



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/15493/2013

THE IMMIGRATION ACTS

Heard at Field House
On 28 November 2013

Determination Promulgated
On 13 December 2013
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Before

UPPER TRIBUNAL JUDGE ESHUN

Between

MR JOSEPH MURIMI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Appellant in person
For the Respondent: Mr P Deller, HOPO

DETERMINATION AND REASONS

1. The appellant is a citizen of Kenya, born on 24 April 1970. He has been granted permission to appeal the decision of First-tier Tribunal Judge Walters dismissing his appeal against the decision of the respondent made on 17 April 2013, to refuse to

issue a residence card as confirmation of a right of residence under the EEA Regulations of 2006.

2. The appellant made his application on 10 September 2012 on the basis that on 28 January 2012 he married Oksana Apanasevica, a Latvian national, under Kikuyu customary marriage rights by proxy because both he and Miss Apanasevica were in the UK. It was witnessed by a few friends and relatives, some of whom had submitted a statutory declaration. He had also paid a dowry of £100 to his wife's family, by way of transfer to his wife's sister in Latvia. The judge found that there was no evidence of the payment of the dowry, or its receipt.
3. The judge repeatedly said that the appellant had deliberately sought to marry under Kikuyu customary marriage rights in order to circumvent the respondent's approach to immigration control. This was because the appellant had been informed that he could not marry in the UK and obtain immigration status.
4. The appellant had claimed that on the day of his marriage to Oksana Apanasevica, her sister remained in Latvia, although she talked to the appellant's family members over the telephone. However beyond what was contained in the statutory declaration, the judge found that there was no evidence of Oksana Apanasevica's sister's presence in Latvia, her knowledge of a Kikuyu customary marriage right, of a telephone call to the material parties at or about the time of the marriage whether, she would have known the significance of her contribution to the marriage right, or anything else. Consequently the judge did not believe the evidence.
5. The appellant had submitted the Kenyan Marriage Bill, 2012 but claimed in evidence that at the time of his marriage to Oksana Apanasevica, that bill did not represent the law. He agreed that the Kenyan Marriage Act 2008 was in place when he married in accordance with customary law, that he needed a witness to his marriage but did not need to register it. Because the Kenyan Marriage Bill 2012 had not been implemented at the material time, he was not bound by its provisions. Again, the judge found that there was no independent corroboration of the appellant's evidence. The judge concluded having regard to the entirety of the evidence before him, that the appellant had not persuaded him that his claimed marriage to Oksana Apanasevica occurred and was conducted in accordance with Kikuyu customary marriage rights.
6. Whilst noting what the appellant and Oksana Apanasevica claimed to be documentary evidence of their living together in the UK, the judge was not persuaded that the documentation was genuine evidence of a shared life together and given his other findings, that evidence has been deliberately contrived for the purposes of proceedings before him. He was not persuaded that the appellant can be regarded as the unmarried partner of an EEA national in a durable relationship for the purposes of Regulation 8(5) of the 2006 EEA Regulations.
7. The appellant was granted permission by First-tier Tribunal Judge Osborne who said that in an otherwise careful determination which focused upon and engaged with the

evidence, it is arguable that the appellant and his spouse did not know that they would be asked questions about any dowry discussed by the appellant and paid by him. Nonetheless, they gave consistent evidence that the appellant had paid a dowry to his spouse's sister-in-law in the sum of £100. It is further arguable that the appellant gave the date of his marriage as 28 July having found at paragraph 31 and at 37 that the appellant could not remember the precise dates of his marriage and was not sure of the date. It is arguable that the judge failed to give adequate regard to the consistent evidence of the appellant and his spouse in relation to these matters and that to do so amounted to an arguable error of law.

8. At the hearing before me the appellant attended with his wife. The Counsel who had represented him below was in court but he said that he had not been instructed by the appellant to represent him today.
9. The appellant accepted that he could not remember the exact date of his engagement although he remembered that it was in September 2011, the same month in which he and Oksana went to Scotland on the 16th to celebrate their engagement.
10. He said that they paid £100 to Oksana's sister in Latvia. The money was transferred in cash from Barclay's Bank in the UK to her sister's account in Latvia. The £100 formed part of a larger amount of £300 which was transferred that day. The extra £200 was paid towards the funeral expenses of Oksana's grandmother. The appellant said they could not find the transfer payment slip. Oksana's sister said that she was told by her bank that the bank does not keep records of accounts after six months. That was why they did not have evidence of the payment to Oksana's sister.
11. The appellant said that the statutory declarations at pages 14 to 19 of his bundle confirmed a customary marriage ceremony took place in Kenya on 28 July 2012. The statutory declarations are from his elder brother, William Maina, his uncle and aunt and another couple who were at the ceremony. His aunt and uncle in their statutory declaration said that "the marriage was contracted in the appellant's homestead in Kirinyaga, central province of Kenya where traditional marriage rights were performed, dowry and drinkable paid subsequent to which the two families were joined together and the couple were declared husband and wife. The appellant said that the statutory declarations were made before a Commissioner of Oaths. They are accepted in a court of law in Kenya as proof that a marriage has taken place.
12. He also said that the £100 he paid for the dowry was not the whole amount. The full amount was £150. The remaining £50 will be paid when a baby is born to them. Other things were provided as part of the dowry and these were a front arm of the leg of a lamb which symbolises a sweet and lasting relationship. The lamb was provided by his uncle to him and Oksana but as they were not present, they were given to his brother and his wife who represented them. The appellant accepted that the prolonged nature of the dowry was not explained to the judge.

13. The appellant said that he and Oksana gave consistent evidence of their relationship which was not given adequate consideration by the judge. They live in the same house and do everything together.
14. Mr Deller submitted that there was a small curiosity in the grant of permission. The FtT Judge stated that the grounds were lodged out of time and no special circumstances making it unjust not to extend time have been pleaded. She had taken the merits of the substantive application into account when deciding whether to extend time and had gone on to say that the application was not admitted. However she then went on to consider the merits of the application and granted permission. I shall disregard the confusion and consider the appellant's grounds as if the application had been admitted.
15. In reaching my decision I have considered the submissions made by the appellant and those made by Mr Deller. I fully agree with the submissions made by Mr Deller.
16. There was no independent evidence that the marriage that had taken place in Kenya was recognised by the Kenyan authorities and would be recognised by the authorities in the UK. The judge took the view that the statutory declaration from the witnesses and the evidence of the appellant and Oksana Apanasevica was the best form of evidence the appellant could produce. There was no independent evidence from a Kenyan lawyer or an expert in Kenyan customary law as to the validity of the traditional customary marriage and whether he could accept it in terms of the overall credibility of the appellant's claim.
17. The appellant claimed in evidence that he was not bound by the Kenyan Marriage Bill 2012 which had not been implemented at the material time. He also said that the Kenyan Marriage Act 2008 had no application to him because he had married in accordance with customary law and was also not bound by its provisions. At the hearing before me the appellant relied on paragraph 6 of the skeleton argument that had been submitted on his behalf at the hearing below. Paragraph 6 said that in part V, paragraphs 42-44, the 2012 Bill addressed marriages under Customary Marriages. The appellant said that the Bill was to address for the first time in Kenyan history, the issue of registration of customary marriages in Kenya. Section 43 states that the parties to a customary marriage shall notify the Director of such marriage within three months of completion of the relevant ceremonies or steps required to confer the status of marriage to the parties in the community concerned.
18. I note from paragraph 7 of the skeleton argument that under the new Bill, registration of customary marriage shall be done within six months of the marriage after completion of the necessary rituals for the union and both shall appear in person before the Director to be issued with the certificate of marriage. The skeleton argument goes on to say that unfortunately the Bill made no reference to customary marriage conducted before the Bill was passed, as is the case of the appellant. This is incorrect because Section 96(2) of the Marriage Bill makes provision for the registration of such marriages within three years of the coming into force of the Act.

There was no evidence before the First-tier Tribunal or before me that the appellant has registered his customary marriage. The absence of such evidence further undermines the credibility of his claim.

19. In any event, the statutory declarations are only a bare assertion that the appellant and Oksana Apanasevica got married. The appellant claims that his brother received the front leg of a lamb but that does not appear in the brother's statutory declaration. Furthermore it was not evidence that was put before the judge even though the appellant was legally represented. There was no evidence before judge of the prolonged nature of the dowry. It is not enough for the appellant to say that he did not expect that he would be questioned about the dowry at the hearing. He should have come prepared to answer questions about it since it formed a core part of the customary marriage. In any event there was no proof that a dowry was actually paid as there was no evidence of the payment slip from Barclay's Bank or evidence from his sister-in-law or her bank that she actually received the money and no evidence from the bank in Latvia to confirm that it does not keep statements of accounts after six months.
20. I accept that the judge repeatedly stated that the appellant deliberately sought to marry under Kikuyu customary marriage rights in order to circumvent immigration control. When one puts that assertion to one side, the fact is that there was no independent evidence to corroborate the appellant's claim that a valid proxy marriage had taken place in Kenya which should be recognised in the UK.
21. Aside from this is the matter of the appellant's immigration status. I accept that the existence of Regulation 7 of the EEA Regulations is not contingent upon the non-family member of the EEA national being lawfully resident in a member State. Nevertheless, the appellant said that he met Oksana Apanasevica at the company where he was employed. There was no evidence before the judge as to when the appellant entered the UK and whether he entered the UK lawfully. The appellant however knew that he could not marry in the UK because he did not have immigration status here. He had therefore married by proxy with total disregard for immigration control. Such evidence inevitably undermines the appellant's credibility. The judge was not satisfied on the evidence before him that the appellant was telling the truth and I find that he was entitled to come to this conclusion in the absence of documentary evidence to support his core claims.
22. I find that the judge did not make an error of law.
23. The judge's decision dismissing the appellant's appeal shall stand.

Signed

Date

Upper Tribunal Judge Eshun