IAC-FH-CK-V2

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/37728/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 29 April 2015	**On 10 June 2015**
Prepared 29 April 2015	

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

MR KOME DENIS NGWESE
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr S Mahmud, Counsel instructed by Law & Lawyers Solicitors
For the Respondent: Ms A Brocklesby-Weller, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Cameroon, date of birth 10 October 1988, appealed against the Respondent's decision dated 15 September 2014 to refuse a residence card with reference to Regulation 2 of the Immigration (European Economic Area) Regulations 2006 (the EEA Regulations) on the basis that the Appellant had failed to establish that there was a genuine

© CROWN COPYRIGHT 2015

marriage and it was positively asserted by the Secretary of State that the marriage was a sham marriage.

2. An appeal against that decision was considered on the papers submitted by First-tier Tribunal Judge S P J Buchanan, who in a decision promulgated on or about 16 December 2014 concluded that the Respondent had shown that there was not a genuine marriage which was subsisting and it is clear that the judge assessed the evidence on the papers provided and made reference to statements submitted as part of the appeal by the Appellant's representatives Law & Lawyers Solicitors and concluded on the evidence that it was not a genuine marriage.

3. The difficulty the judge faced necessarily, when there was not live evidence to be heard and assessed and potentially tested by the Respondent, was how to form a view on the material provided.

4. On one hand the judge had received through the Respondent's bundle the evidence which showed the Appellant claiming that he and his wife lived together and that she cohabited with him at 13 [-], Basingstoke. Similar information as to their cohabitation at the present time of marriage was given at that address. The Appellant's wife's payslips were addressed to that address and her bank statements provided again had the same address of 13 [-] in Basingstoke.

5. In addition the judge was provided with information which recited the fact that an interview had been set up for the Appellant and his wife but that scheduled on 13 June 2014 did not attend and there was no explanation on the day for non-attendance. Subsequently, albeit it is now claimed that it was a misunderstanding, it is plain that about a month after the intended interview the point was being taken that either they had not attended because they had a row ('breakdown') and were not getting on with one another or alternatively it is said that there was a 'breakdown of a motor vehicle' rather than a breakdown of the relationship.

6. On the same hand the judge had also had information concerning the Immigration Officer's visit to 13 [-] and the outcome of conversations held with Ms Miranda Melle, who was a half-sister of the Appellant. She confirmed her attendance of the marriage although she did not know where. She knew the Appellant's wife solely by a name of affection used rather than her surname or anything else and it was said that those matters and the outcome of that interview gave rise to the real concern that there was not a genuine marriage. It was therefore by choice that the Appellant, alive to those issues raised, nevertheless pressed ahead with having a determination on the papers and to some extent the consequent difficulties faced by the judge are born of the Appellant's choice but I do not criticise him for that. The judge went through the evidence provided including the statements of the Appellant, his wife and his half-sister and the circumstances explaining why they were not living together, that is, the Appellant and his wife, back at 13 [-] and suggesting the costs of living together in London would be beyond her means; given that his wife was the sole worker in the family.

7. The judge noted all these matters and assessed that evidence. Despite the vigorous submissions of Mr Mahmud of Counsel the fact of the matter is that on the face of it the judge's reasons are adequate in terms of law and they are sufficient in terms of the reasons why the judge rejected the contrary evidence which had been provided to that which was before the judge. It may well be that had the Appellant attended a hearing with his wife and the evidence had been given that a different view might well have been reached. I do not speculate. The problem is it was not such a hearing and in the circumstances the judge was driven to do the best he could with the evidence he got. I bear in mind the self-evident and largely, but not completely, unexplained differences in the presentation of the case as an application to the Respondent and as presented through the appeal process. It could be, for example, that the Appellant and his wife entered into an arrangement which has now crystallised into one which is genuine and subsisting. That is but one possibility which could never be tested.

8. Having carefully considered the submissions made it seems to me that the fact of the matter is that the criticisms, for example that the judge has not properly reasoned why they are not living together in London, have some substance but the judge was obliged to look at the evidence as a whole and to make the best efforts to assess that evidence.

9. In the circumstances it seems to me that whilst I might not have taken the points the judge did that does not disclose on the face of it an error of law but people may differ. The Tribunal has been reminded by the Court of Appeal that it is not open to us to set aside decisions because we as judges might not have reached the same conclusions.

10. For the above reasons I am satisfied that the Original Tribunal did not make any material error of law and nothing indicated shows any real likelihood that any other Tribunal would have been likely to reach any different conclusion. It simply remains for the Appellant and his representatives to assess if they press this matter again by a further application.

11. For the avoidance of doubt, I was provided with a medical certificate to possibly explain the absence of the Appellant's wife supporting the Appellant at the hearing of this matter. The medical material does not say that she is unfit to attend this hearing and to be present with the Appellant. However, it seems to me that it would not be right to draw any adverse conclusion from her absence and in any event, had there been an error of law it would have been appropriate to have a resumed hearing to remake the decision and that would have enabled her to attend.

NOTICE OF DECISION

The appeal is dismissed under the EEA Regulations 2006.

ANONYMITY

No anonymity order is necessary.

Signed Date

Deputy Upper Tribunal Judge Davey