



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: EA/03919/2017

**THE IMMIGRATION ACTS**

Heard at Field House  
On 10 December 2018

Decision & Reasons Promulgated  
On 2 January 2019

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

FUSEINA SEIDU  
(ANONYMITY ORDER NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr S Unigwe, of Counsel, instructed by Melvyn Everson & Co  
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. This appeal comes before me following my determination of 5 October 2018 setting aside of the decision of First-tier Tribunal Judge Courtney which was promulgated on 18 May 2018.
2. The appellant is a Ghanaian national born on 7 May 1967. She entered the UK as a visitor in 1999 and overstayed. In March 2011 she sought a residence card as the spouse of one Robert Mathias Nicolas; that was refused on 12 July 2011.

On 20 January 2014, the appellant made an application on private life grounds for leave to remain but that was refused under paragraph 276ADE on 11 April 2014. On 2 September 2016 the appellant sought a residence card as the spouse of another EEA national, the current sponsor, Mallam Mustapha Musa Stokey, whom she married by proxy on 1 November 2015. That application was refused on 7 March 2017 because the respondent was not satisfied that the marriage was valid or that it was genuine and subsisting.

### **The Hearing**

3. The appellant attended the hearing and gave oral evidence. She confirmed that she lived at 21 [B~] House, although she could not spell the name of the street, and adopted the contents of her witness statement. She stated that she started to live with the sponsor at 54 [O~] Road in 2014; she could not be more specific as to the date. They married in 2015 and then lived at [B~] House. Other than about a year at [O~] Road, they had lived at [B~] House, having moved there at the end of 2014 or early 2015. She could not explain why the tenancy agreement commenced in July 2016 (for a one year period). She did not have any other tenancy agreement because the landlady "*is not charging us much*". She said that her husband paid £200-£300 a month towards the utility bills.
4. The appellant said her husband had travelled to Holland "*last week*". When asked to be more specific, she replied it had been on Friday of last week. She called him and he told her he was unwell with a chest problem. He had sent her a photograph of himself in hospital and she had the picture on her mobile phone. He had sent it on the 5th of December. When it was pointed out to her that that would have been before his stated departure on Friday, 7th December, the appellant said she had meant the Friday of the week before that. He had not given her a date of discharge.
5. The appellant confirmed that her marriage was genuine and subsisting. They were trying to have a baby and intended to continue to live together. Her husband had travelled to Ghana for the proxy marriage. That completed examination in chief.
6. In response to Mr Melvin's questions, the appellant said her husband did not attend the last hearing because they had had an argument. She was asked if she had any evidence from the hospital to show that her husband was receiving treatment. She said she had a photograph of him on her phone but no other evidence.
7. The appellant was asked whether she accepted that she had a bad immigration history. She replied that she did not. It was put to her that she had come in 2000 and overstayed. The appellant replied she had come in 1999. It was put to her that she had overstayed. She replied she came with a visa. It was put to her that she had overstayed after the visit visa expired. She replied she had had leave for six months.

8. The appellant was asked about her application in 2009 to marry a French national. She stated that she did not want to talk about it. She was asked why she had not left the country after her visa expired or after her application was refused. She replied: "*I love the country*". She was asked why she did not leave after the next unsuccessful application. She replied: "*I love London*". She was asked whether she would leave if her appeal failed. She replied: "*This is my country*".
9. The appellant agreed that she had family in Ghana. She was asked why she had not sought to marry in the UK. She replied: "*He wanted to do it that way*". She was asked why she had waited some 12 months after the marriage to make her application. She said she did not understand. This was the third or fourth time she had been to court. She was asked whether she had any supporting witnesses. She replied that she did. She was asked whether they had provided witness statements. She remained silent. Mr Unigwe indicated that he was not aware of any witnesses. That completed cross examination.
10. In re-examination, Mr Unigwe asked the appellant if she accepted that she had overstayed her visa. She replied: "My life is here". The question was repeated. The appellant then replied she did. She was asked whether she had been making attempts to regularise her position after she overstayed. She said she had. She was asked if she had any evidence her husband was in hospital in Holland. She replied she only had his picture.
11. In reply to questions I then put for clarification, the appellant stated her husband had gone to attend a friend's wedding. When asked when that had been, she replied it was two weeks ago. She did not know which part of Holland he had travelled to. The visit was supposed to be a week long. He had flown there. She did not have any evidence of that. She did not like to ask him questions.
12. The appellant confirmed that the proxy marriage had taken place on 1 November 2015. I asked her to explain why the declaration stated that it had taken place on 12 June 2015. After some consternation, the appellant stated that there had been preparations and "*that is what we say*". I asked why the declaration gave the matrimonial home address as [O~] Road in June 2016 when it was the appellant's evidence that they had been living in [B~] House since the end of 2014. She replied: "*I don't use it much. That is how we do our marriage*". I asked the appellant for the name of her landlord at [B~] House. She replied it was Awula. I asked who Ubaidi Khan was (he is named as the landlord on the tenancy agreement). She repeated that it was Awula. When asked again who Mr Khan was, she replied he was Awula's brother. I asked when she had stopped paying £500 in rent. She replied that was more than a year ago. I asked why her husband's address was recorded as [K~] Road in May 2017 if he had been living with her at [B~] House. She replied he had been using that address. She could not explain why. Neither party had any questions

arising from mine and that completed the oral evidence. There were no other witnesses.

13. I then heard submissions from the parties. A full note of the submissions is set out in my Record of Proceedings.
14. Mr Melvin submitted that having heard the appellant's oral evidence, it was difficult to accept that there had ever been a genuine or subsisting marriage. The appellant had a poor history and did not accept that she had done anything wrong by overstaying. She had also attempted to deceitfully obtain a residence card on the basis of her relationship with a man who was married to someone else. There were gaps between trying to regularise her stay. The sponsor was elusive and there was no evidence that he was in hospital abroad. The picture could be of anyone. The appellant was deliberately obstructive in answering questions. There was no evidence that it took 5-6 months to prepare for a customary marriage or to obtain a certificate. There were also anomalies in the evidence as to the address the appellant and sponsor claimed to share. It would have been reasonable to expect evidence from the landlord/lady to confirm the current accommodation. The marriage was not genuine and subsisting and the respondent had discharged the burden to show that. The appeal had to fail.
15. Mr Unigwe submitted that it was not denied that the appellant had overstayed her visa but she had taken steps to regularise her stay since then. She said she liked London. She did not attempt to deceive anyone. She had married someone who was already married and she did not pursue that. Her husband was ill and so had been unable to attend but he had attended the error of law hearing. The anomaly in the dates of marriage were explained by the time it took to get the marriage done. There were no photographs of their relationship because they did not take pictures. The appellant explained why they had chosen to have a proxy marriage. There was ample evidence to show they resided together: tenancy agreement, utility bills, witness statements and the appellant's oral evidence. The appellant had been confused which led to her conflicting evidence. She had however made out her case on the balance of probabilities. The refusal was based on an unsubstantiated visit to the matrimonial home and the respondent did not want to accept his error. The appeal should be allowed.
16. That completed submissions. At the conclusion of the hearing, I reserved my determination, which I now give with reasons.
17. **Discussion and Conclusions**
18. I have considered all the evidence before me and have had regard to the submissions made. I bear in mind that the burden is on the respondent to show that the appellant has entered into a marriage of convenience and that the correct standard is one of the balance of probabilities.

19. My findings are not based on the alleged visit by immigration officers to the appellant's home; as I already confirmed in my previous decision, in the absence of any supporting evidence I can give no weight to what is said to have transpired during an enforcement visit. My findings are based entirely on the oral and documentary evidence before me.
20. I would state at the outset that the appellant was a very unimpressive witness. She was evasive and vague and simple questions had to be repeated before an answer, not always relevant, was forthcoming. I set out the reasons for this finding below along with other difficulties that arose from the material before me. My reasons are not given in any order of priority. Cumulatively, the factors identified led me to conclude that the respondent has discharged the burden of showing that the marriage was and is one of convenience.
21. The appellant claims to have married the sponsor on 1 November 2015 by proxy. This was confirmed at the hearing as the correct date of the marriage. The appellant also confirmed that her husband had attended the marriage ceremony. In support of the marriage, she adduced a marriage certificate issued on 1 December 2015 which gives the date of the marriage as 1 November 2015, as stated by the sponsor. Difficulties arise, however, between this document and the other supporting evidence.
22. First, I note that the appellant is described as a spinster on the marriage certificate. Plainly this is not correct as she was previously married to a different man and made an application for a residence card as a spouse in 2009. The appellant refused to discuss the matter at the hearing and I have no information as to the nature of the marriage or of any confirmation of annulment or divorce. I am told that the sponsor was present for the marriage ceremony but it is not his name and signature that appear on the certificate as the husband.
23. A further difficulty is that the accompanying declaration from the Chief Registrar dated 16 November 2015 makes no mention at all of the 1 November date but gives the date of the marriage as 12 June 2015. When this anomaly was put to the appellant, she could offer no sensible explanation and maintained that this was how marriages were performed and in submissions Mr Unigwe suggested that it took time to obtain the certificate. I can accept that a certificate may not be immediately forthcoming and indeed that is borne out by the fact that the certificate is dated 1 December 2015, a month after the stated date of marriage. The declaration, however, gives a date several months earlier. If it were the case that the marriage occurred on 12 June 2015, as that document maintains, I have no explanation as to why a different document should give the date of the marriage as 1 November 2015 or why the appellant should have stated in oral evidence that the latter date was correct. The sponsor's statement maintains that the marriage was officially registered on 1 November 2015 however it is plain from the certificate that that date pertains to the date *on which the marriage ceremony occurred* and not the date of registration.

24. A further issue arising from the declaration of 16 November concerns the place of residence given for the appellant and the sponsor in June 2015. The declaration states that "*both couple lived on the same address at 54 [O~] Road*". The appellant's evidence to me was, however, that she moved with her husband from [O~] Road to [B~] House (in fact it is [N~ B~ House) at the end of 2014 so it is unclear why some six months later the wrong address should be given. If the sponsor was present, he should have been aware of where he was living at the time. This matter was not resolved by the appellant either.
25. The certification from the First Deputy Judicial Secretary dated 30 November 2015 confirms the authenticity of the stamp, signature and seal of Kodwo Effirim Nunoo (but not the contents of the document itself), said to appear on the declaration of 16 November 2015. The difficulty with this is that it is not Mr Nunoo's details which appear on the declaration but those of one Oppong Y. Mensah. The same problem arises from the document issued by the Ministry of Foreign Affairs.
26. The copy of a page in the sponsor's passport, contained in the appellant's bundle, does not show that he was there in November 2015 or that he was there on 1 June 2015 when, according to the declaration, the customary procedure commenced.
27. The five copied photographs in the bundle which purport to have been taken at the wedding are so poorly reproduced as to be useless. In any event, they could be of anyone at any event, anywhere. No attempt was made to identify any of the people in the photographs.
28. When asked why she had chosen a proxy marriage rather than marrying in the UK, she said the sponsor wanted to do it that way. In her witness statement she gives other reasons.
29. Therefore, while the Tribunal accepted at the last hearing that a proxy marriage undertaken in Ghana is valid in the UK, there are serious issues arising over the reliability of the documentary evidence adduced by the appellant. These remain unresolved and raise concerns over whether a marriage ever took place.
30. Nonetheless, I now consider the matter on the basis that a marriage did take place; whether it was in June or in November 2015 does not matter for the following assessment.
31. The appellant's case is that she met the sponsor in February 2014 at a bus stop. Her witness statement and the sponsor's witness statement contain identical and unusual phrases which suggest that they were not individually prepared. Both maintain that soon after meeting they decided to get married "*to push our relationship further*". There are at least two other entire paragraphs that are virtually identical (starting with: "*I note with concern in the Home Office refusal letter...*" and "*I have to state here that our marriage ...*").

32. The appellant maintains in her witness statement that when they decided to live together, soon after meeting, they moved in to the home of a close family friend, Awulatu Ariori. This, I take, is the person the appellant stated in evidence was her landlady - Awula, and with whom she lives at [N~ B~] House. There are several difficulties with this claim. Firstly, the only tenancy agreement submitted for the [N~ B~] House property names Ubaidi Khan as the landlord. I take judicial notice of the fact that that appears to be an Asian name whereas Awulatu does not. After much prevarication as to who Ubaidi Khan was, the appellant eventually claimed he was the brother of Awulatu. I do not accept this is likely, given the problem with the names that I have identified and the fact that at first the appellant had no idea who this man was, only suddenly remembering he was her close family friend's brother after she was pushed for an answer.
33. The tenancy agreement covers the period from 21 July 2016 to 20 July 2017 and requires a monthly rental payment of £550. The appellant said that as Awulatu was a close friend, there was no further tenancy agreement, she did not "*charge much*" and they did not pay the rent, just £200-£300 towards bills. If that is the case, there is no explanation for why there was a tenancy agreement at all, why it was for the 12 month period stated and why rent used to be paid but is no longer required. Nor is it explained why the appellant gave a different amount for the rent in her oral evidence to the First-tier Tribunal (at paragraph 25 of the determination). There is no reliable evidence to confirm when the appellant and sponsor moved into that address. The commencement of the tenancy agreement post dates the sponsor's other evidence by some 18 months, conflicts with the information in the witness statement which was that the couple moved into that property shortly after they met in February 2014 and with the appellant's oral evidence that they moved there at the end of 2014.
34. I have had regard to the utility bills. These raise even more questions about where the appellant and sponsor were living. The gas bills give their address as [O~] Road for the period 1 October 2014 - 31 December 2014, 1 April 2015 - 30 June 2015 and 1 July 2015 - 30 September 2015. This does not, however, accord with the oral evidence of the appellant that they moved from [O~] Road at the end of 2014 or with either witness statement that they moved to [N~ B~] House when they decided to cohabit. The application for a residence card made by the appellant on 2 September 2016 gave [O~] Road as her address which is a further inconsistency with other evidence.
35. What is very strange is that one of the gas bills for [N~ B~] House in the names of the appellant and the sponsor covers a period where they are paying for utilities at the [O~] Road address - 1 July 2015 - 30 September 2015 (AB: 61 and 64). Stranger still, is the fact that the total of both bills is identical and that the bills show two totals which conflict with each other. The top part of the bill, in both cases, gives the amount due as £136.76. The lower half gives the total, in both cases, as £135.76. I do not accept that the appellant and sponsor would be paying for gas in two separate properties and that the amount due at both

properties would be identical and that the bills would both contain the same error. I have not been given the originals of the bills and can only conclude from these serious inconsistencies and peculiarities that they have been falsified.

36. The gas bill for [N~ B~] House commence from 1 July 2015 but as pointed out above, this was at a time when the appellant and sponsor were also paying for gas at [O~] Road and indeed continued to do so until 30 September 2015. Other bills for this address are dated 1 October 2015 - 31 December 2015, 1 January 2016 - 31 March 2016 and 1 April 2016 - 30 June 2016. other than the identical bill of £136.76 for this address and the [O~] Road address, there are further problems with the bills for [N~ B~] House. The January - March bill is for a total of £189.57 (AB:65), the same total as for the April - June bill (AB:66). The latter, however, also contains another total of £184.84 which conflicts with the amount stated elsewhere on the same bill. This appears to me to be another example of a badly falsified document.
37. There is no reliable evidence of where the appellant lives or of where the sponsor lives. I note that his pay slip for May 2017 gives the sponsor's address as 188 [K~] Road. This is an address which has never been mentioned and when asked to explain the appellant could only state that "*he used this address*". There is no explanation at all for why he would need to do that.
38. The sponsor stated that his first job in the UK was with Optima Site Solution from May 2016 until October 2017; however, his pay slips for several months during that period are for two differently named companies.
39. The sponsor did not attend the hearing before the First-tier Tribunal and the account given to the judge by the appellant that she had "*called him to remind him*", did not know why he had not attended and "*had changed his behaviour suddenly*" differed to her oral evidence to me which was that they had had an argument. I note that the sponsor did not attend the hearing before me either. It was said that he had fallen ill when on a trip to the Netherlands but other than a photograph the appellant claimed he had sent to her on her mobile phone, there was no evidence whatsoever to support the claim that he was receiving treatment in a Dutch hospital. The appellant was contradictory about when he had travelled, there was no evidence of his travels, she did not know where he was and did not know when he was coming back. Mr Unigwe submitted that the sponsor had attended the error of law hearing. I have no way of knowing who accompanied the appellant on that occasion but certainly the sponsor has been absent on both occasions when his evidence has been required.
40. For all the reasons given above, I have no hesitation in finding that the respondent has discharged the burden of showing that the marriage is a complete and utter sham. I find that the claim is a complete fabrication.
41. I am satisfied that the appellant is determined to remain in the UK by whatever means possible and that she is willing to lie and deceive the authorities to do so.



I note her complete denial that she had done anything wrong by overstaying since 1999. Although she sought to maintain that she had been attempting to regularise her stay ever since, the evidence is that she waited some ten years before first attempting to do so and then another few years before trying again. She clearly has no respect whatsoever for the laws of this country and appears to believe that because she likes living in London, she has a right to do so.

42. I find that there was never any genuine or subsisting relationship between her and the sponsor and that there is no intention to live together and start a family and never has been.
43. I also find that the problems I have highlighted in respect of the gas bills submitted as supporting evidence strongly indicate that the appellant has relied on forged documents and has sought to blatantly and cynically deceive the court. I bear in mind the standard I must consider to make that finding but there can be no other answer to the anomalies arising thereof. It is for the respondent to decide whether to pursue the matter of false evidence.
44. **Decision**
45. The appeal is dismissed.
46. **Anonymity**
47. I have not been asked to make an anonymity order and see no reason to do so.

Signed



Upper Tribunal Judge

Date: 14 December 2018