



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-006181
First-tier Tribunal No: EA/00997/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 09 May 2023

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

Theresa Arthur
(NO ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr L Youseffian, Counsel, instructed by A1 Solicitors For
the Respondent: Ms A Everett, Senior Home Office Presenting Officer

Heard at Field House on 27 March 2023

DECISION AND REASONS

Introduction

1. The appellant appeals against the decision of First-tier Tribunal Judge Dempster (“the judge”), promulgated on 18 October 2022. By that decision, which had been taken without a hearing at the appellant’s request, the judge dismissed the appellant’s appeal against the respondent’s refusal of her application for a family permit under the EUSS.
2. The appellant is a citizen of Ghana, born in 1997. Her case was based on her claimed proxy marriage to Mr Amankwah, a citizen of Belgium (“the sponsor”) on 19 June 2020. The EUSS application was made on 16 June 2021 and the respondent’s refusal was dated 7 October 2021.

3. Accompanying the EUSS application were a number of documents, including a customary marriage certificate, a letter from the relevant municipal authority in Ghana, dated 23 October 2020 confirming the authenticity of the marriage certificate, a letter from the Ghanaian High Commission in London confirming the validity of the proxy marriage, and several other items.
4. In refusing the application, the respondent had not expressly challenged the authenticity of any of the documents: the refusal was instead predicated on the apparent fact that the appellant and sponsor had both signed the marriage certificate when the sponsor had been in the United Kingdom at all material times. The explanation put forward by the appellant was that the marriage certificate had been sent by an uncle from Ghana to the United Kingdom, had been signed by the sponsor, and in turn signed by the appellant herself, and then registered with the relevant authorities in Ghana.
5. The judge dealt with this issue at [12] and [13] of her decision. Having set out the explanation described in the preceding paragraph, she stated at [13] that:

“I have given this explanation anxious consideration. I find that this explanation does not accord with the information which appears on the face of the marriage certificate, most particularly that [the appellant’s uncle] is described in that document to be a witness to the sponsor’s signing of the certificate. There is nothing on the face of that document that suggests that [the uncle] is anything other than as so described. I find the status of this person as described in the certificate to be inconsistent with the role ascribed to him by the appellant.”
6. The judge then noted what she deemed to be the significant absence of any evidence from the sponsor himself as to the circumstances surrounding the marriage.
7. Ultimately, the judge was not satisfied that there had been a valid proxy marriage and the appeal was dismissed because that had been the only issue in dispute.

The appellant’s challenge

8. Two grounds of appeal were put forward which, in essence, asserted that the documentary evidence relating to the validity of the marriage had been overlooked or not properly considered and that the judge should, if concerned by aspects of the evidence, have converted the case into an oral hearing.
9. I was provided with a skeleton argument from Mr Youseffian. Having considered that document, I was satisfied that it did not seek to amend the grounds of appeal but simply expressed in clearer terms what had already been put forward in the application for

permission.

The hearing

10. I heard concise oral submissions from Mr Youseffian to the effect that the confirmatory evidence from the Ghanaian authorities was significant and that the judge had failed to engage with this adequately or indeed at all. The absence of evidence from the sponsor had in reality been beside the point. Further, the judge had misconstrued the marriage certificate.
11. Ms Everett relied on a rule 24 response dated 4 January 2023, which opposed the appellant's appeal. However, having heard Mr Youseffian's submissions and reflected on these, she ultimately accepted that the judge had erred in failing to adequately address the confirmatory evidence.
12. Both representatives were agreed that if I were to find an error of law to exist and set aside the judge's decision, I should go on and re-make the decision in the appeal on the evidence now before me.
13. At the end of the hearing, I announced to the parties my decision that the judge had materially erred in law, that her decision had to be set aside, and that I was re-making the decision in this appeal by allowing it under the 2020 Regulations. I now give reasons for that decision.

Decision on error of law

14. Starting with the marriage certificate, it is clear to me that the column on the certificate (which the judge must have been referring to at [13] of her decision) does not state or even suggest that the appellant's uncle had signed it as a witness to the signing of the marriage certificate itself. The column is headed "Name and Signature or Thumbprint of Witnesses" and that is all. I agree with the submission put forward by Mr Youseffian to the effect that the judge misconstrued what was said on the face of the certificate and there was no proper evidential basis on which she could have concluded as she did at [13], when rejecting the appellant's explanation for why the sponsor had signed the certificate from the United Kingdom. There is a material error of law here.
15. In addition, I conclude that the judge did indeed fail to engage adequately with the confirmatory evidence emanating from the competent authorities in Ghana. In particular, the letter from the relevant Municipal authority dated 23 October 2020 confirmed the registration of the proxy marriage and the authenticity of the marriage certificate. That significant evidence had to be read together with the letter from the Ghanaian High Commission, dated 21 May 2021, which confirmed in terms that the marriage had been contracted in accordance with the Customary Marriage and Divorce

(Registration) Law 1985, and other documents stating details of relevant individuals connected to the proxy marriage. It is important to note that the authenticity of this documentary evidence had not been challenged by the respondent.

16. Case-law on proxy marriages over time has made it clear that the burden on establishing the validity of a proxy marriage rests with the individual relying on it, but that evidence from competent authorities may be sufficient to discharge that burden: see, for example, Cudjoe (Proxy marriages: burden of proof) Ghana [2016] UKUT 00180 (IAC). In the present case, there was such evidence, its authenticity and reliability had not been challenged by the respondent, and the judge provided no reasons for implicitly rejecting it.
17. I agree with Mr Youseffian that the absence of evidence from the sponsor, whilst perhaps surprising, was something of a red herring: the confirmatory evidence from the competent authorities had to be addressed on its merits and the value attributed to this evidence was not dependent on any evidence from the sponsor.
18. In light of the above, this is a further error of law in the judge's decision.
19. In the circumstances, I exercise my discretion and set the judge's decision aside.

Re-making the decision

20. I now go on to re-make the decision in this appeal based on the evidence before me.
21. I re-iterate that none of the documentary evidence from the Ghanaian authorities has been challenged by the respondent, previously or now. I find it to be reliable in all material respects. Even putting the absence of any challenge by the respondent to one side, I am satisfied that the documentary evidence emanates from the competent authorities, is in proper form, and that the information contained therein is consistent with the appellant's claim.
22. In terms of the marriage certificate itself, I find that the uncle's signature simply confirmed his status as a witness to the proxy marriage and not as a witness to the signing of the marriage certificate by the sponsor and the appellant. In light of the evidence as a whole, I accept the appellant's explanation that the certificate was sent by her uncle from Ghana to the United Kingdom whereon it was signed by the sponsor and returned.
23. I am satisfied that the appellant has demonstrated that her marriage by proxy to the sponsor was valid under Ghanaian law and is therefore recognised under English law. That being the only live issue in this appeal, I find that the respondent's refusal was not in accordance with

the relevant Immigration Rules pertaining to the EUSS and that the appellant's appeal falls to be allowed.

Notice of decision

24. **The decision of the First-tier Tribunal involved the making of errors of law. That decision is set aside.**
25. **I re-make the decision by allowing the appellant's appeal under the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020.**

H Norton-Taylor
Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 11 April 2023