



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

Appeal Number: EA/09637/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 21 February 2019**

**Decision & Reasons Promulgated
On 28 February 2019**

Before

UPPER TRIBUNAL JUDGE FINCH

Between

DENNIS AGYRI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A. Radford of counsel, instructed by Turpin Miller LLP

For the Respondent: Ms J. Isherwood, Home Office Presenting Officer

DECISION AND REASONS

BACKGROUND TO THE APPEAL

1. The Appellant is a national of Ghana. He entered the United Kingdom as a visitor on 20 July 2010. On 8 May 2013 the Appellant was part of a customary marriage by proxy to a Dutch national. The marriage took place under the provisions of the Customary Marriage and

Divorce (Registration) Law 1985. He applied for a residence card as the spouse of a Dutch national, but his application was refused in January 2014. In March 2016 he made a further application as the unmarried partner of an EEA national, but this was refused on 6 September 2016.

2. On 10 August 2017 the Appellant made a further application for a residence card as the spouse of an EEA national. The Respondent refused his application on 27 November 2017. He stated that the Appellant had not provided adequate evidence to show that he qualified for a right to reside. This was because he did not accept that the Appellant had provided the necessary documentation to show that his marriage was conducted by a competent authority. The Respondent also asserted that the person concerned must be someone who is authorised to handle marriages in Ghana.
3. The Appellant is no longer living with his EEA wife but is accommodated by her mother and they are not yet divorced. The Appellant's mother in law supports him and his wife and child.
4. In a decision, promulgated on 7 December 2018, First-tier Tribunal Judge Parkes dismissed the Appellant's appeal and on 4 January 2019 First-tier Tribunal Judge O'Callaghan granted the Appellant permission to appeal. This was on the basis that it was arguable that First-tier Tribunal Judge Parkes had failed to consider material matters and also failed to canvas an issue which had not been expressly raised within the Respondent's decision letter, thereby denying the Appellant the opportunity to address an issue of concern.

ERROR OF LAW HEARING

5. The Appellant had made a Rule 15(2A) application to submit further evidence and this was granted and therefore the Appellant has been granted permission to rely on a Supplementary Bundle, if an error of law is found. The start of the hearing was delayed until 2.30 as not all of the pages of the Appellant's Bundle had been provided to the Upper Tribunal. When the hearing reconvened, both counsel for the Appellant and the Home Office Presenting Officer made oral submissions and I have referred to the content of these submissions, where relevant, in my decision below.

ERROR OF LAW DECISION

6. Regulation 14(2) of the Immigration (European Economic Area) Regulations 2016 (“the 2016 Regulations”) states that:

“A person who is a family member of a qualified person residing in the United Kingdom under paragraph (1)...is entitled to remain in the United Kingdom for so long as P remains the family member of that person or EEA national”.

7. In his decision letter, dated 27 November 2017, the Respondent did not challenge the fact that the Appellant had been in a genuine relationship with his wife. He also stated that:

“as your marriage was conducted in Accra, Ghana where proxy marriages are recognised by law, the Home Office may recognise your proxy marriage to your sponsor if documentation to demonstrate that the marriage was conducted by a competent authority within Ghana is also provided”.

8. This approach accorded with the decision in *Awuku v Secretary of State for the Home Department* [2017] EWCA Civ 178 where the Court of Appeal found that the approach taken by the Upper Tribunal in *Kareem (Proxy marriages – EU Law)* [2014] UKUT 24 (IAC) was not correct. Instead, the Court of Appeal held that “the law of England and Wales recognises proxy marriage if valid by the *lex loci* celebrations. Accordingly, a spouse of an EU national who has concluded such a marriage will qualify as a family member within Article 2 of the Directive”.

9. In the refusal letter the Respondent also stated that “the person must have authority to certify that the marriage is valid. That person must be someone who is authorised to handle marriages in Ghana. It cannot for example, be someone from the High Commission, who may handle immigration matters but does not have any jurisdiction over marriages.

The competent authority must be someone akin to a UK registrar, who is authorised to handle marriages”.

10. At the hearing before First-tier Tribunal Judge Parkes the Appellant relied on a Form of Register of Customary Marriages that stated that a marriage had taken place under Ghana's Customary Marriage and Divorce (Registration) Law 1985 on 8 May 2013. The document had also been signed by the Registrar of the Accra Metropolitan Assembly Marriage District on 14 June 2013. He did not raise any issues with the content or format of this document but relied on the fact that there was an inaccuracy in another document relied upon by the Appellant. In particular, he noted that the letter from the Accra Metropolitan Assembly Legal Department, dated 17 April 2018, stated that the marriage had been registered on 14 May 2013 not 14 June 2013, as said on the "marriage document". This mistake was rectified in a further letter from the Accra Metropolitan Assembly Legal Department, dated 16 October 2018, which was also before the First-tier Tribunal. However, First-tier Tribunal Judge Parkes would not accept this second letter as it did not state how it was that the error was made or how it was corrected and he noted that neither letter stated how the contents of the certificates being certified were verified.
11. In particular, First-tier Tribunal Judge Parkes found that the only way that the marriage certificate could have been certified as being accurate would be it being compared to the Register itself. If that was the case it would not have been possible to put the wrong month in the first letter. (However, he did not take into account the possibility of a simple human error having been made.)
12. First-tier Tribunal Judge Parkes then referred to the case of *Tanveer Ahmed v Secretary of State for the Home Department* [2002] UKIAT 00439* and found that he could place no weight on the "marriage document". However, in paragraph 38 of this decision, the Upper Tribunal found that "the decision maker should consider whether a document is one on which reliance should properly be placed after looking at all the evidence in the round". I find that this case is relevant to EEA appeals as such appeals are conducted under the same Procedure Rules as asylum and immigration appeals.
13. First-tier Tribunal Judge did not refer to the other evidence relied upon by the Appellant in relation to his marriage. For example, there was a Statutory Declaration made by the Appellant's and his wife's uncles, Francis Nyariloh and O. K. Sekyere. dated 24 October

2016, which confirmed that they attended the customary marriage on 8 May 2013 and that a dowry was paid and that they had given their full consent and approval to the marriage. There was also a document, dated 14 October 2016 and signed by Richard Apietu, Second Deputy Judicial Secretary of the Judicial Services of Ghana, which confirmed that George B. Kom who signed, stamped and sealed the uncles' declaration was a notary public. In addition, there was a further document, dated 25 October 2016 and signed by Solomon Korbieh, Assistant Director, Legal and Consular Bureau, Ministry of Foreign Affairs and Regional Integration, which confirmed that it was Richard Apietu's signature on the earlier confirmatory document.

14. In addition, there was also a document, dated 19 October 2016, in which Richard Apietu, Second Deputy Judicial Secretary of the Judicial Services of Ghana, attested that Frank Adeeku, whose stamp, signature and seal appeared on the reverse side of "marriage document" was a notary public of Ghana. There was also a further document signed by Hilda Hinidza-Elluh, the Assistant Director of the Ministry of Foreign Affairs and Regional Integration and dated 20 October 2016, which confirmed that Richard Apietu had signed the previous document. The reverse side of the "marriage document" also discloses that she signed and legalised this document on 21 September 2018.
15. The failure by First-tier Tribunal Judge Parkes to take into account any of this additional evidence or the photographs said to be of the customary marriage and evaluate it amounted to an error of law in the context of the starred decision in *Tanveer Ahmed*. It was also a wider breach of procedural fairness, in so far as the Judge did not take into account the totality of the case being made by the Appellant at the appeal.
16. In paragraph 13 First-tier Tribunal Judge Parkes also stated that there was "no reliable evidence to show that the actual requirements for a valid proxy marriage would be in Ghana and no evidence to show in what way they were validly complied with". He added that a "bald statement that all requirements were met would be insufficient...".
17. This was not a basis on which the Respondent had refused to grant the Appellant a residence card and it was confirmed in paragraph 5 of First-tier Tribunal Judge Parkes decision that there was only one basis on which the application had been refused. The Appellant was not

asked by the Judge at the hearing to address any further allegation that he could not meet the actual requirements for a valid proxy marriage in Ghana. Therefore, the decision by First-tier Tribunal Judge Parkes to proceed to dismiss his appeal on this alternative basis also amounted to an error of law. Procedural fairness requires that the totality of a case made against an Appellant is put to him at a hearing so that he has a proper opportunity to respond to it.

18. As a consequence, the decision by First-tier Tribunal Judge Parkes did contain errors of law.

DECISION

- (1) The Appellant's appeal is allowed.
- (2) The appeal is retained in the Upper Tribunal and is re-made, as detailed below.

Nadine Finch

Signed
Upper Tribunal Judge Finch

Date 26 February 2019

RE-MAKING

1. As noted above, the only basis upon which the Appellant had been refused a residence card was that his customary proxy "marriage document" had not been certified by someone who was authorised to handle marriages in Ghana.
2. I have taken into account the fact that the "marriage document" itself was certified by a Registrar from the Accra Metropolitan Assembly Marriage District and Richard Apietu, Second Deputy Judicial Secretary of the Judicial Services of Ghana, had attested that Frank Adeeku, whose stamp, signature and seal appeared on the reverse side of "marriage document" was a notary public of Ghana. There was also a further document signed by Hilda Hinidza-Elluh, the Assistant Director of the Ministry of Foreign

Affairs and Regional Integration and dated 20 October 2016, which confirmed that Richard Apietu had signed the previous document. The reverse side of the “marriage document” also discloses that she signed and legalised this document on 21 September 2018.

3. Richard Apietu, Second Deputy Judicial Secretary of the Judicial Services of Ghana, had also confirmed that George B. Kom who signed, stamped and sealed the Statutory Declaration made on 24 October 2016 by the Appellant’s and his wife’s uncles, Francis Nyariloh and O. K. Sekyere. was a notary public. In addition, there was a further document, dated 25 October 2016 and signed by Solomon Korbieh, Assistant Director, Legal and Consular Bureau, Ministry of Foreign Affairs and Regional Integration, which confirmed that it was Richard Apietu’s signature on the earlier confirmatory document.
4. The evidence indicated that legal officers from the Accra Metropolitan Assembly Marriage District, the Judicial Services of Ghana and the Ministry of Foreign Affairs and Regional Integration Legal Department were all content that the Appellant had undertaken a legal customary marriage in Ghana.
5. I accept that there had been one letter from the Accra Metropolitan Assembly Legal Department, date 17 April 2018, that stated that the marriage had been registered on 14 May 2013 not 14 June 2013. However, this error was corrected in a subsequent letter, dated 16 October 2016 from the Accra Metropolitan Assembly Legal Department. In the light of the other evidence relating to the validity of the marriage document and applying the principles outlined in *Tanveer Ahmed* and the balance of probabilities, I find that the discrepancy contained in the letter dated 17 April 2018, was as a result of a human error.
6. I have also taken into account the evidence previous admitted for the purposes of any re-hearing and, in particular, the letter from Accra Metropolitan Assembly Legal Department, dated 21 January 2019, which admitted that an error had been made in the letter dated 17 April 2013 by one of its employees. In a further letter, dated 8 February 2019, the Accra Metropolitan Assembly Legal Department confirmed that the “marriage document” was signed by a competent Registrar duly authorised to sign

all said certificated and the marriage Registry vets all documents before signing them.

7. For all of these reasons, I allow the Appellant's appeal against the decision, dated 24 November 2017, to refuse to issue him with a residence card.

DECISION

- 1. The Appellant's appeal is allowed.**

Nadine Finch

Signed
Upper Tribunal Judge Finch

Date 26 February 2019