



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

Appeal Number: EA/05883/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 14 February 2019**

**Decision & Reasons
Promulgated
On 06 March 2019**

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

**CHARLES UGOCHUKWU NWACHUKWU
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Dr C U Ikegwuruka, legal representative, OBAC Legal Service

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission the decision of First-tier Tribunal Judge Mathews promulgated on 26 November 2018 who dismissed his application for an EEA Residence Card as the spouse of an EEA national exercising treaty rights in the United Kingdom.
2. The appellant's application was originally refused by the respondent on 9 August 2018 on the basis that the respondent was not satisfied that the EEA sponsor was free to marry, having been named as the EEA sponsor in

a previous application for an EEA Residence Card by another unnamed individual in 2014 on the basis of a proxy marriage to that person. There was no evidence that that marriage had been dissolved and therefore the respondent was not satisfied that what was seen as a second marriage to this appellant was valid.

3. The First-tier Tribunal dealt with the case on the papers and dismissed the appeal essentially on the basis that the grounds of appeal did not specifically dispute the sponsor's earlier marriage to a Ghanaian man and in all the circumstances there was a lack of any evidence from the sponsor addressing the issues in the case. On that basis, the First-tier Tribunal was not persuaded that the parties had been validly married as claimed given the previous marriage to a Ghanaian national. However, the grounds of appeal before the First-tier Tribunal did expressly dispute the validity or existence of the previous marriage in the form that was sent in with the appeal. It expressly stated that the sponsor had never been married before, she had never been married by proxy or otherwise and believes that someone must have stolen and used her identity.
4. There was further a bundle of documents from the appellant which were filed with the First-tier Tribunal on 30 October 2018, predating the appeal being dismissed on the papers, albeit it is not clear whether those papers were before the Judge. Within those papers is a copy of various documents pertaining to the appellant and the sponsor and in particular, witness statements from the appellant, from the sponsor and from the sponsor's sister, all of whom confirmed that there was no previous marriage by proxy or otherwise and that the sponsor had only entered into one marriage, which was with the appellant.
5. In these circumstances, it is clear that those documents have not been taken into account by the First-tier Tribunal Judge. That is a procedural error and amounts to an error of law in this case for failure to consider the available and relevant evidence. That is sufficient for the decision to be set aside. The appeal therefore needs to be remade and I remit the matter to the First-tier Tribunal given that there are no findings of fact as to the underlying application or validity of marriage in light of the evidence submitted.
6. During the hearing, the respondent handed up a decision on appeal from the hitherto unnamed Ghanaian national who relied on a proxy marriage to the sponsor in an application for an EEA Residence Card which lends support to the sponsor's claim that she had not been married before, albeit on the basis that the sponsor's identity card was not genuine. This is relevant evidence to be considered by both parties in the remaking of the appeal.
7. Further, the respondent's initial reasons for refusal do not examine any of the other requirements of the Immigration (European Economic Area) Regulations 2016 as to whether an EEA Residence Card should be issued and it is important in this case for effective case management and for the

appellant and sponsor to know the case against for them, for the respondent to actively review this file upon receipt of the appellant's bundle before the appeal is reheard and confirm any further reasons for refusal sufficiently in advance of the relisted appeal hearing.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it is necessary to set aside the decision.

I set aside the decision of the First-tier Tribunal and remit the appeal to the First-tier Tribunal (Newport hearing centre) for a de novo hearing, to be heard by any Judge except First-tier Tribunal Judge Mathews. Any further evidence upon which either party wishes to rely should be filed and served no later than 14 days before the relisted appeal hearing.

No anonymity direction is made.



Signed
2019

Date 28th February

Upper Tribunal Judge Jackson