



**Upper Tribunal
(Immigration and Asylum Chamber)**
IA/06112/2014

Appeal Number:

IA /06115/2014

THE IMMIGRATION ACTS

Heard at FIELD HOUSE

**Determination
Promulgated**

On 1st July 2014

8th September 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

**MRS LINDA AGYEKUM
MASTER BRIAN A N AGYEKUM**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss G Tetteh (counsel)

For the Respondent: Mr P Duffy (Home office presenting officer)

DETERMINATION AND REASONS

1. The appellants are citizens of Ghana and are mother and son whose dates of birth are 10.1.1976 and 12.7.2011 respectively.
2. This matter comes before me for consideration as to whether or not there is a material error of law in the determination by First Tier Judge Crawford (FTJ) promulgated on 29.4.2014 in which he dismissed the appeals under the immigration rules.

Background

3. The first appellant entered the UK on 12.12.2008 with a valid visit visa until 26.5.2009. The second appellant was born in London on 12.7.2011. The first appellant entered into a marriage by proxy on 22nd December 2012 in Ghana and the certificate was registered on 21st March 2013. On 29th April 2013 she applied for a residence card as the spouse /family member of an EEA national exercising Treaty rights in the UK. Her spouse is a Dutch citizen and the step father of the second appellant. The respondent refused the applications on 21st November 2013 because the appellants failed to produce evidence to show that they were family members with reference to Regulations 7(1)(a), 8 and 17 Immigration (European Economic Area) Regulations 2006. The refusal letter set out the detailed requirements under Ghanaian law to establish a valid customary marriage and cited **NA (Customary marriage and divorce - evidence) Ghana [2009] UKAIT 00009** which held that both parties were required to have Ghanaian citizenship. As evidence of her Ghanaian nationality the appellant produced her Ghanaian passport. An EEA ID card was produced by her spouse N.Diawou stating that he was born in Accra. The respondent rejected this as evidence of nationality. The respondent found no reliable evidence to show that the appellant's spouse was a Ghanaian citizen or able to demonstrate that his parents were Ghanaian citizens for the customary marriage to be valid according to Ghanaian law. Further, the respondent considered that the appellant failed to show that the marriage was validly registered in accordance with the law. The statutory declaration failed to establish that the declarants were related to the parties to the marriage and there was no evidence in support such as birth certificates. Further the respondent considered that the further evidence of a letter from the Ghanaian High Commission simply confirmed the genuineness of the signatures. The respondent found no evidence to meet Regulation 8 for a durable relationship to be established.
4. In grounds of appeal the appellant argued that a marriage between a Ghanaian national and a non Ghanaian was permissible according to Ghanaian law and cited IA/23315/2012 UT (an unreported UT case) and **McCabe v McCabe**(full citation at 6 below).
5. The FJT determined the appeals on the papers agreeing with the reasons given by the respondent as to the lack of evidence to show that both parties were of Ghanaian nationality and the lack of evidence to show their relationship with the declarants. The FTJ found that the appellants were living with the sponsor N. Diawuo. He found insufficient evidence to show that the parties were in a durable relationship.

Grounds of appeal

6. The appellants appealed on the grounds that the FTJ failed to take into account the detailed written submissions arguing that a valid customary marriage where only one party has shown evidence of Ghanaian

nationality and the other was a non Ghanaian was sufficient to meet Ghanaian law. (Unreported case **IA/23315/2012 UT & McCabe v McCabe [1994]1FCR 257.**)

7. The FTJ failed to consider the evidence of the EU ID card showing the spouse was born in Accra. A birth certificate at page 95 showed the sponsor was of Ghanaian descent.[This latter documentary evidence has not been produced.]
8. The FTJ was wrong to reject the evidence of confirmation of valid signatures by the Ghanaian High Commission. There was no evidence to show that the Ghanaian authorities lacked the competence to issue a customary registration certificate.
9. The final ground related to Regulation 8 and was confusing and unclear.

Permission to appeal

10. In reasons dated 22.5.2014 FTJ Hodgkinson found it arguable that the FTJ did not engage adequately with the totality of the evidence as set out in the written submissions, as argued in grounds 1-4 and that he erred by not considering the appeal with reference to Regulation 8.

Response under rule 24

11. The respondent opposed the appeal arguing that the FTJ directed himself appropriately in concluding that the marriage was not valid according to Ghanaian law. In the alternative, if the FTJ was wrong, there was no evidence to show that the marriage was valid according to Dutch law and the appeal was bound to fail. (**Kareem (proxy marriages - EU law) Nigeria [2014] UKUT 24 (IAC).**)

Error of law hearing

12. Mr Duffy made an application to admit new evidence; a Home Office response to IA/23315/2012 and the expert opinion of ML Akman given in that case. Miss Tetteh did not object to the evidence being admitted. I formally admitted the evidence in accordance with paragraph 15(2) of The Tribunal Procedure (Upper Tribunal) Rules 2008. Miss Tetteh confirmed that she did not have a birth certificate of the spouse's father Dominic , referred to in the grounds of appeal as appearing at page 95 of the bundle and neither did she have copies of two expired Ghanaian passports forwarded by the appellants solicitors with a letter dated 14.5.14.
13. Miss Tetteh pursued grounds 1-4 and relied on the written submissions put before the First-tier Tribunal that the Judge failed to engage with the argument supported by case law that a valid marriage between a Ghanaian and a non Ghanaian was permissible according to expert ML Akman. Further, there was no need for the appellant to show evidence of the spouse's Ghanaian descent because the registration made reference to his parents. All the requirements were met for a valid registration . The FTJ

took into account matters that were not requirements such as evidence of birth certificates which went beyond what was required by the Ghanaian authorities. The letter from the Ghanaian High Commission confirmed the signatures and was sufficient to show a validly made registration.

14. Mr Duffy submitted that the lack of evidence of a birth certificate was relevant to the issue of Ghanaian descent. There was no reliable evidence to establish the spouse's Ghanaian nationality. The ID card stating that he was born in Accra was not evidence of Ghanaian nationality. Reliance could not be placed on an unreported case and in any event the RANLON report (contradicting **NA**) had been withdrawn and the expert opinion given little weight. At the date of decision the policy was that a non Ghanaian national could not enter into a valid customary marriage.
15. In the alternative, Mr Duffy relied on **Kareem** (cited above). There was no evidence to show the validity of the marriage according to EEA/Dutch law; the starting point in cases where there was doubt as to the the validity of a marriage. **Kareem** was referred to in the appellants' written submissions and ought to have been considered by the FTJ. It was relevant to consideration of materiality. There was a high evidential burden to establish the legal requirements to be met for a valid marriage from a particular country. Mr Duffy accepted that there was sufficient evidence available to show what is required according to Ghanaian law, but there was no evidence as to Dutch law. He argued that even of the FTJ erred in law, it was not material as the appeal could not succeed under **Kareem**.
16. Miss Tetteh agreed that the FTJ ought to have looked at **Kareem** and his failure to do so was an error of law. However, she argued against the position taken by the Secretary of State. The decision in **Kareem** should not be adversely held against the appellant. The withdrawal of the UKBA report was not relevant.
17. At the end of the hearing I reserved my decision.

Discussion and decision

18. This appeal was determined by the FTJ on the papers. The documentary evidence included documents of dissolution of the previous marriages of both the appellant and her spouse and the birth certificate of the second appellant. The letter dated 14.5. 2014 from the appellants solicitors was sent to the respondent post hearing and was not evidence before the Tribunal. There is no evidence in the bundle of any birth certificate for the spouse's father.
19. At [8] the determination set out the requirements to be met in Ghanaian law for a customary marriage by proxy and the requirements for a valid registration. The FTJ found that the appellant failed to show evidence that her spouse Nicholas Diawuo, was a Ghanaian national and further that the statutory declaration did not specify that the parties were Ghanaian citizens. At [9] the FTJ found that the letter from the High Commission

confirming the genuineness of the signatures was insufficient to establish the validity of the registration of the marriage. The FTJ concluded that there was no evidence of two years cohabitation, to show a durable relationship. The written submission at [16] submitted that Regulation 8(5) was not applicable and the appellant relied on Regulation 7.

20. In essence I find that the FTJ adopted the respondent's reasons for the refusal having regard to the appellant's failure to address the concerns raised by the Respondent as to the validity of the marriage and the registration. Such findings were open to the FTJ on the evidence before him. What the FTJ did not consider was the point raised that a customary marriage between a Ghanaian and a non Ghanaian is valid and further he failed to consider the guidance in **Kareem**. I find that these are errors of law because there was a failure to engage with the evidence and submissions relied on. However, I find that the errors were not material for the following reasons.
21. The appellants needed to show firstly, that the parties could enter into a valid customary marriage by proxy according to Ghanaian law and having voluntarily registered that marriage, they further needed to show the registration was validly registered in accordance with the 1985 law. The FTJ's error is that he failed to engage with the marriage issue or the alternative position taken by the appellant. However, given that the FTJ correctly found no reliable evidence to show that the statutory declaration met with the requirements of section 3(1)(a)(b) & (c) of the PNDC law 112, Customary Marriage & Divorce (Registration) Law 1985, specifically that the relationship stated was father and son, I find that the error was not material. It was not accepted that the representation at the proxy ceremony was validly established. I am further satisfied that it was open to the FTJ to find that the further evidence, a letter dated 12.4.2013 from the High Commission, was limited to confirming the genuineness of the signatures in the various documents. It failed to confirm that the marriage was either registered or correctly registered in accordance with the law. Accordingly I find that the error was not a material error of law.
22. I should add that although Mr Duffy relied on **Kareem** arguing that the appeal would fail in any event because there was no evidence of the Dutch legal requirements for a valid marriage. This was not a point or issue specifically raised before the FTJ. He clearly made no reference to the guidance in **Kareem**, but his failure to do so in my view makes little difference to the outcome and was not therefore material. As to Regulation 8 (durable relationship) I am satisfied that the FTJ dealt with the issue in the determination. The appellant's position was that there was no reliance on this regulation only on Regulation 7.

Decision

23. I find no material error of law in the Judge's determination which shall stand.
The appeal is dismissed.

Signed

Dated 9.7.2014

Deputy Judge of the Upper Tribunal

No anonymity order
No fee repayment award

Signed
Deputy Judge of the Upper Tribunal

Dated 9.7.2014