



Upper Tribunal

(Immigration and Asylum Chamber) Appeal Number: PA/07845/2017

PA/07834/2017

THE IMMIGRATION ACTS

Heard at Field House

On 22nd January 2018

Decision and Reasons

Promulgated

On 19th March 2018

Before

**UPPER TRIBUNAL JUDGE FRANCES
DEPUTY UPPER TRIBUNAL JUDGE FARRELLY**

Between

[J K]

[C A]

(ANONYMITY DIRECTION NOT MADE)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: No appearance

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

DECISION AND REASONS

Introduction

1. The appellants are nationals of Ghana, born respectively on [] 1972 and [] 1996. The first appellant is the mother of the second appellant. They

were issued with visit visas valid from 24 March 2009 until 25 March 2010. They overstayed. In 2012 they made unsuccessful applications for leave to remain. They continued to overstay until they were encountered on 17 April 2015. They then made a further unsuccessful application for leave to remain. They were detained on 8 June 2017 and claimed asylum on 17 July 2017. This in turn was refused and they appealed.

2. Their appeal came before First-tier Tribunal Judge J Bartlett at Yarl's Wood on 6 November 2017. They were represented by a solicitor and there was a Home Office Presenting Officer in attendance. At the start of the hearing it was indicated on behalf of the appellants they intended calling the first appellant's father; a pastor; and a Mr Sissoko. The latter is a French national originally from Mali. The presenting officer objected to this on the basis that no witness statements had been served.
3. The first appellant's protection claim was on the basis she was a Christian and that she was in a relationship with Mr Sissoko who is of the Muslim faith. She claimed they were married in an Islamic ceremony in the United Kingdom. Because of this relationship she would be at risk in her home country from her family. The first appellant's claim of conversion to Islam was in issue. The second appellant's claim arose through his association with the first appellant.
4. The judge agreed to hear evidence from Mr Sissoko on the basis that a significant issue in the appeal was whether or not a genuine and subsisting relationship existed between the first appellant and him. The judge did not allow the other two witnesses to be called.
5. The judge did not accept the relationship was genuine and referred to various inconsistencies between the evidence of the appellant and Mr Sissoko. The judge referred to the absence of any documentation from the Mosque as to their claimed religious marriage and referred to her activities in the Christian church. Part of the claim was that the appellant's father and the pastor travelled to Ghana and spoke to the appellant's family on her behalf.
6. In the alternative, the judge found there was no current threat from the family, pointing out the appellants' long absence from their home country. She had been living in Italy since 2002 until her marriage broke down, coming to the United Kingdom in 2009. The judge also found that there was sufficiency of protection and, if needs be, the appellants could reasonably internally relocate within Ghana.
7. The judge accepted that the appellants received some financial support from the first appellant's father. However, the judge concluded this did not mean their relationship amounted to family life for the purposes of article 8. Again, in the alternative the judge concluded the decision was proportionate.

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8. Permission to appeal was granted on the basis it was arguable the judge should have heard from the first appellant's father and her pastor.
9. There was no appearance on behalf of the appellants and no further argument advanced. Notice of the hearing had been served upon the parties on 15 December 2017 at the address given in the grounds of appeal. It was returned undelivered. A letter was sent to the appellants' solicitors on 4 January 2018. This too was returned undelivered on 9 January 2018. Attempts were made to contact the appellants and the solicitors by telephone without success. It is for the appellants to notify the Tribunal of any change of address. In the absence of any explanation, and in giving effect to the overriding objective, we proceeded in the appellants' absence.
10. The presenting officer submitted that if there was any error in not allowing the witnesses to give evidence it was not a material error. The judge at paragraph 26 had given numerous reasons for rejecting the claimed relationship between the first appellant and Mr Sissoko and at paragraph 27 sought to make allowances for linguistic issues. The first appellant's father may have been able to give some evidence about the relationship but at paragraph 32 the judge took the claim at its highest and even accepting a relationship the claimed fear was rejected. Furthermore, the judge concluded that there was sufficiency of protection and the option of relocation. Consequently, the potential evidence of the pastor about travelling to Ghana and speaking to family members was not material.

Consideration

11. The First-tier Tribunal is given a general discretion as to how a hearing should proceed and the judge is required to manage the proceedings. Standard Directions are that witness statements are served in advance. This makes for the efficient use of court time and enables the respondent to carry out checks. Failure to comply does not however mean a witness should be prevented from giving evidence. A tribunal should not exclude the evidence of a witness whose evidence is otherwise admissible and relevant. Had it been necessary the judge could have considered an adjournment. It would have been preferable had the judge heard from the witnesses proffered. However, in the circumstances of this appeal the refusal to hear from them did not amount to a material error of law.
12. Potentially their evidence may have gone to demonstrating the relationship between the first appellant and Mr Sissoko and the family's reaction. Sustainable reasons were given for rejecting that claim and the conclusion the appellants had not demonstrated a need for protection. Principally, the appellants had been away from their home country for many years. The source of their claimed fear were family members. In

any event, the judge considered the claim at its highest and concluded there was sufficiency of protection or, alternatively, the option of internal relocation. No effective challenge to this conclusion has been made. Consequently, the failure to hear from the witnesses would not have made any material difference to the outcome.

Decision

The decision of First-tier Tribunal Judge Bartlett dismissing the appellants' appeals shall stand. No material error of law has been established.

Francis J Farrelly 16th March 2018

Deputy Upper Tribunal Judge