



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/01101/2017

THE IMMIGRATION ACTS

Heard at Field House
On 26th July 2018

Decision & Reasons Promulgated
On 3rd August 2018

Before

UPPER TRIBUNAL JUDGE KING TD

Between

MISS MERCY BAFFOUR WIAFE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E Anyene, of Counsel, instructed by direct access
For the Respondent: Ms K Pal, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Ghana. She appeals against the decision of the respondent taken on 16th January 2017 to refuse to issue a residence card as evidence of a right of residence as the family member of an EEA national who was a qualified person.
2. Three issues are addressed in the reasons for refusal letter. The first being whether or not Mr Mohamadu was properly exercising treaty rights. The case was advanced that the sponsor was in employment/self-employment with JA Construction Services, attempts to make contact with those Services were unsuccessful. It was concluded therefore that the sponsor had failed to provide sufficient evidence to show that he was currently economically active in the United Kingdom as a self-employed person under Regulation 6 of the Immigration (EEA) Regulations 2006.

3. The second issue that fell to be considered was whether or not there was a lawful proxy marriage as between the sponsor and the appellant. For the detailed reasons are set out in the decision it was not accepted that the documents submitted established that matter, particularly in the light of the decision in **Karim (Proxy marriages - EU law) [2014] UKUT 0024 (IAC)**.
4. A third issue was whether there was sufficient evidence as to a durable relationship and, for the reasons set out in the decision, the respondent concluded that there was not.
5. The appellant sought to appeal to the First-tier Tribunal, which appeal came before First-tier Tribunal Judge Pooler on 6th April 2018 for hearing. On 19th April 2018 in a determination promulgated on that date the appeal was dismissed; in effect, the Judge upheld the concerns as expressed by the respondent.
6. Challenge is made to that decision on each of the three grounds and leave to appeal the matter to the Upper Tribunal was granted in respect of the issue of economic activity on behalf of the sponsor.
7. Thus the matter comes before me to determine whether or not there was a material error.
8. A bundle of documents was placed before the First-tier Tribunal Judge as indeed placed before me. In terms of employment there was ample material to show that the sponsor had been working for and/or employed by JA Construction Services Limited from April 2015 until January 2018, such being supported by statements which showed regular payments into that bank by JA Construction. Indeed, most of the money that comes into the account comes from that source.
9. Mr Anyene submitted that all that was necessary to establish that the sponsor was exercising treaty rights was evidence of economic activity and that had been provided to the Judge. My Attention was drawn to a decision of the Court of Justice in **Levin [1982] EUECJ R-53/81 (23rd March 1982)** which indicated that the terms worker and activity as an employed person should have a community meaning and that evidence of economic activity was sufficient. He contended therefore that the Judge should not have expected more evidence than was provided.
10. It is said of the attempts by the respondent to contact JA Construction that that was because of the telephone number being misrecorded from that supplied by the sponsor or appellant in that the last digit was in fact a 3 and not a 7 as recorded. Such was explained to the Judge by the sponsor. It is contended that that in itself was an error on the part of the Judge not to have highlighted that matter.
11. Clearly the decision letter put the existence of JA Construction very much in issue. The Judge considered that it was significant in evaluating the evidence presented that nothing from that company had been presented at all to deal with the concerns expressed by the respondent. No pay slips were adduced in evidence, there was no

documentary evidence from HMRC and no evidence of contract as between the sponsor and JA Construction. The Judge noted in paragraph 16 of the determination that such evidence could have been obtained without undue difficulty.

12. Mr Anyene contends that that was not evidence that was strictly required in the light of the jurisprudence as to earnings.
13. It seems to me, however, that the Judge was entitled to expect some confirmation as to whether the appellant was an employee or self-employed, particularly as that would not be something that would be particularly difficult to obtain. The Judge considered that it was significant given the challenge made that nothing has been presented to address it. I find nothing unreasonable about that approach.
14. In terms of the proxy marriage the Judge highlighted the concerns that were expressed by the respondent and seemingly not addressed in the evidence as presented. The case of Karim had set out what needed to be established in order for such a marriage to have legal effect for the purposes of the EEA Regulations. Not least that it should be a marriage recognised in Ghana and also one recognised by the EEA national's own country. There was no evidence as to the latter and the Judge concluded that insufficient material had been presented to conclude that it was a valid marriage.
15. Once again, I can see little unreasonableness in that approach, particularly when the appellant had been put on express notice in the decision about the concerns that arose.
16. The alternative to the marriage was of course a durable relationship, it being said that the appellant at least was in that relationship since 2012.
17. Mr Anyene submits that there was ample evidence in the bundle as to cohabitation which was not properly considered by the Tribunal Judge, that evidence being the bank accounts of the sponsor at the Halifax Building Society which showed the address []. That same address shows the address as to which HM Revenue and Customs directed correspondence to the appellant in January 2017 (page 135 of the bundle), her Nationwide account seemingly also at that address as were various pay slips for contract cleaning and maintenance. Such it is contended were provided as cogent evidence as to cohabitation without more.
18. The Judge in paragraphs 23 and 24 of the determination noted such documents but did not consider that they were necessarily determinative of a durable relationship without more. Again, it was open to the sponsor to use the appellant's address for the purposes of his bank statements, but such did not necessarily mean that he resided there. It is to be noted, as did the First-tier Tribunal Judge, that there is a Nationwide Flexi account which seems to be a joint account with both the sponsor and the appellant upon it. For the parties to establish a durable relationship it is clearly some evidence which has the potential to assist. However, what was of concern to the respondent in the reasons for refusal and of concern to the Judge in the determination was that there was a paucity of any other material such as to assist in the description

of the relationship, such as to enable the decision maker to find that it was a relationship in existence and one that was durable in its nature.

19. The only detail that seems to have been provided by the appellant in her witness statement of 27th March 2018 is that she and the sponsor got married by proxy on 11th March 2012 and had lived together since that time. Such evidence was also given in similar terms by the sponsor without more. However, nothing to speak as to their interests or any matter touching the nature of that relationship which is claimed other than the issue of cohabitation. There are no joint utility bills or joint council bills, or anything to indicate a joint commitment one to the other aside of the bank statements.
20. Given that the appellant has been put on notice by the decision as to the concerns raised, it is understandable that the judge placed significant weight upon the absence of such details in coming to the findings which were made.
21. As Ms Pal submitted, the appellant and sponsor were alerted to the concerns as expressed but did little to address them.
22. Even were it to be said that the First-tier Tribunal Judge ought to have been a little more generous and open in his approach to the earnings of the sponsor, the nature of the relationship was not revealed adequately by the sponsor and appellant.
23. I find therefore that it was properly open to the Immigration Judge to raise the concerns that were raised and to make the findings accordingly. I find therefore, no material error of law.

Notice of Decision

The appellant's appeal before the Upper Tribunal is dismissed and the decision of the First-tier Tribunal shall stand, namely that the appeal be dismissed overall.

No anonymity direction is made.

Signed 

Date 31 July 2018

Upper Tribunal Judge King TD