



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: EA/01022/2016
EA/01020/2016

THE IMMIGRATION ACTS

Heard at Birmingham Employment Tribunal
On 13th August 2018

Decision & Reasons Promulgated
On 31st August 2018

Before

UPPER TRIBUNAL JUDGE KING TD

Between

MRS SATU JAMMEH BOJANG (FIRST APPELLANT)
MR FAAL SANNEH (SECOND APPELLANT)
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr I Ali, Counsel, instructed by Brook Hill Law Solicitors
For the Respondent: Mrs H Aboni, Home Office Presenting Officer

DECISION AND REASONS

1. The first appellant applied for a registration certificate on the basis that she was a Spanish national. The respondent refused that application in a decision dated 8th January 2016. The second appellant applied for a registration card on the basis of being the husband and therefore family member of the first appellant, that also was refused on 8th January 2016.
2. Refusal was made on a number of factors. Firstly, it was not accepted that the first appellant was indeed a Spanish national. The Secretary of State had the Spanish passport, a passport from Gambia and a Spanish birth certificate. It was not accepted

that the Spanish documents were genuine. In particular, it was noted that in the Gambian passport the place of birth of the appellant was stated as being in Gambia. The appellant herself, in an application in 2012 for a visa, had also confirmed that fact. That stood in sharp contrast to the birth certificate presented as to show her birth in Barcelona in Spain. The respondent indicated that there was nothing to show how it was that the appellant came to obtain Spanish citizenship and put the appellant to proof of such matters. Further, the proxy marriage as between the appellants was not accepted for the reasons as set out in some detail in the decisions. Further, it was not accepted that there was a durable relationship also for the reasons as set out in the decisions.

3. Both appellants sought to appeal against those decisions, which appeal came before First-tier Tribunal Judge Young-Harry on 20 January 2017. In summary the Judge upheld the concerns that were expressed by the Secretary of State having heard the two appellants give evidence.
4. Grounds of appeal were lodged on the basis that the Judge erred in finding that the first appellant had not produced her Spanish passport, and also erred in the approach to various aspects of evidence. It is submitted that there was material error in the approach taken generally as to the credibility of the proceedings.
5. Permission to appeal to the Upper Tribunal was given specifically on the issue of the passport.
6. At many places in the determination the Judge makes reference to the passport not having been produced. It is contended on behalf of the appellant that the passport was produced but not the original identity card, because she had to return to Spain to get that. The suggestion being therefore that the Judge misunderstood her evidence on that point to her detriment.
7. The respondent relies upon the note of the Presenting Officer, which is to some extent silent on that matter and seemingly no clarification was sought of the Presenting Officer as to whether the passport had been produced or not. Similarly, no approach had been made to the representative of the appellants at the hearing, namely Ms Rahman, as to her recollection. It is particularly unfortunate that such was not done.
8. However, I have read what are the Judge's full notes of the hearing as set out in the file. No specific mention is made at any stage in those notes as to the absence of the passport. That may be significant because although the hearing was conducted on 20 February 2017 the decision was not promulgated until 23 March 2017. The decision itself was dated by the Judge as 22 March 2017. Thus, as a matter of common sense there would have been significant reliance upon memory and the notes.
9. A matter of some concern however is what is set out in paragraph 20 of the determination as follows:-

“I note also that the appellant has failed to produce an original version of her Spanish passport and ID card; photocopies have been provided in the respondent’s bundle only. The appellant claims that her original Spanish passport is in Spain and she would need to return there in order to apply for a new one”.

If one looks at the notes, however, the notes read as follows:

“Request adjournment to give app time to obtain ID document from Spain and evidence of marriage. It was refused on the basis that the appellant had ample time to obtain ID document before hearing. Finding that the ID card would not assist”.

10. Thus, that would seem to indicate that the Judge has in that particular paragraph misstated the matter to a material degree. The Judge has misrecalled the evidence as to why the appellant needs to return to Spain, there is a possibility that the absence of the passport was misrecalled. As I have indicated, there was no indication in any of the notes that no passport was produced and in those circumstances it seems to me that the fairest course is to accept that it was.
11. That in itself does not dispose of the issue because the issue under contention was whether or not it was a genuine one.
12. The Judge correctly notes the challenge that is at the forefront of the credibility of the passport, namely that the Gambian passport records birth in Elliyasaya and not in Barcelona as contended. There is however one matter of fairness which perhaps arises in relation to the approach taken to that matter in paragraph 18 of the determination as follows:-

“The appellant claims the Gambian passport office made a mistake when issuing the passport by stating that she was born in Elliyasaya. I note the appellant relies on ‘mistake’ once again in an attempt to explain away a further discrepancy. I note the appellant has failed to provide any documentary evidence confirming this claim. Since the passport was issued in 2009 containing the incorrect information, I note the appellant has not taken and did not take any steps to correct the position. She has failed to provide any correspondence from the Gambian authorities confirming her claim”.
13. It is to be noted however in fairness to the appellant, as that she submitted to the Gambian authorities an affidavit dated 21 January 2016, which is found at page 26 of the bundle of evidence as was before the First-tier Tribunal, indicating that the correct place of birth was Barcelona and not as written on the passport. That affidavit seems to have been endorsed with a stamp from the authorities in the Gambia. Whether that can be considered as confirmation from them of the acceptance of this mistake or simply the receipt of the affidavit perhaps needs to be clarified in due course, but it would be quite wrong to say that she has taken no action in the light of that document.
14. A further concern that I have looking at the matter overall is a lack of clarity it seems in the decision maker’s approach to the two passports. It is the case of the appellant that she has dual nationality and that she was Gambian and remains so but also has

acquired a Spanish passport. It is not entirely clear that that distinction has been recognised by the Judge in the approach taken.

15. Finally, in relation to the credibility of the marriage, the Judge correctly noted that the first appellant claimed to have attended the office to register the marriage but was unable to describe what she did or what the process was. That undermined her credibility. However, the Judge went on at paragraph 27 to say:

“Notably, when the second appellant was asked about the registration, he claimed it was in fact the first appellant’s father who registered the marriage, that the first appellant was not present. I do not find the evidence of the first or second appellant reliable or credible in relation to their proxy marriage”.
16. Again, reading the handwritten notes of the hearing it is quite clear that both appellants gave consistent evidence on that matter, namely that the first appellant was present at the ceremony whereas the second was in the UK. It seems to me that that is an error which must clearly affect the finding of credibility, particularly when that aspect of proxy marriage was dealt with so shortly.
17. Overall, I find that the matters highlighted above are such as to potentially materially influence the overall finding of credibility. It is clear that certain matters that were raised in favour of the appellants’ cases perhaps were misunderstood or misconstrued.
18. It seems to me in those circumstances that it is proper to set aside the decision to be re-made. Given the volume of evidence that is presented and to be called and applying the Senior President’s Practice Direction, the matter should go back to the First-tier Tribunal for a full rehearing.
19. However, may I make certain observations in this matter which I think will be of assistance. The first is that the many bundles of various documents make it difficult to address the issue and there should be one composite document with clear pagination.
20. As I indicated to Counsel on behalf of the appellants at the hearing, there has been, a marked failure on the part of the appellants to address the issues which face them. Further documents have been produced, including an inoculation booklet which points strongly to a birth in Barcelona. The birth certificate however shows that the parents at that time were Gambian. The fact of a birth in Barcelona does not of itself assist as to the nationality of the first appellant. I have seen the original of the Spanish passport which is one issued in 2014. It contains no stamps to indicate that it has ever been used for the purposes of travel. Photocopies of the parents’ Spanish passports also seem to show that they were issued in 2014. It seems to me that there needs to be clear evidence produced from the first appellant and indeed from her parents as to the manner in which Spanish nationality was acquired and when. It might be advisable, as was indicated by the respondent in the refusal letters, to have something from the Spanish authorities as to the provenance of the passport and when it was issued to the appellant.

21. In terms of the Gambian passport, that was valid from 2009 to 2014. I am told that it is in the possession of the appellants but was not produced before me. Clearly, it is in the interest of all to have original documents at court. Whether or not there needs to be any clarification as to the legality of joint citizenship is a matter for the parties to consider. The first appellant still has Gambian citizenship and perhaps a new passport issued with the correct place of birth might be of assistance.
22. Clearly, to claim registration as a Spanish citizen the first appellant had to show that she is exercising treaty rights in so doing.
23. If reliance is placed upon the marriage by the appellants, then clearly the concerns as expressed by the respondent, and indeed touched upon briefly by the Judge, fall to be addressed in common sense.
24. I note that a child has now been born to the relationship and was present in court. An alternative approach of course is that of durable relationship. Once again there seem to have been a paucity of information provided on that matter. I indicated there seems to be a deluge of paperwork in relation to this matter which can perhaps be fine-tuned to deal with the real issues that are joined between the parties. Hopefully a skeleton argument as presented could also have a schedule setting out with clarity the documents relied upon, so as to assist a Judge in the process of analysis.
25. No doubt, if further directions are required those can be issued by the First-tier Tribunal in the normal course of proceedings.

Notice of Decision

26. The appeal to the Upper Tribunal is allowed to the extent that the First-tier Tribunal decision is set aside to be re-made by the First-tier Tribunal at a full rehearing of the matter.

No anonymity direction is made.



Signed

Date 23 August 2018

Upper Tribunal Judge King TD