



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006068
First-tier Tribunal No:
EA/04043/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 19 April 2023

Before

UPPER TRIBUNAL JUDGE BRUCE
DEPUTY UPPER TRIBUNAL JUDGE HOLMES

Between

EUGENE BISMARCK BUABENG
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Ayrana for Adam Bernard Solicitors
For the Respondent: Mrs Nolan, Senior Home Office Presenting Officer

Heard at Field House on 20 March 2023

DECISION AND REASONS

1. The Appellant, a citizen of Ghana claims to have married a Dutch citizen in Accra on 20 November 2020. As such he claims to be her spouse, and thus the Family Member of an EEA citizen. On that basis he applied for a Family Permit under the EUSS scheme on 30 June 2021. His application was refused on 2 February 2022 because the Respondent was not satisfied that he held that status.
2. The Appellant lodged an appeal, requesting that his appeal be dealt with on the papers submitted to the Tribunal. As such it was dismissed by Judge Rose in a decision promulgated on 26 October 2022. The Appellant sought permission to appeal that decision to the Upper Tribunal, and permission was granted to him by decision of Judge Oxlade of 13 December 2022.
3. The grounds argue that in dismissing the appeal the Judge went beyond the matters relied upon by the Respondent when refusing the application, so that the Appellant had no opportunity to answer them, and thus the hearing of the appeal was procedurally unfair.

4. The Respondent served no Rule 24 response to the grounds of appeal.
5. Thus the matter comes before us.

The hearing

6. Before the appeal was called on we indicated to Mr Ayrana (who had attended on behalf of the Appellant) that the Upper Tribunal had received an email, apparently from the sponsor, and written in response to the receipt by her of the Notice of Hearing for today. The email which appears to have been sent by the sponsor, attaches copies of her passport, and can be summarised as a denial that she has ever undertaken a ceremony of marriage with the Appellant. We indicated that copies would be made available to him, and invited him to take instructions from the Appellant before the appeal was called on for hearing.
7. When the appeal was called on for hearing we were informed that Mr Ayrana had chosen to leave the building, having indicated to our clerk that he would not be returning to present the appeal.
8. There was no application for an adjournment, and in the circumstances we were satisfied that it was in the interests of justice to proceed with the hearing in the absence of any representation for the Appellant.

Error of Law?

9. The grounds are drafted on the basis that the sole reason offered by the Respondent for the refusal of the application was that the signature to the marriage certificate which purported to be that of the Appellant, differed significantly from the example of his signature contained within his passport.
10. The relevant passage of the refusal decision reads however as follows;

“Upon assessment your signature on the marriage certificate differs from your signature on your Ghanaian passport.

It is noted that you have not provided any evidence to demonstrate that you attended the ceremony.

You have not provided any other relationship evidence.”
11. As such we are satisfied that the grounds misrepresent the basis for the decision under appeal. That decision did not require the Judge to focus simply upon the narrow point of whether the two signatures upon two different documents that purported to be both made by the Appellant were so dissimilar as to suggest one had been made by a third party. Indeed, had the Judge taken that approach, he would in our judgement have fallen into error.
12. There can be no arguable error on the part of the Appellant in the Judge’s approach to the issue of the signatures, since he was not satisfied that they were sufficiently dissimilar for any differences between them to be the basis for any adverse decision on the application [D5].
13. We are satisfied that, although briefly stated, the Respondent took three points against the Appellant when concluding that she was not satisfied the couple were married, and so refusing the application. First that the signatures purporting to be

those of the Appellant appeared to be materially different between that which is contained within his passport and that which is borne by the marriage certificate. Second that there was no other evidence of the attendance by either the sponsor or the Appellant at the marriage ceremony. Third that there was no other evidence of any subsisting relationship between the Appellant and the sponsor. We say “no other evidence” because we conclude that is what must have been meant by the Respondent in taking the second and third points, since the marriage certificate and its content was itself evidence of both attendance at the ceremony and a relationship between the two individuals.

14. Since the decision relied upon the failure of the Appellant to provide evidence of attendance at the ceremony, and of the existence of a genuine relationship of marriage, and since the skeleton argument filed on the Appellant’s behalf engaged with those points, we can see no arguable error of law in the Judge engaging with the lack of evidence relied upon by the Appellant beyond the mere existence and content of the marriage certificate, to demonstrate that he was in a genuine and subsisting relationship of marriage with the sponsor. Had the Judge failed to do so, he would in our judgement have fallen into error. Accordingly, the approach taken did not result in an unfair hearing as the grounds assert.

Conclusions

15. In the circumstances we are not satisfied that the Judge fell into any material error of law in his approach to the evidence before him, and his decision to dismiss the appeal is confirmed.

Notice of Decision

The decision promulgated on 26 October 2022 did not involve the making of a material error of law. The decision to dismiss the appeal is confirmed.

JM Holmes
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
20 March 2023