



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/02688/2018

THE IMMIGRATION ACTS

Heard at Field House
On 6th August 2018

Decision & Reasons Promulgated
On 23rd August 2018

Before

UPPER TRIBUNAL JUDGE KING TD

Between

MRS LYDIA ADUSEI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E Lanlehin of Counsel instructed by Direct Access

For the Respondent: Ms J Isherwood, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Ghana. By application dated 7th December 2017 she applied for a residence card as a family member of an EEA national exercising treaty rights in the United Kingdom. That application was refused on 13th March 2018.
2. In summary the respondent did not accept that the appellant was a family member or that the proxy marriage was a lawful marriage for the purposes of the EEA Regulations.

3. In particular the respondent was not satisfied that both parties to the marriage were Ghanaian nationals and was not satisfied that the marriage certificate as produced was properly completed. The Secretary of State did not accept the genuineness of the marriage notwithstanding the statutory declaration that had been adduced.
4. The matter was dealt with on the papers by First-tier Tribunal Miles on 11th May 2018. In a decision promulgated on 23rd May 2018 the appeal was dismissed. For the most part the determination would seem to echo the refusal letter, although acknowledges that it is no longer a requirement that both parties to the marriage are Ghanaian citizens. The Judge relied upon NA in certain aspects of the decision and pointed to the omissions in the signature fields of the marriage certificate itself. As was pointed out in the grounds of the appeal reference to the bride price was made in the statutory declaration.
5. It is somewhat difficult to extract for the determination the precise nature of the findings that are made in this matter.
6. It had been indicated to the Tribunal at an earlier stage that it was the wish of the appellant to have the matter determined on the papers. A notice was sent to her advising that all evidence and submissions should be with the Tribunal by 9th May 2018. It is understandable therefore that the Judge would proceed to deal with the matter on the papers that were presented at that time or lack of them. However a substantial bundle of documents was submitted and received by the Tribunal on 14th May 2018, as evidenced by the date stamp given that the determination was on the papers. The decision and was not promulgated until after the receipt of the documents. It is reasonably open to argue that there has been at the very least potential procedural unfairness in that much material that was presented on behalf of the appellant had not been considered.
7. Had the determination been clear in its findings that might have stood notwithstanding the late receipt of the documents but overall I find that justice should not only be done but seen to be done. In those circumstances fairness of these proceedings would require a reconsideration of all material.
8. Given the substantial factual findings that will need to be made and the body of evidence presented I find, in accordance with the Senior President's Practice Direction, that the matter should be remitted to the First-tier Tribunal for a hearing.
9. Although the appellant in the grounds of appeal seemed to indicate that the bundle now presented was enough to enable the Tribunal to come to a decision it will be advisable that there be oral evidence from her and the sponsor. A matter of some concern to me in, evaluating the documents, is the form of a register of customary marriage that has been presented. In my bundle at pages 20 to 2,1 which is the bundle date stamped by the court, there is a form of register seemingly completed with all the particulars but bearing no stamp or signature of the registrar to indicate that it has been authorised. In a bundle, also presented to me but which I handed to the

presenting officer, the same form of register contains partial stamps upon it. It is difficult to see how two versions of the same form can be sustained.

10. Much reliance is placed upon the statutory declaration of 20th April 2017. Such a document has been challenged as to its content by the respondent in the decision. Curiously there are two documents, one from the assistant director of the Legal and Consulate Bureau and one from the second deputy judicial secretary, the latter seeking to identify the signature of the notary and the former identifying the signature of the second deputy secretary. Such seems to be somewhat unduly complicated. Surely it would be easy for the notary on proper headed notepaper with a proper signature and identification to enclose the statutory declaration which was taken before him.
11. Once again in the grounds of appeal there seems to be an assumption by the appellant that the full documents speak for themselves. It may be considered however that they raise more questions than they solve.
12. It is a matter for a Judge to consider all the evidence and to make a decision upon such matters in the round.

Notice of Decision

The appeal before the Upper Tribunal succeeds to the extent that the decision of the First-tier Tribunal set aside to be remade in a new hearing before the First-tier Tribunal on the evidence as then shall be presented.

No anonymity direction is made.

Signed

Date 14 August 2018

A handwritten signature in black ink, appearing to read 'P. L. King', enclosed within a thin black rectangular border.

Upper Tribunal Judge King TD