signed

Date 1 March 2018

Upper Tribunal Judge Allen