



Upper Tribunal
Immigration and Asylum Chamber

Appeal Number: IA/22494/2013

THE IMMIGRATION ACTS

Determined at Field House
On 12 March 2014

Promulgated
On 13 March 2014

Before

Upper Tribunal Judge Kekić

Between

Mwamuzi Mbilinyi

Appellant

and

Secretary of State for the Home Department

Respondent

Determination and Reasons

For the appellant: No appearance
For the Respondent: Mr L Tarlow, Home Office Presenting Officer

Details of appellant and basis of claim

1. This case comes before the Upper Tribunal following the grant of permission to appeal on 10 December 2013 by Designated First-tier Tribunal Judge J M Lewis and the decision of 31 January 2014 of Upper Tribunal Judge Chalkley that First-tier Tribunal Judge Raymond erred in law when dismissing the appeal on 20 November 2013.

2. The appellant, a Tanzanian national born on 26 October 1983, seeks a residence card as the spouse of Nicole Catherine Sylvain, a French national. His application was refused because the respondent considered that he had entered into a marriage of convenience. This conclusion was based on the fact that a visit had been made by two immigration officers to his alleged place of residence where the occupants had denied any knowledge of him. A report from an immigration officer appears in the respondent's bundle (contrary to what was said about its absence when permission to appeal was granted). The Secretary of State also considered that there had been inadequate documentary evidence to show that the EEA sponsor was exercising treaty rights in the UK.
3. The appellant did not attend his appeal hearing before the Upper Tribunal. In a brief determination, Judge Chalkley found that the First-tier Tribunal Judge had erred because he had failed to demonstrate that he had examined the evidence submitted by the respondent, failed to comment on the appellant's explanation for what the UKBA staff (i.e. the immigration officers) were told when they made their house visit and failed to consider Article 8 despite the fact that the Secretary of State had dealt with this in the refusal.
4. I have to say that in my view these alleged errors were not made out. The respondent did not submit evidence that was disregarded, the appellant's explanation appeared for the first time in his application for permission to appeal and so was not before the First-tier Tribunal Judge and the Secretary of State did not consider Article 8 as she specifically found that the appellant had not made any valid Article 8 application. However, as a decision has been made that the determination should be set aside, I proceed to hear the appeal afresh.

Appeal Hearing

5. There was no appearance by the appellant or his sponsor at the hearing on 12 March and no explanation for non attendance was received. Given that he had also failed to attend the two previous hearings and having satisfied myself that the Notice of Hearing was properly served, I proceeded with the appeal in his absence.
6. Mr Tarlow made submissions on behalf of the Secretary of State. He asked that I uphold the respondent's finding that the appellant had entered into a sham marriage. He referred me to the visit of the immigration officers to the appellant's residence and to the two reports of the officers that he submitted. He pointed out an anomaly in the addresses supplied by the appellant. Finally he submitted that no Article 8 claim had been made but even if it had, it could not succeed given the fact that the appellant had married for convenience.

Findings and Conclusions

7. The reports of the two immigration officers to the appellant's address on 20 February 2014 led the Secretary of State to conclude that the appellant had entered into a sham marriage. The officers encountered two Ghanaians who confirmed that they did not know the appellant and that he did not live there. In his permission to appeal application the appellant offered an explanation; he stated that they were visitors and so did not know him. No such explanation was offered in support of his original hearing even though a report from an immigration officer was contained in the respondent's bundle and this issue was highlighted in the refusal. Even if these individuals were visitors, I do not accept that they would not know there were other residents there. The appellant could have adduced documentary evidence to show he resides at that address but he has failed to adduce a shred of documentary evidence linking him directly to that address. I have seen no tenancy agreement, no bills, letters or bank statements naming the appellant. The appellant could have taken the opportunity of attending his appeal and given oral evidence but he has failed to do so on three occasions.
8. I further note that at the time when the appellant and his wife gave their address as a street in Birmingham (in November 2012 on their marriage certificate), the sponsor's bank statements (at least from October 2012) showed her address as Reading. Again, at a time she claimed to be living in Birmingham, her business accounts showed the Reading address. Her bank statements show extremely modest deposits and it is difficult to accept that she could live off the very small amounts she pays in each month. No evidence has been put forward to show that the appellant is employed or helps with domestic costs.
9. The respondent has requested further evidence from the appellant but this has not been adduced. There is no evidence that his wife is even in the UK, let alone cohabiting with him. No statement from her has been submitted at any stage.
10. Given all these matters and having considered the very limited evidence as a whole, I find that the respondent has discharged the burden upon her to establish that the marriage is one of convenience. I find that the appellant entered into a sham marriage solely for the purpose of deceiving the immigration authorities and obtaining a residence card.
11. I note that no Article 8 claim has been made. Even if it had, it could not hope to succeed given my findings on the marriage and no details of any private life the appellant may have established here have ever been put forward.

Decision

12. The First-tier Tribunal Judge was found to have made an error of law. I now re-make the decision and dismiss the appeal.

Signed:

Dr R Kekić
Judge of the Upper Tribunal

12 March 2014