



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/08797/2013

THE IMMIGRATION ACTS

Heard at Bradford
On 16 October 2013

Determination Promulgated
On 4 November 2013

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

ROSINA MUMUNI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Not present or represented
For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Rosina Mumuni, was born on 27 July 1981 and claims to be a citizen of Ghana. A decision was taken on 5 March 2013 to refuse the appellant's application for a residence card as confirmation of right to reside in the United Kingdom. The appellant claims to be married to an EU national (Robert Sebastian Pawlowski) who is a citizen of Poland. The appellant appealed to the First-tier Tribunal which, in a

determination promulgated on 27 June 2013, dismissed the appeal. The appellant has appealed to the Upper Tribunal. I have a letter from the UK Border Agency dated 22 August 2013, annexed to which is a report entitled "Customary Marriage and Divorce/Proxy Marriages Contracted in Ghana". The report is dated 17 January 2012. The letter indicates that the respondent did not seek to oppose the appeal.

2. Permission was granted to the Upper Tribunal on the basis that it was arguable that the judge had that (i) failed to deal with Article 8 ECHR; (ii) failed to have regard to the fact that the original document (the absence of which the judge criticised in his determination at [8]) had been in the possession of the respondent. It was apparent that the judge did not deal with Article 8 ECHR although this had been raised as a ground of appeal. In the circumstance, I have set aside the determination and have remade the decision.
3. The appeal concerns an alleged customary marriage which the appellant claims she has contracted with a Polish national. The refusal letter noted that the appellant had provided a copy of a Ghanaian customary marriage certificate and an affidavit. That affidavit is, in fact, a statutory declaration apparently made under the Ghanaian Statutory Declarations Act 389 of 1971. The declarants are Andrzej Pawlowski and Alhassan Mumuni who are, respectively, the father of Robert Sebastian Pawlowski and the father of the appellant. The declaration indicates that the marriage was contracted in Accra on 27 April 2012.
4. The burden of proving that any of the documents submitted by the appellant in support of her application are not genuine rests on the respondent. Otherwise, "the onus of proving either a customary marriage or disillusion rests on the party making the assertion." (see *NA (customary marriage and divorce - evidence) Ghana* [2009] UKAIT 00009). The refusal letter challenges the authenticity of the marriage certificate, suggesting that "purported wet ink stamps are underneath that of the black background lines as indeed are the two signatures." This "would indicate that they are either applied to the paper prior to the certificate being printed as a certificate or that all markings were printed simultaneously. This is not consistent with the normal application of a wedding stamp." There was no allegation of outright forgery only a submission that the anomalies "detract from the credibility of the stated document." No evidence has been provided to show what might constitute "the normal application of a wedding stamp" on such documents. In the absence of evidence which might indicate how the document produced by the appellant and a "normal" document may differ, it is difficult to know how to take that part of the refusal letter any further.
5. The letter cites paragraph 3(1) of Part 1 of the Ghanaian Customary Marriage and Divorce (Registration) Law 1985 which records that statutory declarations accompanying applications for registration of marriages in Ghana shall state "the places of residence of the parties at the date of the marriage." The letter states that:

The statutory declaration provided accompanying the registration for a marriage does not state the places of residence at the time of marriage for either yourself or your EEA sponsor instead stating places of residence for your proxies at the ceremony.

The respondent was not satisfied that the marriage had been conducted in accordance with the Ghanaian Law of 1985 and “for this reason the UK Border Agency cannot accept the registration of marriage or statutory declarations submitted as being valid and lawfully issued and evidence of your relationship.”

6. The statutory declaration shows that Mr Pawlowski’s father was living at house number M212/2 Madina, Accra whilst the appellant’s father was living at house number C574/3 Asylum Down, Accra. The customary marriages register form simply states that the appellant and Mr Pawlowski are living in “UK”.
7. A question in the appeal is whether the respondent was entitled to reject the application for a residence card by insisting upon a scrupulous adherence to the requirements of the Ghanaian Law of 1985. The document which has been submitted by the respondent concerning customary marriage and divorce in Ghana gives details of the concerns which arise in proxy/customary marriages. It notes that there is no central register of marriages with the consequence that marriage certificates are extremely difficult to verify. The potentially polygamous nature of such customary marriages was also raised in the report. The report notes that:

The contents of the statutory declarations are not verifiable and this renders the system open to abuse. ... Even with customary marriages that are registered, the certificates are of little evidential worth as information provided on the forms of registration of marriage or divorce is accepted as a true representation of facts without any verification.

8. Set against the problematic nature of the Ghanaian marriage registration system are the considerable benefits to an appellant of participating in what is, in essence, a purely paper exercise. I make no criticism of the appellant for not attending the hearings before the First-tier Tribunal or the Upper Tribunal; it is her right to have the appeal decided on the papers. However, the fact remains that the appellant seeks, simply by submitting to the respondent a number of documents created abroad the veracity of which cannot be properly established, a right of residence in the United Kingdom. In the circumstances, I consider that it is reasonable that the respondent should insist that the documents submitted to her should comply strictly and in every particular with the foreign laws subject to which they purport to have been created. In this appeal, the statutory declaration does not, as required by the 1985 law, give details of the places of residence of the bride and groom. Given that the onus of proving the particulars of this marriage rests on the appellant, I find that she has failed to establish that she has contracted a customary marriage with an EEA national.
9. I have considered new documents which have been provided by the appellant to the Upper Tribunal. I have a 71 page bundle which is indexed on its face. There are witness statements from the appellant and Mr Pawlowski in which they state that they live together at 120 St Leonards Road, Bradford. There are some particulars in both statements as to how the couple met. I note that there is also a letter purportedly written by the Ministry of Foreign Affairs and Regional Integration of Ghana dated 3 May 2012 verifying a signature endorsed on the statutory declaration.

There are a number of documents relating to the employment of Mr Pawlowski. There are documents from insurance companies and bank statements relating to both Mr Pawlowski and the appellant indicating that they both reside at the same address. It is not clear how much further forward this evidence takes the appellant's case. I can give little weight to the witness statements given that they have not been tested in court in cross-examination. Whilst I acknowledge the appellant's right to have her appeal determined without a hearing, she cannot expect significant weight to be attached to witness evidence which is not tested by cross-examination. Further, the new documents relating to the marriage process do not address the reason why the respondent rejected those papers, namely the failure of the statutory declaration to record the places of residence of bride and groom.

10. As regards Article 8 ECHR, I repeat that I am not satisfied on the evidence that the appellant and Mr Pawlowski are married as claimed. The only evidence regarding their private and family lives appear in the grounds of appeal to the First-tier Tribunal where an assertion is made that Mr Pawlowski is a European citizen who "lives and works in the United Kingdom." The grounds go on to say that, "the appellant has therefore established a private and family life in the UK by virtue of her marriage to her husband." Given that I have found that the appellant has failed to prove that Mr Pawlowski is her husband, I can place little weight on that assertion. I have been given no evidence of the strength of their ties either to each other or to the United Kingdom. There is no evidence at all regarding their relationship nor is there any reliable evidence that they are living together. I am not satisfied that Article 8 ECHR is engaged at all in this appeal but, if it is, then I find, on the evidence, that the respondent's decision is entirely proportionate.

DECISION

11. The determination of the First-tier Tribunal which was promulgated on 27 June 2013 is set aside. I have remade the decision.
12. This appeal is dismissed.

Signed

Date 31 October 2013

Upper Tribunal Judge Clive Lane