



**Upper Tribunal
(Immigration and Asylum Chamber)
UI-2023-003319**

Case No:

Tribunal No: EA/10835/2022

First-tier

THE IMMIGRATION ACTS

Heard at Field House

**Decision and Reasons
Promulgated**

On 6 October 2023

20th October 2023

Before

Deputy Upper Tribunal Judge MANUELL

Between

**MR JACOB KWAME ZIZINEKPE
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Azmi, Counsel

(instructed by Wisemart Solicitors)

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

DECISION AND REASONS

1. Permission to appeal was granted by First-tier Tribunal Judge Bibi against the decision to dismiss the

Appellant's EUSS appeal made by First-tier Tribunal Judge Young-Harry in a decision and reasons promulgated on or about 3 July 2023.

2. The Appellant, a national of Ghana born on 7 May 1977, had applied for settled/pre-settled status as a spouse under Appendix EU of the Immigration Rules. The application was refused by the Secretary of State for the Home Department on 28 October 2022. It was not in dispute that the Appellant had overstayed his visit visa which expired in 2018.
3. Judge Young-Harry found that the Respondent had discharged the legal burden of proving that the marriage relied on was one of convenience, and that the Appellant had failed to rebut the evidential burden of proving otherwise. Judge Young-Harry found that there were significant inconsistencies between the answers given by the spouses at their Home Office marriage interviews. They had limited knowledge of one another, their respective backgrounds, families and friends. Further inconsistencies emerged during the evidence given at the hearing by the spouses and by the Appellant's cousin, in particular in relation to bank deposits. There was limited evidence of cohabitation. The photographs produced were not of assistance. The Appellant failed to meet the requirements of Appendix EU.
4. Permission to appeal was granted by Judge Bibi because she considered that it was arguable that the judge had given insufficient weight to the photographs and the supporting statements of family and friends.
5. The Respondent filed a rule 24 notice dated 11 August 2023, opposing the onwards appeal. It was submitted that the judge had reached properly reasoned and sustainable findings on the evidence, which had been fully considered. The grounds merely expressed disagreement with the judge's decision. There was no error of law and the determination should be upheld.
6. On the day prior to the Upper Tribunal hearing, the Appellant applied for leave to amend the grounds of appeal to include an assertion that the judge had failed to consider all of the evidence presented by the Appellant, including a second supplementary bundle, and had given inadequate weight to the Appellant's evidence. The application was refused as it was made

far too late without any satisfactory reason for the delay and was only spelling out in more detail a complaint which had already been made.

7. Mr Azmi for the Appellant relied on the grounds of appeal and the grant of permission to appeal. He submitted in summary that the judge had not adequately particularised the inconsistencies which she considered affected the Appellant's case. The judge's approach had been perfunctory. There was no consideration of the Appellant's WhatsApp messages or of the photographs. The Appellant could not be sure what evidence had been considered by the judge. The determination was unsafe and should be set aside.
8. Ms Isherwood for the Respondent relied on the rule 24 notice and submitted that there was no material error of law at all. Sustainable findings had been reached and explained. The Appellant's documents were required to be filed with the application, and the Appellant was not entitled to serve supplemental evidence. The judge had pointed out that the witness statements lacked detail. The appeal had no merit. The onwards appeal should be dismissed.
9. There was nothing which Mr Azmi wished to raise by way of reply.
10. The tribunal finds that there was no error of law in Judge Young-Harry's decision, so that the onwards appeal must be dismissed. There is no reason to doubt the judge's statement that she had considered all of the evidence submitted, even if specific items were not referred to: see [4] of the decision. The judge correctly determined first of all whether or not the Respondent had established a *prima facie* case, and then moved to a review of the Appellant's evidence.
11. As has been noted above, the judge's decision turned on the witness evidence, which was examined with care. The judge set out the various significant inconsistencies in detail from [11] to [16] of the decision. The judge accepted no part of the witness evidence concerning a large deposit into the sponsor's bank account. That was an inconsistency which plainly attracted weight, in the context of a claimed Ghanaian customary marriage where there was no obvious connection between the parties and the Appellant was in the United Kingdom unlawfully.

12. The judge found that there was an absence of documentary evidence of cohabitation and that the photographs produced (of which there were a number) failed to demonstrate a genuine or subsisting marriage. Again sufficient reasons were given for those findings which were clearly expressed.
13. Mr Azmi's criticism of the decision seemed predicated on the basis that the decision needed to be much longer. That is not so. The judge's decision was incisive as well as cogent and concise, and explained precisely to the Appellant why his appeal had failed. Nothing about the judge's findings can be characterized as being against the weight of the evidence or otherwise surprising.
14. In the tribunal's judgment the experienced First-tier Tribunal Judge reached sustainable findings, in the course of a decision and reasons which securely resolved the issues.

DECISION

The Appellant's appeal to the Upper Tribunal is dismissed.

There was no material error of law in the First-tier Tribunal's decision and reasons, which stands unchanged.

Signed

Dated 12 October 2023

R J Manuell

Deputy Upper Tribunal Judge Manuell