Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: EA/03062/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 4th April 2019	**On 10 April 2019**

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

JENNY ISABEL LOPEZ ALMENARIZ
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr R Submanian, Legal Representative, Lambeth Solicitors
For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant appeals against the decision of First-tier Tribunal Judge Davey promulgated on 20 December 2018, in which the Appellant's appeal against the Respondent's decision to refuse her application for an EEA Residence Card dated 27 February 2018 was dismissed.

2. The Appellant is a national of Ecuador, born on 3 August 1978, who applied on 18 October 2017 for an EEA residence card as the former spouse of an EEA national exercising treaty rights in the United Kingdom who has retained a right of residence. The Appellant married a Portuguese national on 6 April 2005 at the Consulate of Ecuador in London, a marriage validly recognised by the Ecuadorian authorities. The

Appellant's husband died in 2012, following which her application the basis of retained rights of residence was made.

3. The Respondent refused the application the basis that the Appellant's marriage was not legally recognised in the United Kingdom, nor was it accepted that the Appellant was in a durable relationship as a partner; no death certificate for the Appellant's partner had been provided and there was no evidence that the Appellant had been living in accordance with the Immigration (European Economic Area) Regulations 2016 in the year prior to her partner's death or since.

4. Judge Davey dismissed the appeal in a decision promulgated on 20 December 2018 on the sole basis that the Appellant's marriage was not valid in English law. The Tribunal identified that the difficulty in this case is that under the Marriage Act of 1994, it is only if an embassy or consulate is listed as an 'approved building' for civil marriages in the United Kingdom that a marriage therein conducted will be recognised as having taken place. Otherwise persons cannot be married in the United Kingdom in the sense of having it recognised here if it is taken place in an embassy. Embassies are not treated as if they foreign territory for the purposes of the Marriage Act. The decision records that it was common ground between the parties that the Ecuadorian embassy or consulate is not on the approved list of premises and although the marriage is valid in Ecuador, it is not a valid marriage for UK purposes.

5. The First-tier Tribunal found in the Appellant's favour on all of the other initial reasons for refusal following the provision of death certificate and further information about the exercise of treaty rights.

The appeal

6. The Appellant appeals on the grounds that the First-tier Tribunal materially erred in law in concluding that the Appellant's marriage was not a validly recognised in the United Kingdom.

7. Permission to appeal was granted by Judge Hemingway on 4 March 2019 on the basis that the Tribunal had not explained how it reached the view it did by reference to any particular sections of the Act to which it refers, so that the question of law can be fully considered. The Appellant's representatives were forewarned that clearer legal submissions and the legal basis for them would be required for the error of law hearing than had been advanced to that point.

Findings and reasons

8. At the oral hearing, Mr Submanian relied on his skeleton argument and expanded upon it in oral submissions. In essence, it was the Appellant's case that her marriage in the Ecuadorian embassy on 6 April 2005 was legal and valid, with a number of different and alternative submissions made in support of that.

9. I indicated to Mr Submanian as the outset of the hearing that the initial question to determine was in whose territory the Ecuadorian embassy was

situated and what law it was subject to; this being an essential basis upon which to determine whether this is a foreign marriage which could be recognised in the United Kingdom or a domestic one which must comply with English law. Although a number of contradictory responses were given to this question, Mr Submanian accepted, consistently with the grounds of appeal and submissions made before the First-tier Tribunal, that the Ecuadorian embassy in London was within the territory of the United Kingdom and subject to English law, supplemented by provisions in the Vienna convention on Diplomatic Relations 1961 (the "Vienna Convention").

10. However, Mr Submanian further submitted that as the marriage is recognised by the Ecuadorian government, it should be considered as a foreign marriage and validly recognised as such. Specific reliance was placed on the letter from the Consulate of Ecuador in London dated 10 January 2006, which so far as material stated as follows:

> *"This letter has the purpose to certify that the marriages celebrated at this Consulate fulfil all legal requirements requested by the sovereign state of Ecuador and, consequently, have the same validity as the marriages celebrated in Ecuador. To assist its nationals, the Government of Ecuador in its own right and competence, has determined that all Ecuadorian Consular Missions have the authority to celebrate civil marriages within the diplomatic premises since, backed by International Law principles, those are part of Ecuadorian territory. These marriages will be ruled under Ecuadorian legislation.*
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> *Based on this, I would like to confirm that the civil marriage celebrated at this Consulate on 6 April 2005 between the Portuguese citizen Joaquim Martins Pinto … and the Ecuadorian citizen Jenny Isabel Lopez Almendariz …, Fulfilled all the legal requirements requested by Ecuador and therefore, it is legitimate, valid and legal for Ecuadorian, all countries and International Law."*

11. Neither the letter itself, nor Mr Submanian, could identify the legal basis upon which it was asserted that this is a foreign marriage validly recognised in United Kingdom. Mr Submanian was unable to cite any statutory provision, any Article within the Vienna Convention or any other authority or basis upon which this would be the case, particularly in light of the acceptance that the Ecuadorian embassy is in the territory of the United Kingdom and subject to English law.

12. It is uncontroversial that a marriage celebrated outside of England and Wales is governed by the law of the country in which it was celebrated, the lex loci, and if valid in accordance with the laws and requirements in that country, would normally be recognised as a valid marriage in the United Kingdom. However, for that to assist the Appellant, she needs to show that her marriage was in fact celebrated outside of England and Wales and she can not do so on the facts of this case or on the basis of English or International Law. There is nothing in English law or in the Vienna Convention to support the assertion in the letter from the Consulate of Ecuador that the diplomatic premises are part of Ecuadorian territory.

They are not, as accepted by Mr Submanian, they are within the territory of the United Kingdom and subject to English law, subject to the provisions of the Vienna Convention. The Appellant must therefore show that the marriage complied with English law, there being no specific exemptions or amendments to the same with regards to marriages in an embassy either in domestic legislation or in the Vienna Convention.

13. The Appellant's alternative submissions were first, that the Marriage Act 1994 does not in any event apply to a marriage in an embassy; secondly, the marriage is valid because it is recognised in family law and the parties could legally have divorced in the United Kingdom; and finally, that there is no standard definition of marriage applicable in EU law. In relation to the last two, no specific legal basis could be given for either submission (save for reference to the case of Awuku v Secretary of state for the Home Department [2017] EWCA Civ 178, the relevance of which to the issues in the present appeal was entirely unexplained) and oral submissions on these points were not developed further.

14. As to the Marriage Act 1994, Mr Submanian suggested that it did not apply first because of the special provision for embassies in the Vienna Convention; and secondly that it could not apply as an embassy could not be an 'approved premises' because it is private and because a fee would need to be made for an application for approval.

15. Although in broad terms it is correct to say that the Vienna Convention makes specific provision for diplomatic missions and their personnel, there is no specific provision in relation to marriages and no general provision to disapply the local law of the territory in which a diplomatic mission is situated or apply the law of the sending state. Instead, specific provision is made for specific matters which are expressly set out in the Vienna Convention and include, for example, the inviolable nature of the premises of a diplomatic mission (Article 22) and immunity for the diplomatic agent, including not being liable to any form of arrest or detention (Article 29) or subject to the criminal jurisdiction (Article 31). Mr Submanian was not able to identify any provision in the Vienna Convention that has any relevance to the celebration of marriages or applicability of local law in this field.

16. The Marriage Act 1949 sets out in Part III the requirements for marriages to be solemnized under a Superintendent Registrar's Certificate (as an alternative to marriage according to the Rites of the Church of England in Part II of the Act), which includes, so far as potentially relevant to this appeal, a marriage of any couple on approved premises in section 26(1)(bb) (as inserted by the Marriage Act 1994). It was not suggested on behalf of the Appellant that any of the other options in section 16(1) of the same applied for the solemnization of marriage.

17. Section 46A and 46B of the Marriage Act 1949 (also inserted by the Marriage Act 1994) make provision for the approval of premises in pursuance of section 26(1)(bb) and a regulation making power for these purposes, including power in relation to the determination and charging by

local authorities of fees in respect of applications for the approval of premises.

18. It is submitted on behalf of the Appellant that the Ecuadorian embassy could not legally become an 'approved premises' because under Article 23 of the Vienna Convention, the head of the diplomatic mission is exempt from all national, regional or municipal dues and taxes in respect of the premises of the mission, other than such as represent payment for specific services rendered. None of the regulations made under the power in section 46A were cited or referred to at all by Mr Submanian and in fact, none of the regulations specify that a fee must be paid for an application, only that a local authority may charge one subject to certain conditions. There is no evidence submitted on behalf of the Appellant that any fee would be charged by the relevant local authority in an application by the Ecuadorian embassy and in any event, I find that any such fee would clearly be payment for a specific service rendered and therefore outwith the exemption in Article 23 of the Vienna Convention. In any event, even if the Appellant were right that this is a municipal due in respect of the premises, the fact that Article 23 of the Vienna Convention exempts the head of the diplomatic mission from payment for an application for approval of premises would not have the effect that the Marriage Act 1949 generally, nor section 26(1)(bb) combined with sections 46A and 46B simply would not apply to the embassy meaning marriages would somehow become valid in English law if conducted there.

19. The alternative reason relied upon by the Appellant is that embassy could not be an approved premises because it is private. Again, Mr Submanian submitted no authority as to why that would exempt the embassy from being able to satisfy the requirements for an approved premises and in any event, how a marriage could be valid if not conducted in approved premises and/or in accordance with the requirements of the Marriage Act 1994.

20. Although as noted in the grant of permission, the First-tier Tribunal did not set out the relevant statutory provisions relied upon when concluding that an embassy must be an approved building for a civil marriage (and in particular there is no such requirement in the Marriage Act 1994) and the Ecuadorian embassy was not, such that the marriage was not recognised as valid in the United Kingdom; it is clear for the reasons set out above that the conclusion was unarguably correct. The Appellant has not been able to identify any legal basis upon a marriage conducted in the territory of the United Kingdom (as the Ecuadorian embassy is), but in accordance with Ecuadorian law would be a validly recognised marriage according to the applicable law of England and Wales. The decision of the First-tier Tribunal therefore contains no error of law and the decision to dismiss the appeal on the basis that the Appellant was not validly married to an EEA national is confirmed.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of a material error of law. As such it is not necessary to set aside the decision.

The decision to dismiss the appeal is therefore confirmed.

No anonymity direction is made.

Signed  Date 5th April 2019

Upper Tribunal Judge Jackson