Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: UI-2022-001897; UI-2022-001898; UI-2022-001900; & UI-2022-001901
[EA/04667/2020, EA/04668/2020, EA/04669/2020, EA/04671/2020]

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 12th August 2022	**On 10th October 2022**

Before

UPPER TRIBUNAL JUDGE KEITH
DEPUTY UPPER TRIBUNAL JUDGE STOUT

Between

AGNES NAANA RHABBLES (1)
BENJAMIN KWOLFIE (2)
RHODA KWOLFIE (3)
ALVIN KWOLFIE (4)
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE ENTRY CLEARANCE OFFICER

Respondent

Representation:
For the appellant: Ms R Spio-Aidoo, Solicitor, R Spio & Co Solicitors
For the respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

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1. These are the approved record of the decision and reasons which were given orally at the end of the hearing on 12th August 2022.

2. This is an appeal by the appellants against the decision of First-tier Tribunal Judge Monson (the 'FtT'), promulgated on 19th August 2021, by which he dismissed their appeal against the respondent's refusal of their applications for EEA family permits under the Immigration (EEA) Regulations) 2016 as the partner (the first appellant) and the step-children (second to fourth appellants) of the sponsor. The use of "partner" is in neutral terms as the sponsor and first appellant state that they are validly married, while the FtT concluded that they were not.

3. In essence, the respondent was concerned that there was a delay between the date of the claimed customary marriage between the sponsor and the first appellant in January 2013 and its registration in October 2019 and the documents were not accepted as reliable evidence of the genuineness of their relationship.

4. The appellants appealed against the respondent's decision, citing in support in the grounds of appeal the authority of NA (customary marriage and divorce – evidence) Ghana [2009] UKIAT 0009 as authority for the proposition that marriage registration was not mandatory. The marriage was registered in accordance with Ghanaian laws in 2019.

The FtT's decision

5. The FtT considered the sponsor was a Dutch national (§4) and that the couple had claimed to have entered into a customary marriage in 2013, and that all relevant Ghanaian laws had been complied with. At §10, the FtT noted that the sponsor had never been a Ghanaian national, having previously fled Liberia. The FtT recorded the sponsor's evidence that members of the first appellant's family had stood in for his family for the purposes of the customary marriage.

6. The FtT noted at §18 the respondent's submissions that as per NA, the sponsor's account of the customary marriage, as described, did not meet all of the relevant criteria under Ghanaian law.

7. The FtT also noted the appellant's representative's submissions at §19, which were that under Ghanaian law, whilst the consent of both partners' families was required, relatives of one partner could stand in for relatives of the other, in *loco parentis*.

8. The FtT made his findings at §21 onwards. He cited NA, and accepted the appellant's submission that the marriage did not have to have been registered, in order to be valid. The FtT went on to make positive findings about the nature of the wedding ceremony at §§27 to 28 but identified his concerns at §29 onwards. In particular, at §31, he concluded that a valid customary marriage required both parties to be Ghanaian citizens. The sponsor had never been a Ghanaian citizen. The second was that the first

appellant had sworn a statutory declaration in which she said that the marriage had taken place in the presence of members of the respective families, which on the face of it was not truthful, as none of the sponsor's family had been present at the ceremony. Not only was the registration not shown to be valid because it was obtained by filing statutory declarations which were incorrect, but the marriage itself was not valid (§33).

9. For these reasons, the FtT dismissed the appellant's appeal.

The grounds of appeal and grant of permission

10. Having relied upon NA, the appellants asserted that it was a material error of law for the FtT to have relied on NA, on the basis that the respondent had not refused their applications on the ground of invalidity of the couple's marriage. This appears to have been raised of the FtT's own initiative and in circumstances where the parties were not given an opportunity to make submissions on the issue. The part of NA which suggested the customary marriage was not possible between a non-Ghanian and a Ghanaian citizen had been superseded and this was recognised in the respondent's policies. Moreover, it was clear from the sponsor's evidence, as recorded at §§14 and 17, that the sponsor was unaware of his biological family and regarded the first appellant's family as his own. The FtT had not identified the provision of Ghanaian law that required the person's nominated family member for the purpose of authorising a customary marriage to be the biological family of the person. Instead, the appellants contended that through their acting *in loco parentis,* those authorising a person's marriage need not be biologically related to them at all.

11. First-tier Tribunal Judge Austin granted permission on 27th April 2022. The grant of permission was not limited in its scope.

The hearing before us

12. Mr Melvin helpfully outlined, when we queried the documents that we were being asked to consider, that there was in fact a Rule 24 response that had been filed on 20th May 2020 and regrettably had not been furnished to us before now, without criticism of either Mr Melvin or the respondent. It is worth citing it briefly now. It states:

> *"The respondent to this appeal does not oppose the appellant's application for permission to appeal and invites the Tribunal to determine the appeal with a fresh oral hearing to consider the appellants' appeal. The FtT appears to have erred in his approach to consideration of the Ghanaian customary marriage. Material has been lodged on the appellants' behalf, which refers to a UKBA document, 'Customary marriage and divorce proxy marriages contracted in Ghana' of 17th January 2012. This confirms that only one party to the marriage needs to be Ghanaian."*

13. The consequence is that the respondent does not oppose the appellants' appeal and accepts that the FtT erred in law. However, the respondent continues to contest the underlying appeal, which will need to be remade, and the parties agreed that we should proceed to remake the decision at this hearing.

Conclusions

14. We accept, as per the respondent's Rule 24 response, that there are errors of law for the reasons outlined in the grounds but for completeness, that there was a procedural error in circumstances where issues were taken by Judge Monson that were not in the refusal decision and, crucially, to which the parties not had an opportunity to respond.

15. We therefore set aside the FtT's decision, without preserved findings of fact.

Disposal

16. We come on to the question of remaking of the appeal. We have considered paragraph 7.2 of the Senior President's Practice Statement and the appropriateness of retaining remaking in the Upper Tribunal. Both representatives invited us to remake in the Upper Tribunal today in the context that the substantive facts were no longer in dispute.

17. We therefore remake the appeal. Judge Monson had accepted that the relationship between the first appellant and the sponsor was genuine and subsisting. We have not preserved any findings of fact, but Mr Melvin pragmatically did not seek to re-argue that issue. We find that the relationship was, and is, genuine and subsisting.

18. Whilst he made no formal concession, Mr Melvin also indicated that the respondent would no longer be contesting that the marriage was invalid either on the basis that a non-Ghanaian national could not enter into a customary marriage, or in this particular case, because parties not biologically connected to the sponsor, i.e. members of the appellant's family, had acted in *loco parentis* for the sponsor in consenting to the marriage. Neither of these issues were contested. On the basis that there are no outstanding disputes of law or on the facts, we are satisfied that the appellants' appeals should succeed.

Decision on error of law

19. We conclude that there were material errors of law and we set aside the FtT's decision.

Decision on remaking

20. We remake the appellants' appeals by allowing them. The respondent's refusal of EEA family permits is not upheld.

Signed J Keith   Date: 4th September 2022

Upper Tribunal Judge Keith