



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/01206/2013

**THE IMMIGRATION ACTS**

Heard at Field House  
On 28 June 2013

Oral Determination Promulgated  
On 24 October 2013

Before

UPPER TRIBUNAL JUDGE JORDAN

Between

MS MARY BIOH

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr E Akohene, Counsel, instructed by Afrifa and Partners Solicitors  
For the Respondent: Mr P Nath, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant is a citizen of Ghana who was born on 18 May 1978. She appeals against the determination of First-tier Tribunal Judge Woolf promulgated on 19 April 2013 dismissing her appeal against the decision of the Secretary of State to refuse her

a residence card as confirming her right of residence in the United Kingdom as the spouse of an EEA national who is a qualified person in that he is exercising Treaty rights in the United Kingdom being himself a citizen of the Union.

2. The basis for the decision made by the Secretary of State was in relation to the documentation which was provided dealing with the validity of the marriage which had taken place in Ghana. This was a customary marriage which had taken place and in relation to that customary marriage there was from the Republic of Ghana Judicial Service a document by the Second Deputy Judicial Secretary confirming that there was a document which had been notarised by a Mr Alexander Kofi Baah and that he was on a list of Notary Publics in Ghana. Consequently the Second Deputy Judicial Secretary was able to say that Mr Kofi was a Notary Public. The document itself that he notarised was a document which referred to a marriage which took place or is said to have taken place in Ghana where both the husband and the wife were involved in a customary marriage which was agreed to by the parents of the bride and bridegroom.
  
3. There was however before the Secretary of State information from the Accra Metropolitan Assembly and Ghana legal sites which dealt with customary marriages. It is perfectly acceptable to enter into a customary marriage in Ghana and more importantly such marriages are recognised in the United Kingdom. The information before the respondent was that there is a formal statutory declaration which has to state the residence of both the husband and the wife, in this case the sponsor and the appellant, and the statutory declarations which were provided did not do that. This was a point that was raised by the Secretary of State in her letter of 19 December 2012. That material may be right or it may be wrong but it was a point that having been raised had to be addressed by the appellant. There is a process of registration. It is not said on the part of the Secretary of State that registration is necessary but once that process of registration is gone through it is for the judge to attach such weight as he may to the documentary evidence in order to satisfy himself that the documentation can be relied upon. In view of the fact that the statutory declaration did not appear to be consistent with the information that the Secretary of State had obtained about the formalities of such documents, it seems to me it was open to the decision maker to raise the point and, when it had not been answered on appeal, it cannot be said that it was perverse or irrational on the part of the Immigration Judge to at least attach some weight to it. But as she said in paragraph 40 she did not consider that fact to be determinative, rather it caused her to be put on enquiry as to whether she could attach weight to the marriage certificate. There was in paragraph 15.5.2 of the guidance provided by the Home Office the following passage:

“Since it is possible for Ghanaians living outside Ghana to obtain the proper certificates of marriage or divorce, authenticated by the Ghanaian High Commission, this should be requested in all cases where the marital status of an applicant is important. Statutory declarations made by a parent or other family elder of either party to an unregistered customary marriage should only be accepted where they complete a chain of otherwise first class documentary evidence of a claim to citizenship.”

4. The guidance does not form part of the Rules and is not therefore a requirement but it was relied upon by the Secretary of State in questioning the authenticity of the documentation in relation to this customary marriage and once again it provided the appellant with the clearest indication that it would be wise if she wished to place weight upon the marriage certificate to have it authenticated by the High Commission. In saying that I make it perfectly plain that I am not imposing a requirement which is not found under the Rules nor am I imposing a requirement for corroboration which is not required as a matter of law in such cases. However, where there is a means by which a marriage certificate in relation to a customary marriage can be authenticated, it is simply commonsense if it is going to be relied upon, and the Secretary of State raises objection to it, to have that marriage certificate authenticated. That was exactly the point that was made by the judge in paragraph 40 of her determination. She said:

“I accept that this is not a requirement of the 2006 Regulations and that failure to present certificates which have been authenticated by the Ghanaian High Commission is not fatal to the appellant’s case. It is nevertheless a course which the appellant and/or her representatives could not fail to be aware was open to her following the receipt of the reasons for refusal letter.”

5. I agree with those sentiments. It seems to me that once one is presented with a clear call to authenticate a document, that the authentication of that document is permissible and obtainable in the United Kingdom by approaching the Ghanaian High Commission, it is simply folly not to rely upon that process of authentication if one wishes in due course to have weight attached to a marriage certificate in circumstances where the authenticity of the marriage is brought into question.
6. There were other reasons which were put forward by the judge in relation to discrepancies in the evidence. Reliance on those discrepancies was open to the judge but they matter very little compared with the points that I have already referred to. In those circumstances I have concluded that it cannot be said to be irrational or perverse for the Immigration Judge not to be satisfied that there had been a validly celebrated marriage in Ghana when the matter could have been put beyond doubt by an authenticated copy of the marriage certificate from the Ghanaian High Commission.

## DECISION

The Judge made no error on a point of law and the original determination of the appeal shall stand.

ANDREW JORDAN  
UPPER TRIBUNAL JUDGE