



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/00595/2014

THE IMMIGRATION ACTS

Heard at Field House, London

Determination

On 25 September 2014

Promulgated

On 10 November 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

SAMUEL AGYEI

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L G Tetteh instructed by A J Solicitors

For the Respondent: Mr S Whitwell, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, a national of Ghana, appealed to the First-tier Tribunal against the decision of the Secretary of State to refuse to issue him with a residence card as confirmation of a right to reside in the UK as the spouse of an EEA national. First-tier Tribunal Judge M A Khan dismissed the appeal and the appellant now appeals with permission to this Tribunal.
2. The appellant claims to have married Charlotte Gyimah (the sponsor), a Dutch national, by proxy marriage in Ghana on 20 March 2013. The respondent did not accept the marriage certificate as proving that the

appellant is married to the EEA national because it had not been shown that the customary marriage was undertaken in accordance with Ghanaian law. The respondent further decided that the appellant had not established that he and his spouse were in a durable relationship so as to satisfy regulation 8 (5) of the Immigration (European Economic Area) Regulations 2006 (the EEA Regulations).

3. The appellant and the sponsor gave evidence at the hearing in the First-tier Tribunal. The Judge did not find them to be credible or consistent witnesses and found their evidence to be vague and evasive. He relied on a number of inconsistencies in the oral evidence including the fact that the appellant said that the dowry included a suitcase whereas the sponsor did not mention a suitcase; the appellant said that he had given the sponsor a gold ring however the ring was not gold; and the appellant said that he told his wife that he had gone to visit his friend Afifra in Croydon on the Saturday before the hearing whereas the sponsor said that she did not know what he had done on Saturday. The Judge found that the appellant had not provided evidence that the people who attended the proxy marriage were related to him as claimed and the statutory declaration was not in accordance with Ghanaian law therefore the documents did not meet the Ghanaian requirements for a proxy marriage. Further the Judge found that the appellant had not produced evidence to show that his marriage would be recognised under Dutch law in accordance with the decision in Kareem (Proxy marriages - EU law) Nigeria [2014] UKUT 24 (IAC). The Judge found that, as there were no documents addressed to the appellant and sponsor in their joint names at the same address, it had not been established that they were in a durable relationship under regulation 8(5).
4. The grounds of appeal to the Upper Tribunal do not challenge the Judge's findings in relation to the validity of the customary marriage. The grounds of appeal challenge the Judge's findings in relation to credibility and that the appellant is not in a durable relationship. It is contended that the Judge inaccurately recorded some of the oral evidence and failed to take account of all of the oral and documentary evidence.
5. The grounds contend that the Judge failed to record the sponsor's evidence accurately and that counsel's note indicated that the sponsor had in fact said that a suitcase was among the items in her dowry. Ms Tetteh submitted a copy of counsel's notes which indicate that the sponsor did say that the dowry included a suitcase. I told her that the Judge's note does not include reference to a suitcase. Mr Whitwell submitted that the appellant could not properly challenge the accuracy of the Judge's recording of the proceedings without adducing evidence from counsel who represented the appellant at the First-tier Tribunal hearing. He submitted that the appellant had not produced a statement or oral evidence from counsel and could not therefore succeed in this part of the challenge. I agree that without more the appellant cannot succeed on this ground. In any event this was not the only finding which informed the Judge's conclusions. All of the findings need to be read together and one cannot be taken in isolation.
6. Ms Tetteh submitted that the Judge was shown the sponsor's ring and he concluded that it was not gold even though it is gold coloured. Ms Tetteh

submitted that the sponsor said in cross-examination that the appellant had gone to see a friend on the Saturday before the hearing and she said that he always goes to see Afifra so it could have been inferred that this include the previous Saturday. Ms Tetteh submitted that the Judge should have taken the documentary evidence into account. She referred to TV licensing documentation and a Halifax bank statement in the appellant's name.

7. Mr Whitwell submitted that the Judge did not take these matters in isolation. He submitted that the Judge took a range of factors into consideration including the discrepancies in oral evidence and the lack of documentary evidence. He submitted that there was insufficient documentary evidence before the Judge and that he was entitled to reach the conclusions he did on the basis of all of the evidence.
8. I agree that the decision needs to be read as a whole. There is nothing further to support the submission that the Judge was wrong to conclude that the ring was not gold when the appellant had said that it was. Again there is nothing from counsel who appeared at the hearing and no evidence in relation to the ring. The Judge heard evidence from the appellant and the sponsor and decided that they were not credible. He set out his reasons for so doing including the inconsistencies in their evidence and his view that they were vague and evasive throughout their oral evidence. The Judge heard the witnesses and was entitled to come to this conclusion for the reasons given.
9. The documentary evidence before the Judge in relation to the appellant's claim to have been living with the sponsor was limited to a recent Halifax Bank statement and TV licence letters in his sole name. There were three photographs and no record of any oral evidence as to when and where these were taken. The Judge was entitled to conclude that the documentary evidence was not sufficient to demonstrate that the couple were living together in a durable relationship. In fact it is difficult to see how the Judge could have concluded otherwise on the basis of this evidence.
10. In summary I am satisfied that the Judge did not err in his approach to the evidence and that he made a decision which was open to him on all of the evidence before him.

Conclusion:

The decision of the First-tier Tribunal did not involve the making of an error on a point of law.

Signed
November 2014

Date: 10

A Grimes
Deputy Judge of the Upper Tribunal