



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/17099/2013

THE IMMIGRATION ACTS

Heard at Field House
On 24 October 2013
Prepared 24 October 2013

Determination Promulgated
On 01 November 2013
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Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

CHARLOTTE KUMI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Akohene, Solicitor
For the Respondent: Mr S Walker, Senior Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals with permission against the determination of First-tier Tribunal Judge Thomas, promulgated on 28 August 2013, dismissing her appeal against the respondent's refusal to issue her with a residence card as confirmation of

her right of residence as the spouse of an EEA national exercising treaty rights in the United Kingdom.

2. The appellant is a citizen of Ghana born on 10 March 1982. On 20 June 2011 married to Tony Gyamfi, a citizen of Germany, originally from Ghana, who is employed in the United Kingdom. The marriage took place in Ghana by proxy, according to customary law in Ghana. The marriage was registered with the district registrar on 20 April 2012 following provision to the registrar of a statutory declaration executed by the fathers of the appellant and her husband. It is the appellant's case that this marriage is valid under Ghanaian law, and thus is to be recognised as valid under English law.
3. The respondent refused the appellant's application for a residence card on the basis that she was not satisfied that the appellant was lawfully married to the sponsor as she was not satisfied that the marriage had been registered given that the statutory declaration provided did not comply with Section 3(1) of the Customary Marriage and Divorce (Registration) Law 1985 (the relevant Ghanaian statute) in that it did not state where the parties to the marriage were residing at the time of marriage and thus, as the declaration was not valid, the marriage certificate was not valid as it was not supported by a valid statutory declaration and therefore, absent evidence that they both attended the wedding ceremony, was not satisfied they were lawfully married.
4. The respondent considered also that the appellant was not entitled to a residence card on the basis that she was in a durable relationship with the sponsor.
5. The appellant appealed against the decision on the grounds that the decision was contrary to her rights under European Law and pursuant to the Immigration (European Economic Area) Regulations 2006 ("the EEA Regulations"). The appeal was accompanied by certificates issued by the Ghana High Commission confirming that, amongst other things, a statutory declaration from the appellant's and sponsor's fathers and the certificate issued by the registrar in Accra were genuine as well as a copy of the UKBA's policy. It was requested that the appeal be dealt with without an oral hearing.
6. In a determination promulgated on 28 August 2013 First-tier Tribunal Judge Thomas dismissed the appeal finding:
 - (i) that the issue was whether the appellant had proved that she is married to the sponsor and to that end had adduced a marriage certificate recording entries in the register of customary marriages in respect of her earlier divorce and her second marriage, letters of confirmation from the Ghana High Commission and an affidavit from her and the sponsor's fathers [5];
 - (ii) that the appellant's previous marriage had properly been dissolved [6];
 - (iii) that he attached little weight to the statutory declaration by the fathers given a failure to explain the customary rights which were performed, lack of evidence

of presence otherwise the parties to the wedding or of a dowry and they had not provided evidence that the marriage was still subsisting [7]; and therefore;

(iv) that the statutory declaration and documents based thereon were not sufficient to prove that the appellant is married or in a subsisting customary marriage as claimed.

7. The appellant sought permission to appeal against that decision on the grounds that in concluding that the appellant was not lawfully married, the judge had taken into account irrelevant matters, there being no requirement in Ghanaian law that the customary rights are explained in an affidavit, had failed to take into account that the marriage certificate had been authenticated by the Ghanaian High Commission and that as the registrar in Ghana had been satisfied by the statutory declaration, although registration is no longer necessary, there is no proper basis for concluding the marriage was not valid.
8. On 16 September 2013 Designated Judge David Taylor granted permission to appeal on all grounds although observing that it was arguable that what the judge should have considered was whether German national law recognises the validity of proxy marriage, it being arguable that the relevant law is that of the country of which the EEA national is a citizen.

Does the determination of the First-tier Tribunal involve the making of an error of law?

9. Mr Akohene submitted that in addition to taking into account the irrelevant matters identified in the grounds of appeal, the judge had confused the issues of whether the marriage was valid and whether it was subsisting and, in taking into account the issue of whether the marriage was subsisting in assessing its validity, had taken into account an irrelevant matter. Mr Walker accepted that in doing the latter the judge had erred.
10. I consider also that the judge erred in his approach to the material before him. The statutory declaration in this case does not stand on its own. It is evident from the material before the Tribunal that this was produced to the Ghanaian authorities as a step necessary to the registration of a customary marriage. A certificate to the effect that the customary marriage had been registered has been produced and its authenticity was confirmed in a document issued by the Ghanaian High Commission which in addition confirms the authenticity of those witnessing the statutory declaration.
11. It may well be that the statutory declaration did not comply with the strict requirements of Ghanaian statute but it is important to note that the authorities did issue the certificate as confirmation that the marriage had taken place. Absent any evidence of fraud it is inappropriate to question whether the Ghanaian authorities were correct in doing so. It is not appropriate for a judge sitting in the United Kingdom to conclude on the basis of his interpretation of its law that the authorities of a foreign country acted incorrectly in registering a marriage which is, in effect, what the judge has done by not taking into account the fact that the marriage

certificate was issued by the competent authorities and its authenticity has been confirmed by the Ghanaian High Commission.

12. In the circumstances, I consider that the judge did err in law in his approach to the evidence before him, taking into account irrelevant matters in assessing whether the marriage was valid or not and in failing to give proper weight to the confirmation of the authenticity of the marriage certificate produced by the Ghanaian High Commission.
13. Whilst the issue of the sponsor's capacity as a German national to enter into the marriage was raised in the grant of permission, neither party addressed me on this. As a matter of private international law, a party's capacity to enter into a marriage is governed by the law of his domicile. There is no evidence before me that those with a German domicile or nationality lack the capacity to enter into a proxy marriage, nor was such a submission made.
14. In remaking the decision, in light of the submissions made by both parties, I am satisfied, on the balance of probabilities, that given the appellant's marriage to her husband, performed according to customary rights, has been registered as such in Ghana and the signatures of those witnessing the statutory declaration which preceded it have been confirmed by the Ghanaian High Commission, and that the marriage is valid for the purposes of Ghanaian law. Accordingly I am satisfied that the law is that the marriage is therefore to be treated as valid in English law and accordingly, that being the only basis of which the appellant's application was refused, that the appeal should be allowed under the EEA Regulations.

SUMMARY OF DECISIONS

- 1 The determination of the First-tier Tribunal did involve the making of an error of law and I set it aside.
- 2 I remake the appeal by allowing it under the EEA Regulations.

Signed

Date: 31 October 2013

Upper Tribunal Judge Rintoul