



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: EA/03797/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 17<sup>th</sup> May 2019**

**Decision & Reasons Promulgated  
On 20<sup>th</sup> June 2019**

**Before**

**UPPER TRIBUNAL JUDGE FRANCES**

**Between**

**SEYAKA SONKO  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms M Chowdhury, instructed by Stuart & Co Solicitors  
For the Respondent: Ms A Everett, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Gambia born on 12 May 1957. He appeals against the decision of First-tier Tribunal Judge M A Khan promulgated on 13 March 2013 dismissing his appeal against the refusal of a residence card under Regulations 7 and 8 of the Immigration (EEA) Regulations 2016.

**Facts**

2. The Appellant entered the UK in 2004 on a visit visa. At the time he was married to his ex-wife Haji Yai Ngoneh Jallow, a Norwegian national. On 28 June 2010 the Appellant was issued with a five year residence card on the basis of his relationship with his ex-wife. The parties separated in April 2010 and divorced on 15 March 2013.
3. The Appellant married his second wife Neneh Sanyang Bajao, a Swedish national, by proxy on 4 July 2013. They have lived together since 19 May 2010. On 15 June 2015, the Appellant made an application for a residence card as a spouse. This was refused on 16 December 2015 as the Appellant failed to provide evidence that he was legally divorced from his first wife and free to marry again and that the laws of the Gambia Muslim Marriage and Divorce Act, Chapter 42:01 Act No. 1 of 1941 appertaining to customary marriages had been adhered to.
4. The Appellant's appeal was dismissed on 25 April 2017 by First-tier Tribunal Judge Birk because there was insufficient evidence of domicile of the parties such that the divorce and subsequent marriage were not valid. Secondly, the Appellant had not shown that the proxy marriage would be recognised as valid in the country of the EEA national, i.e. Sweden. Thirdly, the case of Sala applied. There was no right of appeal under Regulation 8 as an unmarried partner.
5. On 14 February 2018 the Appellant submitted a second application for a residence card which was refused on 10 May 2018. The Appellant appealed the decision and the matter came before First-tier Tribunal Judge Khan. The sole issue before the First-tier Tribunal was the validity of the Appellant's divorce and subsequent marriage to their Sponsor. The second and third reasons given by Judge Birk no longer applied because Kareem and Sala had been overturned on those points. The Appellant produced further evidence in the supplementary bundle namely a letter from the Gambian High Commission dated 21 January 2019 confirming that the marriage was valid.

### **Permission to appeal**

6. Permission to appeal was granted by First-tier Tribunal Judge Grant-Hutchison on 18 April 2019 for the following reasons:
  - "It is arguable that the judge has misdirected himself
  - (a) by failing to take into account the letter from the Gambia High Commissioner dated 21 January 2019 which confirms the genuineness of the Appellant's marriage to his EEA national by the Gambian authorities where the marriage was contracted;
  - (b) when considering the expert report of Cherno Marenah by finding that the expert does not explain how and on what authority she has based her interpretation of domicile in Gambia when the expert stated that there is no definition of domicile in any statutes

in the Gambia. The expert went on to state that a person is deemed to be domiciled if that person has a substantial connection with the Gambia even though the person is living abroad. In addition, by making no findings in relation to the case of SM (domicile of choice: Scots law) Pakistan [2008] UKAIT 00092 which was relied upon by the Appellant in this regard; and

- (c) by failing to give adequate reasons as to the weight to be given to all the evidence lodged (pages 32 to 402) of the Appellant's bundle to show that the Appellant is in a durable relationship with his EEA national and not just relying on one letter which is in joint names to show that they are living together."

## **Submissions**

7. Ms Chowdhury relied on the grounds of appeal and the grant of permission. She submitted that the judge failed to consider the expert report when considering the genuineness of the proxy marriage. There was no definition of domicile in Gambian law and the Appellant's links with Gambia were sufficient to show that he was domiciled there due to his family ties and his two marriages.
8. The case of SM was relied on in the Appellant's skeleton argument and in submissions before the judge, but the judge failed to refer to the case in his findings. In essence the judge relied on a previous decision and failed to make any findings on domicile. The previous decision relied on Kareem (proxy marriage - EU law) [2014] UKUT 24 which at the date of the decision under challenge had been reconsidered by the Court of Appeal in Awuku [2016] EWCA Civ 1303. The judge failed to consider the further evidence and the change in the law since the previous decision. Further, there was an abundance of evidence in the bundle showing that the Appellant and his Sponsor had cohabited since May 2010. There was evidence in the witness statements that the relationship was genuine. The judge made no finding that the Appellant and his sponsor were not credible witnesses.
9. Ms Chowdhury explained that the Sponsor was unable to attend the hearing before First-tier Tribunal Judge Khan because of the late notice given for the appeal hearing by the Appellant's solicitors. She had however attended the hearing on the previous two occasions which had been adjourned.
10. Ms Everett submitted that the judge had made an error of law in relation to Regulation 8. The conclusion that there was insufficient evidence of a durable relationship was not open to the judge on the evidence before him. She submitted that the burden was on the Appellant to show that their marriage was valid.

## **Error of law**

11. I found that the judge erred in law in relying on the previous decision of First-tier Tribunal Judge Birk and failing to consider the letter from the Gambia High Commission dated 21 January 2019 stating that the marriage was valid. Accordingly, I set aside the decision. None of the findings were preserved and I adjourned the matter until 2pm for rehearing.

### **Re-hearing**

12. When the hearing recommenced Ms Chowdhury relied on the original bundle of documents of 401 pages and a supplementary bundle of 22 pages. Helpfully, Ms Everett gave a preliminary view and submitted that she accepted there was sufficient evidence of a durable relationship and there was no reason to cross-examine the witnesses or challenge the evidence that was in the bundle and in the Appellant's witness statement.
13. In relation to the marriage, Ms Everett submitted that there was nothing from the Respondent to rebut the evidence in the expert report regarding domicile. She accepted that late registration of the divorce would not affect its legality. The marriage and divorce were dependent on domicile and the expert evidence was very vague. However, there was the letter at page 2 of the Appellant's supplementary bundle from the Gambia High Commission confirming the validity of the marriage.
14. Ms Chowdhury submitted there was sufficient evidence to satisfy Regulations 7 and 8 of the Immigration (EEA) Regulations 2016. I indicated that I was satisfied this was the case and I would allow the appeal. My reasons are as follows.
15. I have considered the evidence in the Appellant's witness statement dated 3 January 2019 and the Sponsor's witness statement of 5 January 2019 in conjunction with the abundance of evidence in the Appellant's bundle that the Appellant and Sponsor have been cohabiting since 2010. I am satisfied on the basis of this evidence that the Appellant and Sponsor are in a durable relationship and I am grateful for Ms Everett's concession on that point. The appeal is therefore allowed under Regulation 8.
16. In relation to the validity of the marriage, I take note of the expert report at pages 14 to 19 of the Appellant's bundle confirming that the certificate issued in respect of the marriage was valid and an authentic legal document. The Appellant has also produced evidence from the Gambia High Commission which states:

“Authentication of Marriage Certificate

To Whom It May Concern

The High Commissioner of the Republic of the Gambia in London hereby certifies that the affidavit of Declaration of facts on Marriage between Mr Seyako Sonko and Mrs Neneh Sanyang both Gambian nationals residing in the United Kingdom is authentic and genuine.

The authentication certificate with serial number 0360170 was signed by Mr Abdou Conteh, registration of marriages on 15<sup>th</sup> day of August 2013 in accordance with Mohammedan Marriage and Divorce Ordinance Act 1941.”

17. The issue of domicile does not arise given the evidence from the High Commission as to the validity of the marriage. If the marriage is valid the divorce must also be valid and therefore the Appellant was free to enter into his marriage with the Sponsor. Accordingly, I find that the Appellant has provided sufficient evidence to satisfy Regulations 7 and Regulation 8 of the Immigration (EEA) Regulations 2016. I allow the appeal.

### **Notice of Decision**

The appeal is allowed under the Immigration (EEA) Regulation 2016

No anonymity direction is made.

**J Frances**

Signed

Date: 17 June 2019

Upper Tribunal Judge Frances

### **TO THE RESPONDENT** **FEE AWARD**

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make a fee award of any fee which has been paid.

**J Frances**

Signed

Date: 17 June 2019

Upper Tribunal Judge Frances