



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

Appeal Number: IA/12525/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 28 November 2014**

**Determination
Promulgated
On 19 December 2014**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL ROBERTSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

**MRS CATHERINE ADOM BONSU
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: The Appellant in Person

For the Respondent: Mr C Wilding, Legal Representative

DETERMINATION AND REASONS

Immigration History

1. The Appellant in this appeal was the Respondent at the First-tier Tribunal hearing on 8 June 2014. However, for ease of reference, the Appellant and Respondent are hereafter referred to as they were before the First-tier Tribunal. Therefore Mrs Bonsu is referred to as the Appellant and the Secretary of State is referred to as the Respondent.

Appeal history

2. The background to this case is set out in the error of law determination which was promulgated following a hearing 27 October 2014 and for the purposes of this determination, the error of law determination is incorporated in full. The date of the continuance hearing was agreed with counsel for the Appellant. At the time, although he stated generally that he was 'busy', he made no mention of any specific engagements,. As the issues in this appeal were not complex, I made it clear that if he were indeed busy there was no reason why other counsel could not be instructed for the purposes of the continuance hearing. The directions issued by Upper Tribunal Judge Southern for the purposes of the error of law decision had not been complied with before the hearing and counsel indicated that they did wish to file further evidence for the continuance hearing. As Mr Tarlow, who was acting for the Respondent at the error of law hearing, indicated that he was not able to deal with the evidence presented in relation to the recognition of Ghanaian proxy marriages by the Portuguese authorities and in fact wanted the matter to be adjourned also, directions were agreed at the error of law hearing and all parties knew the timescales for complying with directions. These directions were also sent out with the error of law decision.
3. However, the Appellant wrote to the Upper Tribunal on 19 November 2014 requesting an adjournment on the basis that her Sponsor was on holiday and she would want him to attend with her, that she was in the process of instructing counsel and, at the end of the error of law hearing (after I had left the hearing room) counsel had told the clerk that he was booked on the 28 November 2014. In any event, there was no reason why another representative should not have been instructed if it was known at the end of the last hearing that Mr Ekeoke was not available. The adjournment request was refused because (i) it was not evident from the file that I had directed that the matter be listed to suit counsel, (ii) the issues in the appeal were not complex, and (iii) the Appellant had failed to establish why her Sponsor was necessary for the purposes of the hearing.
4. No bundle had been filed by the Appellant for the continuance hearing, at which she again requested an adjournment. She stated that her Sponsor had been on holiday and his employer had refused him leave to attend the hearing. However, she provided no evidence either that he had been travelling or that a request had been made to his employer for leave and had been refused. Furthermore, her Sponsor, who did not attend on the last occasion, would have been well aware (given the alleged relationship between him and the Appellant) that the hearing had been booked for 28 November 2014. There is no reliable evidence before me to indicate that he had taken any steps to ensure that he could attend a hearing which was potentially of great significance to the Appellant, who was claiming to be married to him.

5. The Appellant stated that she was pregnant and provided an NHS maternity card to establish this fact. However, pregnancy is not an illness and there was no evidence that the Appellant was unfit to give evidence. In the absence of evidence to substantiate the assertions made by the Appellant as to the lack of availability of the Sponsor, in view of the failure to comply with directions (and there is no reason why a bundle could not have been filed even if an adjournment request was to be made at the hearing) and the time that the Appellant had already had to prepare for the hearing (bearing in mind that permission was granted on 8 September 2014 and it had been conceded by the Respondent that the First-tier Tribunal had erred in law), and in compliance with the overriding objective set out in Rule 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I refused the adjournment request. I did, however, bear in mind the request throughout the hearing with a view to adjourning part heard if I thought that there was any unfairness to the Appellant but in the event found that there was no need to adjourn part heard.
6. In terms of the evidence before me, I had the bundles submitted for the First-tier Tribunal hearing, these being the Respondent's bundle (RB), which is not paginated and which was sent under cover of a letter dated 14 April 2014, the Appellant's bundle (AB), pp numbered 1 - 63 and the document headed 'Permanent Mission of Portugal Geneva' (the 'child, early and forced marriages' document), dated 14 April 2014, comprising 11 pages. When asked, the Appellant stated that she had no additional evidence to submit.
7. Before the First-tier Tribunal, the grounds of appeal were that the decision resulted in a breach by the UK of the Appellant's rights under the European Convention on Human Rights and under the Immigration (European Economic Area) Regulations 2006. The two main issues in the appeal were whether the Ghanaian proxy marriage between the Appellant and her EEA Sponsor, a Portuguese national, was recognised as a valid marriage by the Portuguese authorities and if not, whether there was sufficient evidence to establish that the Appellant and her Sponsor were in a durable relationship.
8. In the skeleton argument (SA), to be found within AB, the first limb of the appeal under the EEA Regulations was that the Appellant satisfied the provisions of Regulation 7 because she was a family member of an EEA national, a Portuguese national, on the basis of their proxy marriage. It was conceded at the error of law hearing that **Kareem (Proxy marriages - EU law) [2014] UKUT 24 (IAC)** established that it was necessary for the Appellant to provide evidence that the Ghanaian proxy marriage between the Appellant and Sponsor was recognised as valid by the Portuguese authorities. As there was no additional evidence before me, other than that which was submitted to the First-tier Tribunal and the child, early and forced marriages document (copies of the latter were provided to both parties), which I had indicated at the last hearing, did not appear to address the question of whether a Ghanaian proxy marriage was

recognised as a valid marriage in Portugal, I asked Mr Wilding to make submissions on this point.

9. He submitted that pursuant to **Kareem**, simply submitting extracts of the law of Portugal in relation to proxy marriages would not establish that a Ghanaian proxy marriage would be recognised in Portugal. An appellant would need to provide confirmation from the Portuguese authorities that the marriage was recognised as valid or provide expert opinion to confirm that the marriage would be recognised in Portugal. The Appellant could have attended the embassy in Portugal to ask for confirmation that the marriage was recognised or provide expert opinion.
10. Turning to the child, early and forced marriages document, Mr Wilding submitted that I had commented at the error of law hearing that the document did not appear to be overly helpful in establishing that the Portuguese authorities recognised Ghanaian proxy marriages; the document was in fact provided to the Commissioner for Human Rights by the Permanent Mission of Portugal to the United Nations Office and other International Organisations, by way of reply by the Portuguese Authorities to a questionnaire on child, early and forced marriages. The only reference to proxy marriages was on page 4, where it was stated, "Marriage by proxy is permitted (Article 1620 CC). One of the intending spouses may delegate authority to an appointed representative through (sic) a proxy document that must contain specific authority to contract the marriage, name and the other intending spouse and indicate how the marriage will take place and the type of marriage."
11. Mr Wilding submitted that these provisions appeared to relate to proxy marriages conducted in Portugal and it must be read as providing that someone in Portugal can in fact get married by proxy. The Appellant's marriage was not conducted in Portugal. As it was about proxy marriages conducted in Portugal, it did not assist with answering the question 'Is the Appellant's Ghanaian proxy marriage recognised by the Portuguese authorities?' Furthermore, even if it was, this provision did not recognise a 100% proxy marriage; i.e, only one party to the marriage could be represented by proxy. Neither the Appellant nor her Sponsor were in Ghana when the marriage took place. Even if the effect of the provisions was that a proxy marriage conducted in another country was recognised by the Portuguese authorities, the inference of the provisions is that only one spouse could be represented by a proxy not both.
12. Mr Wilding submitted that he had seen the document presented in other cases and the submissions made led to more questions than answers; and that the Appellant had failed to establish that her proxy marriage was recognised by the Portuguese authorities.
13. The Appellant had nothing specific to say about the proxy marriage provisions referred to in the child, early and forced marriages document. As to obtaining evidence from the Portuguese embassy, she stated that

she and the Sponsor had wanted to go to the Portuguese embassy to ask if their marriage was recognised in Portugal and if he had been able to take time off work he would have gone to the embassy.

14. Moving on to the issue of whether or not the Appellant and the Sponsor were in a durable relationship, pursuant to the provisions of Regulation 8(5) of the EEA Regulations, I asked the Appellant whether there was any reason why a bundle had not been filed as was directed at the last hearing. She stated that there was no reason and that everything was with her lawyer at the moment. When asked for details of her representative, she stated that his name was Thomas and he lived in Barking; she did not, however, know his surname, his address or the name or address of the firm.
15. When asked if she would like to give any oral evidence regarding their relationship, she stated that they had been together for almost three years, that he had been working throughout that time, and that they planned to have a family together. They had been living together at her current address (the Commonsides address) which was recorded on the Upper Tribunal file as her address for the last two years. However, she had no documentary evidence of their living together there.
16. In cross-examination, the Appellant stated that her husband had asked for time off work but that she did not have any evidence of his request or the refusal. When asked again if there was any evidence to support her assertion that they had been living together throughout 2014, she stated there was evidence because she was pregnant, she had handed in her NHS card and you could tell by looking at her that she was pregnant. When asked how long she had lived at the Commonsides address, she said that it was since they got married, which was in April 2012. She was asked why then there was a utility bill addressed to her and her Sponsor at an address in Sutton Court Road, London (the Sutton Court address), dated 31 March 2013. She said that when they were living there, the bills came once every three months. She was asked if she was saying that she was not living at the Sutton Court address in March 2013. She said that she was 'almost living there' and went there every weekend. When asked why her name was on the bill if she was not living there, she stated that she was trying to support him. It was put to her that she had previously stated that they had moved in together at the Commonsides address in 2012, yet the utility bill was in both names for a different address. The Appellant stated that she had given in her NHS maternity card, and asked if they did not live together, how could she be pregnant?
17. The only evidence from the Sponsor was the statement he had submitted for the purposes of the First-tier tribunal hearing. The Appellant stated that she had not thought to ask him for an updating statement because she had come to the hearing to ask for an adjournment. She stated that they had married on 29 April 2012, that they had been partners for one year prior to that and that the Sponsor wanted to start a family and she had

said that they needed to be married before they had children. Mr Wilding put to the Appellant that the Sponsor in his statement said that they had started living together in August 2011 but she had said that it was April 2012. The Appellant stated that they were dating then. When asked why the Sponsor would say in his statement that they were 'cohabiting' from August 2011 if they were only dating, the Appellant stated that he sometimes stayed with her and she sometimes stayed with him and that she was there nearly every weekend.

18. When referred again to the utility bill dated 23 March 2013, the Appellant stated that that was where he lived and she had visited there nearly every weekend. When asked again why then her name was on the bill, she said that she was trying to support him. She was asked why the utility bill was for Sutton Court in 2013, when they had been living together at Commonsides since April 2012. She stated that the bills came every three months and they had left the address by that date. I asked her to clarify, if bills were being sent 3 months in arrears, why the utility bill was issued in March 2013, when she stated that they had moved elsewhere in April 2012. She said that the Sponsor's brother still lived at that address and the Sponsor had to help pay his bills; the reason why they had moved was because his family lived at the Sutton Court address and they needed a new start.
19. Mr Wilding indicated that he had no further questions for the Appellant.
20. When asked if there was anything else she would like to say in support of her appeal, the Appellant said that there was not. The Appellant was notified that Mr Wilding would sum up the case for the Home Office; she was asked to listen carefully as she would be given an opportunity to respond.
21. Mr Wilding submitted that in the letter dated 22 November 2013 setting out the reasons for refusal of the Appellant's application for a residence card (the RL), it was noted that no evidence had been provided to establish that the Appellant and the Sponsor were in a durable relationship; this was not just evidence of residing at the same address as persons could reside at the same address without being in a relationship. It would be statements from family and friends, photographs of them together over a period of time and at special family events etc. However, even the small amount of evidence submitted as to living together revealed inconsistencies as between the Appellant's evidence and the Sponsor's and between the Appellant's evidence and the documentary evidence submitted. She stated that they had been living together since April 2012, he said it was since August 2011. It was inconceivable and remarkable that there was a utility bill in joint names for a property in which they were not living at the time the bill was issued and where she had never resided. He submitted that little weight should be placed on the documentary evidence. The evidence did not demonstrate that they were in a durable relationship. No documentary evidence at all had been

submitted despite a calendar month having lapsed since the date of the last hearing. He asked me to dismiss the appeal on all grounds.

22. I asked the Appellant if she would like me to take her through the points made by Mr Wilding to enable her to respond to them. She said that she would not but she would like to ask Mr Wilding whether, when he was living with his partner, he would have been able to provide evidence that they were in a relationship. I reminded her that he was not the appellant and that he had not asked her any questions that were inappropriate in the context of her appeal. She stated that all they had been asked to provide was their marriage certificate and their passports and they had provided those. As to Mr Wilding's submission that the evidence as to their living together was inconsistent, the Appellant stated that they were living at the same address and she could have brought a bill or something to prove it. She said that she could not understand why Mr Wilding was saying that they were not living together and that if I were to dismiss the appeal, her child would be without a father. I reminded her that there was no decision to remove her, the only consequence of dismissing her appeal, if I were to dismiss it, would be that she would have to re-apply providing evidence as to her durable relationship with her EEA Sponsor.

Analysis and findings

23. Pursuant to **Kareem**, I find that there is insufficient evidence before to me to establish that the Appellant's proxy marriage is recognised as valid by the Portuguese authorities. The evidence submitted by the Appellant in AB relates only to the validity of proxy marriages in Ghana and whether or not such marriages are recognised in the UK. However, **Kareem** provided that the question was not whether proxy marriages could be validly conducted in Ghana and, if so, whether such marriages were recognised in the UK. The question in EU law was whether a Ghanaian proxy marriage was recognised in the state of which the EEA Sponsor was a national, in this case, Portugal. It follows that the evidence previously submitted has no bearing on whether the Appellant's marriage to the EEA Sponsor was recognised by the Portuguese authorities.
24. The child, early and forced marriages document goes nowhere close to establishing that Ghanaian proxy marriages are recognised in Portugal. Not only is the law not cited in full, there is force in Mr Wilding's submissions that, on the face of it, the document relates to proxy marriages which took place in Portugal and does not establish that both parties can be represented by proxy. As further submitted by Mr Wilding, if the reference to proxy marriages in the document were capable of applying to Ghanaian proxy marriages, the fact that only one party can be represented by proxy would necessarily mean that the Appellant's marriage would not be recognised because both parties were represented by proxy in Ghana. In so deciding, I bear in mind that the Appellant stated that her Sponsor was intending to go to the Portuguese embassy for evidence if he had been able to get time off work, but the fact remains

that the Appellant and her Sponsor have known for some time that evidence would be required and there was absolutely no reliable evidence before me that they had taken any steps to obtain any evidence to support her assertions. Furthermore, the Appellant had been represented throughout the proceedings until she attended on her own to request an adjournment; she had had access to legal advice throughout. There was therefore no excuse for a failure to provide evidence to support assertions made. On the evidence before me, I find that it is not established that the Appellant is the family member of her EEA Sponsor under Regulation 7 of the EEA Regulations.

25. Is it established that the Appellant and her Sponsor are in a durable relationship? The only evidence before me was the oral evidence of the Sponsor and the documentary evidence contained within AB. As to documentary evidence of a durable relationship, as submitted by Mr Wilding, there were no statements from family and friends, no photographs and the scant evidence available as to living together was inconsistent in the following ways:
26. The Sponsor's oral evidence as to when they started living together was inconsistent with the evidence contained within the Sponsor's witness statement; she stated that they had been living together since April 2012, when they had got married. He said that they had been 'cohabiting' since August 2011. Furthermore, in response to questions as to why there was a utility bill addressed to them both at Sutton Court address a year after they were supposed to have moved in together at Commonsides, she stated that it was because she had visited him every weekend. However, there would have been no need for her to visit him every weekend in 2013 when they had been living together since April 2012. When it was put to her that the utility bill was for a period after she stated that they had moved in together, she initially tried to explain this by stating that they were billed three months in arrears but this would not explain why the utility bill was dated approximately one year after they had moved to the Commonsides address. When this was put to her, the Appellant stated that the Sponsor's brother still lived there and they still needed to pay the bills for that property. I find that the Appellant was saying whatever she thought might provide a reasonable answer to the question and that she was not a reliable witness.

What weight should be given to the Appellant's assertions that she was pregnant and that this confirmed that she and the Sponsor were living together? Plainly cohabitation is not required to achieve pregnancy. Whilst the NHS maternity card bore the Appellant's name, there was no evidence to confirm that the Sponsor was named as the next of kin on any NHS forms. The production of an NHS maternity card cannot confirm that the Sponsor is the father of the Appellant's child in the absence of any other evidence to support this assertion. I therefore place very little weight on the fact of pregnancy to support the assertion that the Appellant is in a durable relationship with her Sponsor.

27. On the evidence in the round, I find that it is not established that the Appellant and the Sponsor are in a durable relationship for the purposes of Regulation 8 (5) of the EEA Regulations.
28. Article 8 ECHR was also raised in the grounds of appeal. However, in the absence of evidence that the parties are married or in a durable relationship, it is not established that Article 8 is engaged on the basis of family life.
29. In her witness statement (in AB), the Appellant states that she has been in the UK for 8 years. This is insufficient to meet the criteria set out in the Immigration Rules, paragraph 276ADE, for a grant of leave on the basis of private life. The Appellant was 33 years of age, as at the date of decision, and she had not been in the UK for a period of 20 years. There was nothing within the documentary evidence to establish ties to the community other than the alleged ties through her EEA Sponsor. There was little point in taking oral evidence from the Appellant, in the absence of any objective evidence, of ties within the community or ties to Ghana, bearing in mind that I found her to be unreliable witness. There is insufficient evidence to establish that Article 8 is engaged on the basis of private life. Even if I were to find that it is engaged, the decision is in accordance with the law because the Appellant cannot establish a claim to remain in the UK on the basis of her relationship with the EEA Sponsor. The legitimate public aim under Article 8(2) is immigration control (**FK and BK (Botswana)[2013] EWCA Civ 238** and **AAO [2011] EWCA Civ 840**). There is nothing within the evidence before me from which to conclude that, in the proportionality exercise, the rights of the Appellant are sufficient to outweigh the legitimate public interest in immigration control under Article 8(2).

Decision

30. The Appellants appeal is dismissed on all grounds.
31. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. No application was made for anonymity and pursuant to the provisions of Rule 13 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I find there is no need for anonymity.

Signed

Date **18 December 2014**

M Robertson
Sitting as Deputy Judge of the Upper Tribunal

TO THE RESPONDENT

FEE AWARD

In light of my decision, I have considered whether to make a fee award (Rule 9(1) (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2014 and section 12(4) (a) of the Tribunals Courts and Enforcement Act 2007.

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011). As the Respondent's appeal has been allowed, I make no fee award

Signed

Dated **18 December 2014**

M Robertson
Deputy Judge of the Upper Tribunal