



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/02920/2018

THE IMMIGRATION ACTS

Heard at Manchester
On 14th November 2018

Decision & Reasons Promulgated
On 23rd November 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE FARRELLY

Between

NGOZI [O]
(NO ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr B Aberwusi, Crown and Law, Solicitors

For the respondent: Mr. A McVeety, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant has permission to appeal the decision of First-tier Tribunal Judge Chudleigh's decision promulgated on 25th June 2018. The appeal was against the respondent's refusal to issue her with a residence card to confirm she was a family member of an EEA national exercising Treaty rights.

2. The appellant is a national of Nigeria. Her application was on the basis she was married to Mr [SA], an Austrian national exercising Treaty rights. He is originally from Nigeria and they married by proxy in Nigeria in a customary marriage on 29 August 2017. The marriage was registered on 11 September 2017 at a local government office in Nigeria.
3. She provided a letter from his employer, stating his employment began on 9 January 2017 and his annual salary was £19,000. Wage slips and bank statements were included. The appellant was pregnant at the time and NHS documentation was provided.
4. With the application she included her sponsor's Austrian passport, number [~].
5. The application was refused on 21 March 2018. The respondent said that the passport submitted had been reported lost on 20 June 2017. Her application was refused as she had not provided either a valid national passport or identity card to show her sponsor was a European national. The passport submitted was returned.
6. The grounds of appeal to the First-tier Tribunal stated that the sponsor had reported his passport as missing on 20 June 2017, as the respondent's records confirm. He then obtained a new passport. He subsequently found his original passport which was the one submitted.
7. The appeal was to be heard on the papers and on 8 June 2018 was assigned to First-tier Judge Chudley. At paragraph 2 the judge records that the passport originally reported as lost had been submitted with the application. The judge at paragraph 6 concluded the appellant had failed to produce a valid passport and therefore the respondent was right to refuse the application. The judge points out that the appellant acknowledges the passport submitted was the one originally thought to be lost.

The Upper Tribunal

8. The application for permission to the Upper Tribunal states that the appellant sent a copy of her husband's new passport. She meantime had her baby and a copy of the baby's birth certificate was also sent.
9. Permission to appeal was granted on the basis that the documentation referred to, particularly the new passport, was not before the court. Had this information been available it may have made a material difference and affected the fairness of the proceedings.
10. Mr. McVeety did not oppose the appeal. He stated that he had seen the new passport. There were no issues about the relationship or the sponsor's employment. Consequently, he saw no reason why I should not remake the

decision and allow the appeal. Mr Aberwusi said the documents had been sent and could not explain why they were not before the First tier Judge.

Consideration

11. A potential complication is that this is a proxy marriage. If the appellant is married to her sponsor then she is an immediate family member rather than the extended family member. In the latter case she normally would have been required to show 2 years cohabitation. The evidence in the file in respect of this is limited.
12. Awuku v Secretary of State for the Home Department [2017] EWCA Civ 178 stated in the law of England and Wales the general rule is that the formal validity of a marriage is governed by the law of the country where the marriage was celebrated. A marriage by proxy will be treated as valid in England if recognised by the local law. The Court of Appeal disagreed with Kareem (Proxy marriages – EU law) [2014] UKUT 00024 (IAC) which had referred to the law of the Member State of the EU national's nationality.
13. The refusal raised only on one ground, namely that the appellant had not provided evidence in the approved form of her husband's EEA nationality. His passport has now been produced and Mr McVeety has seen this. He has raised no other objection to the application. The passport produced confirms her husband's the nationality. For an unknown reason this was not placed before the judge. Had it been is likely the outcome would have been different.
14. There is a letter dated 11 September 2017 from the customary court in Nigeria stating that the marriage is recognised in accordance with Nigeria law. The marriage therefore appears valid in Nigeria.
15. Consequently, the evidence indicates the appellant is entitled to the documentation she seeks.

Decision

16. The decision of First-tier Tribunal Judge Chudleigh materially errs in law. This is because a decision was made in ignorance of the fact that the appellant's sponsor had been issued with a new passport and for reasons unknown this was not passed onto the court. I remake the decision allowing the appeal.

Francis J Farrelly
Deputy Upper Tribunal Judge