



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: EA/06523/2016  
EA/06524/2016

THE IMMIGRATION ACTS

Heard at Field House  
On 4<sup>th</sup> June 2018

Decision & Reasons Promulgated  
On 5<sup>th</sup> June 2018

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

MS PRINCELLA ADUSEI  
JOHN ADUBOFFOUR  
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms Sharmaq, Justice and Law solicitors  
For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant Ms Adusei is a citizen of Belgium. Her date of birth is 16<sup>th</sup> August 1986. The Appellant Mr Aduboffour is a citizen of Ghana. His date of birth is 26<sup>th</sup> September 1980. They made joint applications under the Immigration (EEA) Regulations 2006 ("the 2006 Regulations"); Ms Adusei for a registration certificate and Mr Aduboffour for a residence card. The Appellants married in a proxy wedding in Ghana. Their applications were refused on 18<sup>th</sup> May 2016. The Respondent's position was that the marriage was one of convenience. The Respondent concluded in relation to Ms Adusei that there had been an Abuse of Rights under Regulation 21B of the 2006 Regulations

in that she had assisted another person to enter a marriage of convenience.

2. The Appellants appealed against the decisions. Their appeals were dismissed by First-tier Tribunal Judge Juss, in a decision of 6<sup>th</sup> July 2007. Permission was granted to the Appellants.

#### *The error of law decision*

3. The matter came before me on 14<sup>th</sup> March 2018. I concluded that the Judge materially erred for the following reasons:-

“The grounds are poorly expressed but I am satisfied that the Judge did not properly determine the Abuse of Rights issue insofar as the Appellant, Ms Adusei is concerned. It is asserted in the grounds that she should not be excluded from being issued with a residence certificate because the marriage is “questionable”. There is some merit in this assertion; however, the error lies in the Judge having failed to make a finding in respect of abuse of rights.

There is another error in the determination that was brought to my attention by Ms Willocks-Briscoe and that is that the Judge failed to apply the correct burden of proof in accordance with *Rosa v SSHD* [2016] EWCA Civ 14 and *Papajorgii v ECO* [2012] UKUT 38. For these reasons the decisions in relation to both Appellants are set aside.”

#### **The Respondent's decisions**

4. The Respondent noted that Mr Aduboffour was previously married to another EEA National by a Ghanaian proxy wedding and applied for a residence card on this basis. This application was refused and there was no appeal lodged against that decision. His former spouse had gone on to sponsor two different Non-EEA National men.
5. The Respondent took into account documents submitted in support of the application addressed to both Appellants' at the same address; however, one document only was in joint names. It was noted that the rental agreement had been completed by hand and had missing details significantly it did not state how much rent was to be paid. The Appellants submitted an Anglian Water Bill of 28<sup>th</sup> February 2015 which is addressed to Ms Adusei and a named third person who is not named on the rental agreement.
6. The Respondent took into account photographs submitted with the applications but concluded that were taken solely for the purpose of the application. The customary marriage certificate submitted with the Appellants in support of their applications indicated that the marriage was contracted on 2<sup>nd</sup> February 2015. The application was not made until October 2015 despite the fact that Mr Aduboffour was residing in the UK illegally.

7. The Respondent relied on discrepancies in the interviews on 28 February 2016. Ms Adusei claimed that after the first meeting at her brother's wedding the next time she met up with Mr Aduboffour was three months later, whilst Mr Aduboffour claimed that after meeting the sponsor for the first time at her brother's wedding they met up one week later. Mr Aduboffour had to be asked five times before he would give a straight answer to the question. Ms Adusei claimed she and Mr Aduboffour moved in together in September 2014 whilst Mr Aduboffour claimed that he moved in with the sponsor in July 2014. Both the Appellants' claim that they paid £350.00 per month in rent. The rent agreement submitted by them and signed by them is silent on the amount of rent to be paid. Ms Adusei claimed that the buses that serviced her home are the numbers 5 and 6 and that she gets the bus into the city centre. Mr Aduboffour claimed that the buses that serviced his home were the number 23 and 24. He claimed that he and the sponsor lived very near to the city centre and that they walked there.
8. Ms Adusei claimed that the wedding was held at her family home in Kumasi whilst Mr Aduboffour claimed that the wedding was held in her family home but claimed that this was in Accra. Neither party knew the date that the wedding was certified. Ms Adusei claimed that at the wedding they had no physical representation by a friend or family member whilst Mr Aduboffour claimed that both sets of parents represented them on the day.
9. Ms Adusei claimed she spoke Twi, English and Flemish from when she lived in Belgium whilst Mr Aduboffour did not know what Belgium Language his wife spoke claiming it was called "Netherlands".

*Preliminary issue*

10. In accordance with directions that I made at the error of law hearing, the parties submitted skeleton arguments. The Respondent's was served out of time. On 18 April 2018 the Appellants sent to the UT notes relating to an enforcement visit made by immigration officers on 14 July 2017. The Respondent sent these to the Appellants on the same day. As far as I am aware these were not disclosed to the Appellants prior to April 18 April 2018. They were not before the FtT. I did not have sight of these when determining whether the FtT made an error of law. The notes were prepared by Immigration Officers Bevan and Mitchell and relate to their visit to the Appellants' home in July 2017. The Appellants were encountered by the immigration officers in bed together. They dressed in matching "onesies" to be interviewed separately by the officers who concluded that;

"From the outset there were clear signs that this couple co habit in the same room and that they were indeed in a subsisting relationship. There were mixed personal products of both parties on the top of the set of drawers and he wardrobe was filled with clothes from both parties".

11. Following separate interviews with the Appellants, IO Marshall, with whom IO Bevan agreed, concluded that "I have no areas of concern that these subjects are not in a full and subsisting relationship."
12. The Respondent served a skeleton argument. It was served and filed out of the time with reference to the directions I made at the error of law hearing. The Appellants served a skeleton argument. Needless to say the Appellants relied on the evidence of the immigration officers conducting the enforcement visit. This evidence was disclosed to the Appellants for the first time on 18 April 2018. It was not before the decision maker because the visit had not at that time taken place. There is no reason why it was not disclosed prior to the hearing before the FtT in 16 June 2017 or the error of law hearing before me on 14 March 2018. The failure to produce this significant piece of evidence is a grave and serious omission by the Respondent. It is likely in my view that had this evidence (which as conceded by Mr Tufan strongly suggests that at least in July 2017 this marriage was genuine and subsisting) been before the FtT the appeal would have been allowed. I was under the impression at the error of law hearing that the evidence had been served on the Appellants although neither party was able to produce it at the hearing before me. The position was not clearly advanced to me by either advocate. Ms Willcocks-Briscoe makes no mention of this evidence in her skeleton argument. She was unwell on 4 June and Mr Tufan stepped into her shoes late in the day. He asked for an adjournment. He was not prepared for a substantive hearing. This was opposed by Ms Sharmaq on behalf of the Appellants. I refused the application. I put the matter back to give Mr Tufan time to prepare and to consider the evidence of the enforcement visit. The hearing was resumed. Mr Tufan indicated that he wished to proceed relying on the inconsistencies between what the Appellants said in the interviews. He stated that he did not have instructions to concede or withdraw in the light of the evidence from the enforcement officers.

#### *The Appellants' evidence*

13. The Appellants relied on a bundle comprising 670 pages. They produced witness statements dated 15 February 2018. They gave oral evidence, adopting their statements as evidence-in-chief. They were cross-examined.

#### *Findings and Reasons*

14. I take into account all the evidence and the submissions made by the parties. I found the Appellants to be credible witnesses. Their evidence about interpreting problems during the interview was credible. Mr Tufan conceded that they had been consistent about the date when they moved in together contrary to what was said in the reasons for refusal letter. I have attached significant weight to the views of the enforcement officers following their visit to the Appellants. I understand that the issue is the intention of the parties at the time of the marriage; it is not whether the relationship was subsisting at the time of the visit; however, I find in this case that the position of the parties in July 2017 is highly suggestive that the marriage entered into in 2015 was not one of convenience. There were inconsistencies in the answers given by the Appellants during the interviews. They gave credible explanations about most of these (e.g. bus routes, the

wedding ceremony, the delay in making of the application and when they met after their first meeting) in oral evidence. In the light of the enforcement visit, I conclude that any remaining inconsistencies do not materially undermine their credibility.

15. At the time of the interview, I accept that there was reasonable suspicion arising from the answers they gave that the Appellants entered a marriage of convenience, but in the light of the evidence as a whole, the Respondent has not discharged the legal burden that the marriage is one of convenience.
16. The Appellants appeals are allowed under the 2006 EEA Regulations.

Signed *Joanna McWilliam*

Date 5 June 2018

Upper Tribunal Judge McWilliam