



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

Appeal Number: IA/01083/2014

THE IMMIGRATION ACTS

Heard at Field House

On 12th September 2014

**Determination
Promulgated**

On 18th September 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

**MR BRUTUS ODAME ASANTE
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Blundell, Counsel instructed by Kilic & Kilic Solicitors
For the Respondent: Mr Parkinson, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Mr Brutus Odame Asante, date of birth 30 June 1967, is a citizen of Ghana. Having considered the facts there is no need for an anonymity direction.
2. This is an appeal by the appellant against the determination of First-tier Tribunal Judge M A Khan promulgated on 27th June 2014, whereby the

judge dismissed the appellant's appeal against the decision of the respondent dated 5 December 2013 to refuse the appellant a residence card. The appellant was seeking a residence card as evidence of a right to reside in the UK as the spouse of an EEA qualified person.

3. By decision made on 22 July 2014 permission to appeal to the Upper Tribunal was granted. The case now appears before me to determine in the first instance whether or not there was a material error of law in the original determination.
4. As a spouse the appellant would be seeking a residence card under Regulation 7. By the time of the hearing before me the appellant was as an alternative seeking to rely upon Regulation 8 on the basis that he was in a durable relationship with his partner and was entitled by reason thereof to have the respondent exercise a discretion in his favour and grant him a residence card. In Article 8 there is a discretion that is to be exercised by the respondent.
5. The appellant came to the United Kingdom in 2006. He claims to have met his spouse, the sponsor Ms. Maria Da Purificao Soares Da Costa a Portuguese national, in 2010 and they married in a proxy marriage on 28 December 2012. The marriage was conducted in Ghana. Neither the appellant nor his spouse attended the ceremony.
6. On 27 March 2013 the appellant submitted an application for a residence card as the spouse of an EEA national.
7. No issue has been taken that the EEA national was exercising treaty rights and was therefore a qualified person.
8. The application was refused on 5 December 2013 by notice of decision by the respondent. The basis for refusing the application was that the respondent did not accept that the appellant was lawfully married to the sponsor for the purposes of regulation 7 of the 2006 Immigration (European Economic Area) Regulations 2006. It was not accepted that the couple were in a relationship and by reason of that it follows that the couple were not in a durable relationship so as to be able to rely upon regulation 8.
9. The appellant appealed against the decision. The appeal was heard on appeal by First-tier Tribunal Judge M A Khan on the 19th June 2014, who dismissed the appellant's appeal. It is against that decision that the appellant now appeals to the Upper Tribunal.
10. At the commencement of the hearing before me counsel on behalf of the appellant conceded that in light of the cases of Kareem (Proxy Marriages -- EU law) [2014] UKUT 00024 and TA & Anor (Kareem) 2014 UKUT 316 the appellant could not succeed under regulation 7 of the EEA regulations.
11. The judge has stated in the determination that there was no evidence as to how Portuguese law would treat a proxy marriage between the

appellant and his alleged spouse. It was a matter for the appellant to prove and there was no evidence that Portuguese law would treat that marriage as a valid marriage. In the absence of such proof the appellant could not be considered to be a spouse or family member under Regulation 7.

12. Counsel on behalf of the appellant pursued the appeal on the basis that the appellant can succeed under Regulation 8 as a person in a durable relationship with an EEA national qualified person. The findings of fact made by Judge are relevant to whether the appellant can fall for consideration under Regulation 8.
13. It is alleged that as the parties are in a durable relationship. Consistent with the case of FD (Algeria) v SSHD [2007] EWCA Civ 981 it is asserted that the respondent should recognise the relationship and consider exercising a discretion to grant a residence card to the Sponsor's partner, the appellant.
14. The grounds of appeal allege that, whilst the judge finds the evidence of both the appellant and the spouse extremely vague and pervasive, the judge has failed to set out the basis for the findings.
15. In paragraph 30 the judge has specifically identified inconsistencies in the accounts given by the appellant and his claimed wife. The judge noted problems with regard to the addresses, at which bank accounts were held. The addresses were not consistent with the address at which the appellant or his spouse claimed to live together.
16. Whilst it is claimed that those details were not put to the appellant or to the spouse, it is clear from paragraph 26 that it was specifically put to the spouse that the bank account had an address in Camberwell when she claimed to be living at Thamesmead.
17. Further within paragraph 26 of the determination the judge has examined the evidence given by the appellant and his spouse as to what they had been doing on the days immediately prior to the hearing and again pointed out inconsistencies and vagueness in the evidence given.
18. Counsel on behalf of the appellant asserted that there were no inconsistencies in the accounts given. It was asserted that the appellant saying that "they" had stayed at home on his wife's birthday was not necessarily inconsistent with the account given by the alleged spouse/partner that that she had gone to MacDonalds with her son. The judge was entitled to conclude on the basis of the evidence that there were inconsistencies.
19. The judge has within the determination clearly analysed the evidence put before him. He has specifically identified inconsistencies in the accounts given and has specifically identified areas where consistency would have been expected. The witnesses should have been consistent and should

have been able to give details about their daily lives. The judge has given specific examples of where they have not given such detail.

20. It was further asserted that there was a large amount of evidence to confirm that the appellant and the partner were living together and the judge had failed to make findings on the evidence. The judge has identified those parts of the evidence where there are inconsistencies and contradictions. In so doing the judge has given justifiable reasons for the conclusions reached. The judge has in paragraph 7 stated that he has taken account of all the evidence including the documentary evidence. Whilst the appellant would emphasise other parts of the evidence, the judge is not obliged to make findings on each and every part of the evidence. The judge has given adequate reasons for the conclusions reached.
21. The judge was entitled to make the findings of fact that he did on the basis of the evidence presented. On the basis of those findings the judge was entitled to conclude that it had not been proved that the appellant and his claimed wife had been living together or that a durable relationship existed. The judge was entitled to find that if the parties had been living together then the bank account would be going to the address in which they claimed to be living; the parties would have been able to say what gifts they gave each other on their birthdays; and they would have been able to state what they had been doing but a few short days before on the birthdays of one of the party.
22. In the circumstances the finding that this was not a genuine relationship between the appellant and his spouse was material to show that this was not a durable relationship in accordance with Regulation 8. I have to say that it had never been submitted to the judge that this was anything other than a marriage. The fact that the judge did not rule upon the issue specifically of a durable relationship was justified as it was never put to the judge that that was the basis upon which the case was being advanced.
23. In the circumstances the judge having considered the evidence was entitled to come to the conclusions that he did. The judge was entitled to make the findings, he did, on the basis of the evidence presented. The only conclusion to be reached was that it had not been proved that there was a durable relationship.
24. There is a no material error of law in the determination. I uphold the decision to dismiss this appeal on all grounds.

Signed

Date

Deputy Upper Tribunal Judge McClure

Appeal Number: