



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

Appeal Numbers: IA/29305/2012  
IA/29304/2012

**THE IMMIGRATION ACTS**

**Heard at : Field House**

**On : 18 July 2013**

**Determination  
Promulgated**

**On : 23 July 2013**

**Before**

**UPPER TRIBUNAL JUDGE KEKIĆ  
UPPER TRIBUNAL JUDGE KEBEDE**

**Between**

**PATRICK FRIMPONG DONKOR  
MILLICENT FRIMPONG COKER**

Appellants

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr B Owusu of BWF Solicitors

For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellants, father and daughter, are citizens of Ghana, born respectively on 9 November 1981 and 28 February 1999. They have been given permission to appeal against the determination of First-tier Tribunal

Judge W Grant, dismissing their appeals against the respondent's decision to refuse to issue them with residence cards under the Immigration (European Economic Area) Regulations 2006.

2. The first appellant claims to have arrived in the United Kingdom in October 2003. He was refused a residence card as an extended family member of an EEA national on 29 August 2007 and again on 14 July 2009 and subsequently made an application, on 16 February 2012, for a residence card as the spouse of an EEA national, Patricia Akosua Sam, whom he claimed to have married by proxy on 13 December 2010.

3. The appellants' applications were initially refused on 31 July 2012, on the grounds that the first appellant had failed to produce a valid marriage certificate as evidence that he was related as claimed to an EEA national, for the purposes of regulation 7(1)(a) of the EEA regulations. The marriage certificate he had submitted was not considered to be valid, since his marriage had been registered eleven months after the marriage, on 30 November 2011, whilst the relevant law, the Customary Marriage and Divorce (Registration) Law 1985, stated that customary marriages had to be registered within 3 months of the marriage. It was also noted that the marriage certificate described the appellant's spouse as a spinster, yet she was a divorcee, having divorced her previous spouse on 21 June 2010. The second appellant's application was accordingly refused in line.

4. The appellants appealed the decisions, but the decisions were subsequently withdrawn by the respondent before the First-tier Tribunal.

5. The applications were then refused again on 3 December 2012. By that time the first appellant had produced an amended marriage certificate giving his spouse's status as "divorcee". On that occasion the refusal was on the basis that a statutory declaration that had been produced with the marriage certificate did not contain all the required information and that the marriage certificate was thus invalid; and that the credibility of the marriage and the documentation was undermined by the ease with which the appellant had managed to obtain a new marriage certificate amending the previous reference to spinster. The respondent went on to consider regulation 8(5) of the EEA Regulations but was not satisfied that the first appellant was in a genuine and subsisting relationship akin to marriage.

6. The appellants appealed against the decisions and their appeals were heard in the First-tier Tribunal on 18 March 2013 by First-tier Tribunal Judge W Grant. The judge heard from the appellant and his spouse. He noted inconsistencies in the appellant's and sponsor's evidence about their relationship and found there to be no credible evidence of cohabitation. With regard to the proxy marriage, he noted discrepancies in the marriage certificate in regard to the age of the parties; he rejected the claim that the reference to the first appellant's spouse in the marriage certificate was a clerical error; and he noted that the statutory declaration did not state the place of residence of the parties. He noted that the UKBA RALON report on customary marriages referred to registration being

compulsory within three months of the marriage, although he accepted that since 1991 registration was optional. He found, nevertheless, that even though registration was optional, if the parties decided to register the marriage then they had to comply with the conditions of registration and he therefore placed little weight on the certificate. He found that the material doubts about the circumstances of the marriage had to be resolved against the appellant and he accordingly dismissed the appeals under the EEA Regulations. He found that the appellants' removal to Ghana would not breach Article 8 of the ECHR, noting the lack of evidence about the second appellant.

7. Permission to appeal was sought on the grounds that the judge had demonstrated a misunderstanding of Ghanaian customary law, since registration was not a requirement of a customary marriage, as recognised in the case of NA (Customary marriage and divorce, evidence) Ghana [2009] UKAIT 00009; that he had digressed onto unrelated issues such as why the appellant's spouse had not represented herself in the proxy marriage; and that he had erred by considering the reference in the marriage certificate to be a procedural error when it was in fact a clerical error.

8. Permission to appeal was initially refused, but was granted upon a renewed application. In the grant of permission, Upper Tribunal Judge McGeachy pointed out that if the judge had gone on to refer to the definition of a spouse in the EEA regulations that would most likely have been an end to the matter, given his doubts about the genuineness of the relationship, but he had not done that and had instead found the marriage not to be valid.

### **Appeal hearing and submissions**

9. At the hearing the appellant was in attendance, although his spouse and daughter were not (his daughter was said to be at school and his spouse was said to be ill). We heard submissions on the error of law.

10. Mr Owusu submitted that the judge had identified that the sole issue before him was the validity of the proxy marriage. In determining that issue he had failed to apply the principles in CB (validity of marriage: proxy marriage) Brazil [2008] 00080 and to consider the case law before him, namely McCabe v McCabe [1994] FLR 410 and Yaotey v Quayle [1961] GLR 573. Had he applied the principles in those cases he would have come to the conclusion that the marriage was valid, given that he had accepted at paragraph 18 that on the face of it the parties had gone through a customary marriage. Had he found that the marriage was not genuine, that would have been a different matter, but that was not what he found. The respondent had withdrawn the first decision because it had erroneously been made on the basis that Ghanaian law required the marriage to have been registered within three months. The amended marriage certificate was produced in court at the time the decision was withdrawn. The judge erred by placing weight on the RALON report which referred to the three month requirement and erred by relying upon the reference to the sponsor as a spinster in the original marriage certificate when that was a clerical error and had been amended. Mr Owusu submitted further

that the judge had erred by drawing adverse inferences about the status of the sponsor's grandchild in the United Kingdom without putting his concerns to the appellant. Had that been put to the appellant he would have been able to provide an explanation. That was a material error since it formed part of his overall adverse credibility findings. There were further errors in the judge's Article 8 assessment.

11. Mr Tarlow submitted that any error on the part of the judge in regard to the registration of the proxy marriage was not material, given the adverse findings he made about the relationship at paragraphs 15, 16 and 23 of his determination.

12. In response, Mr Owusu submitted that the adverse credibility finding he had made about the age of the appellant and his spouse was not correct since the appropriate date was the date of registration and not the date of the marriage. At the date of registration the ages were correct. The only issue before the judge was the validity of the marriage and in that respect he applied the wrong test. The genuineness of the marriage was not raised by the respondent and was not raised by the judge at the hearing and the appellant had therefore been given no opportunity to respond to his concerns.

13. We advised the parties that in our view there was no error of law in the judge's decision. Our reasons for so finding are as follows.

### **Consideration and findings**

14. It was Mr Owusu's case that the genuineness of the appellant's relationship and marriage had never been raised as an issue, either by the respondent or by the judge himself and that the appellant's application had been refused solely on the basis of the validity of the proxy marriage. However that is clearly not the case and it is plain that neither considered the marriage to be genuine and that that was indeed the basis upon which Judge Grant dismissed the appeals.

15. With respect to the respondent, that is apparent from the latter part of the refusal letter which specifically states that the fact that the appellant was so easily able to obtain a new marriage certificate after the previous refusal, when taken together with his previous immigration history, brought into doubt the credibility of his marriage and the documents submitted. With regard to the judge, he did not state, as paragraph 5 of the grounds asserts, that the sole issue was the validity of the marriage in law, but at paragraph 12 of his determination he referred to the only issue being whether the parties had shown that they were married. He did not find that they were. It is clear from his findings at paragraphs 14 to 16 and 20 to 23 that he did not believe there to have been a genuine relationship and marriage between the appellant and sponsor. At paragraphs 14 to 16 he noted various discrepancies in the accounts of the appellant and the sponsor about the relationship itself. We do not agree with Mr Owusu's submission that his comment at the beginning of paragraph 18 was intended in any way as an acceptance of the reliability of the

documentation, since he went on, at paragraphs 18 and 20 to 21 to note various discrepancies in that documentation and to conclude that it was not reliable evidence. At paragraph 23 the judge drew together those findings and concluded that he was not able to accept that a proxy marriage ceremony had taken place.

16. With regard to the judge's adverse findings about the relationship, Mr Owusu submitted that he had made his findings without giving the appellant an opportunity to address his concerns and that the appellant had therefore not been put on notice that the genuineness of the marriage was in question. However, as we have already stated, it is clear that such concerns had already been raised in the refusal letter. Furthermore, the judge was entitled to place weight upon inconsistencies between the evidence of the appellant and the sponsor and was not required to put each inconsistency to the appellant himself. The appellant was represented at the hearing and it was open to the representative to address those clear and obvious discrepancies in the evidence. Whilst it may be the case that the judge's findings about the sponsor's grand-daughter were not entirely helpful, it is clear that his adverse findings were based upon the many other inconsistencies in the evidence before him and that that did not form a material part of his decision.

17. With regard to the judge's findings on the documentation, it is clear that those were based upon discrepancies in their contents which undermined their reliability rather than upon any failure to comply with the formalities of a proxy marriage and, as such, any arguable failure to consider and apply the principles in the cases referred to by Mr Owusu is immaterial. In any event, the judge dealt with the issue at paragraph 19, clearly recognising from the relevant case law that registration was not a requirement for validation of a customary marriage, but then going on to consider, in the alternative, at paragraph 20, the reliability of the documentation.

18. The judge noted that the marriage certificate had been amended to reflect the correct status of the sponsor, but, contrary to Mr Owusu's assertion, was entitled to reject the appellant's explanation for the initial error and to find that it was in fact an indication of the unreliability of the evidence as a whole rather than a simple clerical mistake. He gave reasons at paragraph 20 for rejecting the appellant's explanation and for considering the matter to reflect adversely on the credibility of the marriage as a whole. At paragraph 21 he rejected the argument that the omission of required information from the statutory declaration was irrelevant if there was no need for registration in the first place and found, for reasons properly given, that if the parties decided to register the marriage then they would have had to comply with the conditions attached to that registration. He also noted discrepancies in the recording of the appellant's age and that of the sponsor at the time of the marriage. Mr Owusu's response to that latter point was that the certificate correctly stated the ages at the date of registration rather than the date of marriage, but we note that even if that were the case, the age of the sponsor remained incorrect at the date of registration. Again, that was a matter the judge was entitled to take into account.

19. In view of the numerous discrepancies and inconsistencies he had noted, the judge was fully entitled to place the limited weight that he did upon the evidence of the relationship between the first appellant and the sponsor and upon the documentary evidence relating to the marriage. It is plain from his findings at paragraph 22, with regard to the photographic evidence and his conclusion at paragraph 23, that he simply did not accept that any ceremony of marriage had taken place and that there never was a proxy marriage. Although he did not expressly refer to the cases of Yaotey v Quayle and McCabe v McCabe, it is plain that in terms of those decisions, and contrary to the assertions made at paragraphs 2 and 3 of the grounds of appeal, he did not accept that the essentials or ingredients of a valid marriage under customary law were present. That was a conclusion that was entirely open to him on the evidence before him. Accordingly, the grounds of appeal, whilst criticising the judge's findings on the validity of the marriage, do not in fact properly engage with the actual basis of his findings, namely the genuineness of the marriage itself.

20. It follows, from the above, that we find no merit in Mr Owusu's submissions in relation to family life and Article 8. Having come to the conclusion that he had about the first appellant's marriage to the sponsor, the judge properly proceeded to consider Article 8 in the context of private, rather than family, life. His findings on private life have not been challenged and neither have the findings he made with regard to the second appellant and we consider those findings to have been properly made and to have been open to him on the evidence before him.

21. Taken as a whole, we consider that the judge's determination contains carefully reasoned findings of fact following a thorough and detailed assessment of the appellants' circumstances. He was entitled to reach the decision that he did. He did not make any errors of law.

## **DECISION**

22. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. We do not set aside the decision. The decision to dismiss the appeals stands.

Signed

Upper Tribunal Judge Kebede

Dated: