



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/03295/2017

THE IMMIGRATION ACTS

Heard at Field House
On 5th April 2018

Decision & Reasons Promulgated
On 15th May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

MR EMMANUEL ABOTSI YEBOAH
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E Akohene, Solicitor

For the Respondent: Ms Willcocks-Briscoe, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Ghana born on 17th August 1959. On 19th September 2016 the Appellant sought a residence card to confirm he is a family member of a European Economic Area (EEA) national exercising treaty rights in the UK. That application was refused by Notice of Refusal dated 16th March 2017. The Appellant appealed and the appeal was heard on the papers without a hearing by Judge of the First-tier Tribunal Pickup sitting at Manchester on 7th July 2017. In a decision and reasons promulgated on 10th July 2017 the appeal was dismissed.

2. On 21st July 2017 Grounds of Appeal were lodged to the Upper Tribunal. On 15th December 2017 First-tier Tribunal Judge Bennett granted permission to appeal. Judge Bennett considered it was arguable that the judge had erred in finding that
 - (i) both parties to a customary marriage in Ghana must be Ghanaian citizens or Ghanaian by descent in the light of *McCabe v McCabe* [1994] 1 FCR 257; and
 - (ii) the Appellant must establish that the statutory declaration made in support of the application to register his customary marriage was validly made in accordance with the requirements of Section 3(2) of the Ghanaian Customary Marriage and Divorce (Registration) Law 1985 (as amended) in circumstances where there was no challenge to the actual registration of the marriage.
3. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by his instructed solicitor Mr Akohene. The Secretary of State appears by her Home Office Presenting Officer Ms Willcocks-Briscoe.

Submission/Discussion

4. Mr Akohene takes me to paragraph 14 of the judge's decision and submits that the judge erred by concluding that there was insufficient evidence that the EEA national has any Ghanaian ancestry. He submits that paragraph 24 of *NA (Customary marriage and divorce, evidence) Ghana* [2009] cites a summary of elements required for validity of Ghanaian customary marriage and that this summary does not state that customary marriage can only be validly contracted by citizens of Ghana. Further Mr Akohene seeks to rely on the unreported authority of *Alexander Amoako v SSHD/IA23315/2012*, a decision of Upper Tribunal Judge Martin where Mercy Ackman changed her opinion to that she had previously expressed in *NA* and was now of the view that there is no requirement for both parties to be Ghanaian citizens and that in fact only one of the couple needs to be Ghanaian.
5. Mr Akohene sought to rely on documents that were unreported and not before the Tribunal and certainly not before the First-tier Tribunal. Following objection by the Secretary of State the representations were withdrawn.
6. Mr Akohene takes me to paragraph 17 of Judge Pickup's decision and submits that a statutory declaration is not a required component and that at paragraph 18 he submits that where the judge has stated "it is known from the case law that forged or otherwise false documents are easily obtained in Ghana" that there is no allegation by the Secretary of State that the Appellant has produced any forged or false documents. He points out that page B2 of the Appellant's bundle states in a letter from the Ghanaian High Commission dated 20th April 2017 that customary marriage between the Appellant and the EEA national was properly registered and he submits it is a material error for the judge to decide otherwise in the absence of evidence to the contrary.
7. Ms Willcocks-Briscoe refers to the documents that were before the judge and has indicated that the judge has taken full account of the authority of *NA* which is binding

case law. She submits that it is inappropriate to depart from a binding authority and that the judge was right to rely on it. She submits that this is the decision that has been dealt with quite properly and that it would be wrong for the judge to take any other stance. She submits that there is no material error of law.

The Law

8. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
9. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings on Error of Law

10. I acknowledge that this was a case that was dealt with on the papers. The judge in question is very experienced and his decision is well constructed and relies on all documentation that was before him. He has looked at the documentation that has been produced and the reasons of challenge made by the Secretary of State. He has referred to the recent authority of *Awuku v SSHD [2017] EWCA Civ 178* where the Court of Appeal overturned *Kareem [2014] UKUT 24* and the requirement for the Appellant to demonstrate that the marriage is valid by the law of the country of the qualified person's nationality. The judge has then given due and proper consideration to this and noted that in part the decision therefore of the Secretary of State was in error but has gone on to consider *NA (Customary marriage and divorce - evidence) Ghana [2009] UKAIT 00009* where the Tribunal held that the onus of proving either a customary marriage or dissolution rests on the party making the assertion and thus it remained the case that the Appellant needed to demonstrate the marriage was valid in Ghana. Thereafter the judge has gone into considerable detail and has given full and proper consideration to Section 3 of the Customary Marriage and Divorce (Registration) Law

1985. He has addressed the issue with regard to the statutory declaration fully at paragraph 17 and as the judge states at paragraph 18

“I have looked in vain for other supporting evidence to demonstrate that the marriage took place as claimed.”.

11. This is a judge who has looked very thoroughly at all the evidence that was before him and has given full and proper consideration to the relevant case law. I have listened and take on board the submissions made by Mr Akohene but in effect they amount to little more than disagreement with the decision of the First-tier Tribunal Judge and an attempt to introduce additional evidence. That is not the role of the Upper Tribunal.
12. This is a decision that is well constructed and shows a detailed analysis and understanding of the relevant law, both by authority and statute. The judge has given full reasons for his findings. For all the above reasons the decision discloses no material error of law and the appeal is dismissed and the decision of the First-tier Tribunal Judge is maintained.

Decision

The decision of the First-tier Tribunal discloses no material error of law and the Appellant’s appeal is dismissed and the decision of the First-tier Tribunal Judge is maintained.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT FEE AWARD

No application is made for a fee award and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris