



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/36534/2014

THE IMMIGRATION ACTS

Heard at Field House
On 9 May 2016

Decision Promulgated
On 20 May 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

Ms CYNTHIA ADJEI
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr P Duffy, Senior Home Office Presenting Officer

For the Respondent: Mr N Garrod (counsel), instructed by Justice & Law solicitors

DECISION AND REASONS

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. The Secretary of State for the Home Department brings this appeal but in order to avoid confusion the parties are referred to as they were in the First-tier Tribunal. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge Majid, promulgated on 30 October 2015, which allowed the Appellant's appeal.

Background

3. The Appellant was born on 18 May 1983 and is a national of Ghana.
4. On 8 September 2014 the Secretary of State refused the Appellant's application for a residence card as confirmation of a right to reside in the UK.

The Judge's Decision

5. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Majid ("the Judge") allowed the appeal against the Respondent's decision.
6. Grounds of appeal were lodged and on 12 April 2016 Judge Robertson gave permission to appeal stating inter alia

"2. The grounds of application have arguable merit. There is no reference within the decision to the issues raised within the reasons for refusal letter or how the Judge has resolved the issues raised therein (ground 2); there is no reference to whether or not he accepts that the proxy marriages is accepted as marriage for the purposes of the EEA Regs, or any assessment of the evidence presented by the appellant and why he does not accept that the respondent's assessment of such evidence is set out in the reasons for refusal letter. As the Judge has not resolved the issue as to whether or not the proxy marriage is in fact accepted as a marriage for the purpose of the EEA Regs, it is also arguable that the Judge has failed to identify the provisions under which the appeal is allowed under such Regs (grounds 1 and 3)."

The Hearing

7. Mr Duffy, for the respondent, told me that the Judge's decision is inadequately reasoned. He told me that the central question in this case was whether or not proxy marriage is recognised in both Ghanaian law and Belgian Law, and (he told me) the Judge did not engage with that question at all. He told me that the decision makes no reference at all to the validity of the marriage in either Belgian or Ghanaian law. He told me that, because no reasoned findings in fact had been made, the conclusion reached by the Judge is entirely unsupported. He urged me allow the appeal and to set the decision aside.

8. For the appellant, Mr Garrod told me that the Judge reached the correct decision on the evidence placed before him, so that if the decision contains an error, it is not a material error of law. He took me to the bundle of evidence which was before the First-tier and reminded me that the bundle contains a report from an expert in Belgian law, who says that the marriage is recognised in Belgian law. He told me that original Ghanaian documents are produced, and that in line with the cases of McCabe v McCabe and Kareem, there was sufficient evidence to satisfy the Judge that the appellant and EEA national are parties to a valid marriage which has now endured for 4 years. He urged me to dismiss the appeal and allow the decision to stand.

Analysis

9. At [7] the Judge states that in response to questions “...*the Appellant gave evidence consistent with her assertions in the application.*”. No-where else in the determination does the Judge deal with the appellant’s evidence. No-where in the determination does the Judge discuss the expert report relied on by the appellant. No-where in the determination does the Judge consider the validity of the appellant’s marriage in either Ghanaian law or Belgian law.

10. Between [9] and [23] the Judge sets out, in the most general of terms, his understanding of the approach to be taken to the Immigration (EEA) Regulations 2006. The Judge then races to his conclusion at [24] that “...*the Appellant comes within the relevant immigration law, as amended.*”

11. The decision does not contain any meaningful findings in fact. The decision avoids consideration of the validity of marriage, which is exactly what the appeal is about. The Judge has not explained why he preferred the appellant’s evidence to the respondent’s evidence, nor which parts of the appellant’s evidence he placed weight on. The appellant’s 398 page bundle is not considered by the Judge. The Judge does not consider the expert evidence contained in the appellant’s bundle. In short there is no meaningful analysis of the evidence which was placed before the Judge.

12. In MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC), it was held that (i) It was axiomatic that a determination disclosed clearly the reasons for a tribunal’s decision. (ii) If a tribunal found oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it was necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight was unlikely to satisfy the requirement to give reasons.

13. I can only come to the conclusion that the summary nature of the decision indicates that the Judge has given inadequate reasons and that his fact-finding exercise is flawed. These are material errors of law. I must therefore set the decision aside.

14. There is, however, sufficient evidence before me to enable me to substitute a decision. I have before me the respondent’s PF1 bundle together with the appellant’s bundle which contains the items listed on the index to the bundle. There is no reason why I should not proceed to determine this case of new.

My Findings of Fact

15. The appellant is a Ghanaian national born 18 May 1983. She entered the UK on 7 November 2011 with entry clearance as a visitor, which was valid for 6 months. The appellant has remained in the UK since then.

16. Richard Mayor is a Belgian national of Ghanaian origin who exercises treaty rights of movement as a worker in the UK. The appellant met Mr Mayor (“The EEA

National”) in December 2011. Romance developed between them, and they decided to marry. They considered marrying in the UK, but, after speaking to their families in Ghana, decided to marry in a customary Ghanaian marriage. Neither the appellant nor the EEA national could afford to return to Ghana, so they each consented to marriage by proxy, with each one represented by family members at their wedding ceremony.

17. The appellant and EEA national’s marriage ceremony took place in Ghana (near Accra) on 10 February 2012. The appellant and the EEA national have lived together as husband and wife since then. Their marriage was registered in Ghana on 25 October 2013.

18. The Appellant’s marriage is recognised in Ghanaian law. All of the legal requirements for registration of the marriage have been complied with, and the Ghanaian High Commission is happy to confirm that the appellant and EEA national have contracted a valid marriage in Ghanaian Law

19. Dr Ian Curry- Sumner BA. MA.PhD. LIB & LLM is an expert in Belgian law. He works in the Netherlands and has taught private international law there. He provides a report at pages 16 to 20 of the appellant’s bundle. He has considered the marriage documents provided by the appellant against the Belgian Code of Private International Law. He says that the appellant’s Ghanaian proxy marriage is a valid marriage in Belgian law.

20. The appellant’s Ghanaian Proxy marriage is valid in both Belgium and Ghana.

Conclusions

21. In Kareem (Proxy marriages - EU law) [2014] UKUT 24(IAC) it was held that (i) A person who is the spouse of an EEA national who is a qualified person in the United Kingdom can derive rights of free movement and residence if proof of the marital relationship is provided; (ii) The production of a marriage certificate issued by a competent authority (that is, issued according to the registration laws of the country where the marriage took place) will usually be sufficient. If not in English (or Welsh in relation to proceedings in Wales), a certified translation of the marriage certificate will be required; (iii) A document which calls itself a marriage certificate will not raise a presumption of the marriage it purports to record unless it has been issued by an authority with legal power to create or confirm the facts it attests; (iv) In appeals where there is no such marriage certificate or where there is doubt that a marriage certificate has been issued by a competent authority, then the marital relationship may be proved by other evidence. This will require the Tribunal to determine whether a marriage was contracted; (v) In such an appeal, the starting point will be to decide whether a marriage was contracted between the appellant and the qualified person according to the national law of the EEA country of the qualified person’s nationality; (vi) In all such situations, when resolving issues that arise because of conflicts of law, proper respect must be given to the qualified person’s rights as provided by the European Treaties, including the right to marry and the rights of free movement and residence; (vii) It should be assumed that,

without independent and reliable evidence about the recognition of the marriage under the laws of the EEA country and/or the country where the marriage took place, the Tribunal is likely to be unable to find that sufficient evidence has been provided to discharge the burden of proof. Mere production of legal materials from the EEA country or country where the marriage took place will be insufficient evidence because they will rarely show how such law is understood or applied in those countries. Mere assertions as to the effect of such laws will, for similar reasons, carry no weight; (viii) These remarks apply solely to the question of whether a person is a spouse for the purposes of EU law. It does not relate to other relationships that might be regarded as similar to marriage, such as civil partnerships or durable relationships.

22. In TA and Others (Kareem explained) Ghana [2014] UKUT 00316 (IAC) it was held that following the decision in Kareem (proxy marriages - EU law) [2014] UKUT 24, the determination of whether there is a marital relationship for the purposes of the Immigration (EEA) Regulations 2006 must always be examined in accordance with the laws of the Member State from which the Union citizen obtains nationality.

23. The respondent refused the appellant's application solely because the respondent was unable to accept that the appellant was a party to a valid marriage. On the facts as I find them to be, the appellant's marriage is recognised in both Ghana and Belgium (the country of nationality of the EEA national). The appellant therefore meets the requirements of regulation 7 of the 2006 regulations.

Decision

24. The decision promulgated on 30 October 2015 is tainted by a material error of law. I set it aside.

25. I substitute the following decision

26. The appeal is allowed under regulation 7 of the Immigration (EEA) Regulations 2006.

Signed
Deputy Upper Tribunal Judge Doyle

Date 13 May 2016