



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

Appeal Number: EA/02413/2015

THE IMMIGRATION ACTS

**Heard at Birmingham
On 22 September 2017**

**Decision & Reasons
Promulgated
On 28 September 2017**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

**AWA LEMON
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Amgbahah, UK Law Associates

For the Respondent: Mr Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Awa Lemon, was born on 13 July 1987 and is a citizen of Gambia. The appellant claims to be married to a Mr Abdulii Djabi a Portuguese citizen. The appellant's application for a confirmation of her right to remain in the country on account of her marriage to an EEA national was refused by a decision of the respondent dated 3 November

2015. She appealed to the First-tier Tribunal (Judge Buckwell) which, in a decision and reasons promulgated on 9 January 2017, dismissed the appeal.

2. I note that the appeal in the First-tier Tribunal had initially been listed on 21 December 2016 for an oral hearing. However, the appellant did not attend. Consequently, the file was allocated to Judge Buckwell as a paper case on 23 December 2016.
3. The judge considered the various items of documentary evidence. At [17] he wrote as follows:

“Additionally provided are affidavits in support of the marriage. There is an affidavit by Ba Foday Jabbi who, at paragraph 2 of the affidavit, states that Abduadulai Djabi is his biological son. He confirms the marriage by his son to Awa Lemon. The affidavit is dated 25 March 2015. However there is also an affidavit in the name of Alh (which I assume to be short for Alhadji) Muhammad Kairu Djavi dated 3 December 2014 in which that deponent also maintains that Abduadulai Djabi is his son. Accordingly I have before me two affidavits wherein two separate male deponents state that they are both the biological father to Abduadulai Djabi. There is an affidavit by Mariama Jarra confirming that she is the mother of Awa Lemon. There is also an affidavit in which Lie Lemon confirms that the appellant is his daughter.”

4. The judge had before him also a marriage certificate relating to the marriage of Abduadulai Djabi and the appellant. He also had what he describes as an “authentication certificate” relating to the marriage which confirmed that it took place on 28 August 2014 and was witnessed by a Commissioner of Oaths, Amie Jammeh.
5. The judge considered it “critical” to the outcome of the appeal that the claimed proxy marriage, which the appellant claimed was evidenced by these various documents, had genuinely taken place in Banjul. At [25], the judge found that it was “totally incredible that two different individuals could claim to be the biological father of the sponsor in this appeal and I believe that the provision of the two affidavits totally discredits the application overall including evidence as to the stated proxy marriage formalities stated to have taken place in Banjul on 28 August 2014.” Since the burden of proving that a proxy marriage had validly taken place rested upon the appellant (see *Cudjoe* [2016] UKUT 180) the judge found that the appeal should be dismissed.
6. The grounds of appeal assert that the affidavit of Mariama Jarra had been “prepared and submitted in error” to the Home Office and the Tribunal and “should not have been included in the documents” because Mariama Jarra is not the biological mother of the appellant, but her sister. Further, because the affidavits have not been “used to register or authenticate the proxy marriage certificate” they should not have prevented the judge from finding that the marriage was valid on the basis of the certificate itself and the authentication certificate. Given that an “authentication certificate”

had been produced in evidence, the judge need have gone no further and, on the basis of the certificate, should have allowed the appeal.

7. I disagree with the grounds of appeal. The judge was obliged to consider all the evidence before making his decision. He duly did so. That evidence included the affidavits which, by any standard, contained material which cast a very serious doubt upon the credibility of the appellant, the sponsor and the application as a whole. The affidavits were put in evidence by the appellant to support her appeal; she cannot now complain that the judge considered this evidence in reaching his decision. The judge may well have concluded on the basis of the marriage certificate and authentication certificate that the marriage was genuine and the fact remains that there was also evidence which cast doubt on the validity of the marriage. The grounds of appeal are nothing more than a disagreement with findings which were open to the judge on a consideration of all the evidence. Accordingly, the appeal is dismissed.

Notice of Decision

This appeal is dismissed.

No anonymity direction is made.

Signed

Date 27 September 2017

Upper Tribunal Judge Clive Lane

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 27 September 2017

Upper Tribunal Judge Clive Lane