



**UPPER TRIBUNAL  
(IMMIGRATION AND ASYLUM CHAMBER)**

**APPEAL NUMBER: HU/03653/2017**

**THE IMMIGRATION ACTS**

**Heard at: Field House  
On: 14 June 2018**

**Decision and Reasons Promulgated  
On: 25 June 2018**

**Before**

**Deputy Upper Tribunal Judge Mailer**

**Between**

**MR ISAAC KOPHY PAINTSIL  
ANONYMITY DIRECTION NOT MADE**

**and**

**Appellant**

**ENTRY CLEARANCE OFFICER**

**Respondent**

**Representation**

**For the Appellant: Miss E Lanlehin, counsel, instructed by JF Law Solicitors  
For the Respondent: Mr T Wilding, Senior Home Office Presenting Officer**

**DECISION AND REASONS**

1. The appellant is a national of Ghana, born on 17 July 1959. He appeals with permission against the decision of First-tier Tribunal Judge Kainth, who dismissed his appeal against the respondent's decision dated 2 February 2017 to refuse him entry clearance to join his wife in the UK.
2. Judge Kainth noted that the ECO asserted that there was no evidence as to whether the sponsor was free to marry the appellant in Ghana on 6 April 2016 because she had produced no evidence of her divorce with respect to her first marriage. In the letter of refusal, the ECO stated that he was not satisfied that the appellant's marriage is valid. The appellant stated on his Appendix 2 that his sponsor was previously

married. However, he did not provide his divorce certificate to show that she was legally divorced from her previous husband and therefore legally free to marry him.

3. Judge Kainth noted at paragraph 17 of his decision, that the ECO refused the application for a variety of reasons. At the time the appellant lodged his application no formal evidence was presented to the ECO in respect of the sponsor's marriage dissolution. He noted that the material now found within the appellant's bundle had not been provided to the ECO.
4. He referred to the dissolution document produced at page 12 of the appellant's bundle before the First-tier Tribunal. In that document the Justice of the High Court of Ghana signed an Order made under s.41(2) of the Matrimonial Causes Act of 1971, of Ghana dated 23 December 2016. It states that having read the joint affidavit of the fathers of the appellant's sponsor, Veronica Anumah and a Mr Samuel Addae, in support of an application for an order confirming the dissolution of their customary marriage, it was confirmed that the customary marriage contracted between the parties on 22 December 2001 was customarily and validly dissolved on 9 January 2016 and since that time any of the parties have had the liberty to re-marry anybody anywhere in the world and that such a customary marriage and divorce are recognised under the law of Ghana.
5. The Judge noted at [17] however, that there is no specific document to attest to the dissolution of the marriage on 9 January 2016 to the sponsor's former husband. Although the document dated 23 December 2016 made reference to the marriage having been dissolved, there is no documentary evidence to suggest on what basis that decision was arrived at or any documentation "relating as of 9 January 2016 which was some three months prior to the appellant's marriage to the sponsor on 6 April 2016."
6. It was accepted that the divorce documentation was not provided at the time that the application was submitted. He noted that without the formal divorce documentation the ECO did not have the information they needed to decide whether the appellant met the relationship requirements under Appendix FM.
7. Judge Kainth found that even if the document had been provided, the ECO would not have been able to make a positive finding regarding the relationship requirement because, as he had already noted in his decision, there is no documentation dated 6 January confirming that that was the date of the dissolution: the documentation relied upon in this regard is dated several months later, namely 23 December 2016.
8. He found that there was no basis on which the ECO might have exercised discretion when assessing Article 8 issues.
9. He also noted that the sponsor has three children in the UK. It was unclear what relationship the appellant has with them [29]. He stated at [36] that there was a lack of evidence to suggest a strong and close bond with them. Although it might be reasonably likely that there is some level of relationship between the appellant and the children, that is not enough to make a finding in favour of the appellant. He accordingly concluded that the decision is proportionate [27-38].

10. In granting permission to appeal, First-tier Tribunal Judge Parkes referred to the grounds. It was asserted that the Judge was wrong to consider the case under Article 8 without regard to the substantive Immigration Rules. It was also contended that he erred as the marriage certificate had been provided for the appellant so the old rule relating to the date of decision did not apply.
11. Judge Parkes found that the relevant date for the consideration of the facts was the date of the hearing and the evidence submitted. He noted that the appellant had to show that the marriage was valid and any specified evidence had been submitted, but also that even if the Rules were met, that the refusal was disproportionate. He found that the grounds are arguable as it appeared that the Judge focused on the ECO's approach at the date of the decision and not on a balanced assessment at the date of hearing.
12. Ms Lanlehin, who did not represent the appellant at the hearing, submitted that the Judge did not properly apply s.85 of the Nationality, Immigration and Asylum Act 2002. It did not matter that the document post-dated the date of decision or indeed the date of dissolution of the marriage. The document dated 23 December 2016 related to the appellant's circumstances before the date of decision and before the date of the appellant's marriage to the sponsor.
13. She submitted that the Judge erred in stating that there was no documentary evidence to suggest on what basis the decision was reached that the sponsor was divorced from her former husband. There were documents in the bundle confirming that the representatives of the families had affirmed that the marriage was so dissolved.
14. She referred to the order of the High Court relating to the dissolution of the customary marriage dated 23 December 2016 as well as to a document at page 11 from the Second Deputy Judicial Secretary of the Judicial Service of Ghana, who certified that the signatures which appeared on the dissolution of the customary marriage between the sponsor and Mr Samuel Adbae dated 23 December 2016, are in the handwriting of the High Court Judge and the Deputy Registrar of the High Court in Accra.
15. On behalf of the respondent, Mr Wilding submitted that although the evidence was admissible at the date of hearing, the burden lies on the appellant to show that he was in a position to be lawfully married to the sponsor. All there was before the Judge were the two documents referred to dated after the date of application.
16. The issue was whether the marriage was valid under the Rules. The Judge was entitled to find that there was no documentation to evidence the dissolution of the marriage on 6 January.
17. In the circumstances the Judge was entitled to find that it had not been shown that the appellant entered into a valid marriage. There was no evidence of Ghanaian law. There was no evidence of the effect of the document produced at page 12.

**Assessment**

18. In refusing the appellant's application, the ECO stated that he did not have evidence showing that the appellant's sponsor was legally divorced from her previous husband and was therefore legally free to marry the appellant.
19. However, at the date of hearing before the First-tier Tribunal the appellant produced an order made under the Matrimonial Causes Act 1971 of Ghana confirming that the customary marriage contracted between his sponsor and her former husband was customarily and validly dissolved on 9 January 2016.
20. Judge Kainth nevertheless stated at [20] that there was no documentation dated 6 January 2016 confirming that that was the date of dissolution. The documentation relied on in this regard is dated 23 December 2016.
21. He stated that he had taken account of the sponsor's witness statement. In her statement at paragraph 7 she stated that she was not aware that she had been married and so did not have a copy of the original sworn document. Neither was the so called marriage registered as she could not seek a divorce in the UK. She therefore instructed lawyers in Ghana to seek an order from the court which was granted.
22. She earlier stated in her statement that she had agreed for Mr Addae's parents to see her parents to officially declare himself as the person responsible for her children. This is called "the knocking" and not a marriage. She was unaware that they had also agreed to put this observation in writing so that there can be something that would authenticate the relationship. Not only did they do this, but arrangements were recorded and sworn in front of a lawyer, making it authentic.
23. She only became aware of this document during family proceedings in court when Mr Addae produced it.
24. Apart from the document produced dated 23 December 2016, there was no further documentation or evidence relating to the alleged dissolution of the marriage on 9 January 2016. In particular there was no evidence produced to substantiate the assertion that the marriage had been dissolved on 9 January 2016.
25. The burden is upon the appellant to show that he was free to marry the sponsor. He was required to show that the dissolution of his sponsor's previous marriage was in accordance with the laws of Ghana.
26. There was no evidence produced in that respect. Nor was any evidence produced of the basis upon which the marriage was dissolved on 9 January 2016, nor evidence regarding the proceedings on 9 January 2016.
27. In his assessment under Razgar, he had regard to the fact that the sponsor had three children in the UK. It was unclear what relationship the appellant had with them. He considered the short individual statements of the three children. He found that the appellant had no subsisting parental relationship with the children. There was very limited evidence of the nature of his relationship with the children and a lack of evidence to suggest a strong and close bond with them.
28. He examined the public interest considerations set out in s.117B of the 2002 Act. He concluded that the decision was in the circumstances proportionate.

29. I find that the Judge has given sustainable reasons for concluding that the decision was proportionate in the circumstances.

**Notice of Decision**

The decision of the First-tier Tribunal did not involve the making of an error on a point of law. The decision shall accordingly stand.

Anonymity direction not made.

Signed

Date 22 June 2018

Deputy Upper Tribunal Judge C R Mailer