



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/49524/2013

THE IMMIGRATION ACTS

Heard at Manchester Piccadilly
On 11 February 2015

Decision Promulgated
On 16 February 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

MARGARET AMPOFO
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: not represented

For the Respondent: Ms C Johnstone Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.
2. The Secretary of State for the Home Department brought an appeal but in order to avoid confusion the parties are referred to as they were in the First-tier Tribunal. This was an appeal by the Secretary of State against a decision of

First-tier Tribunal Judge Thorne promulgated on 28 July 2014 which allowed the Appellant's appeal under the Immigration (EEA) Regulations 2006 (the EEA Regulations) as he accepted that the Appellant and her EEA sponsor were validly married under both Spanish and Ghanaian law.

3. On 12 December I heard an appeal against that decision and found a material error of law and set the decision aside on the basis that while the Judge had evidence before him that the marriage of a Spanish national was valid anywhere in the world if the marriage was valid under local law he failed to consider the second requirement for the marriage being valid under Spanish law which was that the marriage was registered with the Spanish authorities in the consular section of the local Spanish Embassy.
4. The case was adjourned for re hearing before me as to the issue of whether the marriage had been registered and in the alternative whether the parties were in a durable relationship for the purposes of Regulation 8(5) of the EEA regulations.
5. The Appellant was not represented at the hearing her previous legal representatives no longer acting for her. She confirmed that she was content to proceed without them. I explained the purpose of the hearing to her and confirmed that she understood.

Legal Framework

6. The Appellant applied for admission to the United Kingdom by virtue of European Community Law as the spouse by virtue of a proxy marriage of a European Economic Area national namely Joseph Mensah Quansah a Spanish national who is exercising rights of free movement under the treaty of Rome in the United Kingdom.
7. Regulation 17 of the Regulations sets out the procedure for the issue of a EEA Residence Card:

“17. (1) The Secretary of State must issue a residence card to a person who is not an EEA national and is the family member of a qualified person or of an EEA national with a permanent right of residence under regulation 15 on application and production of –

(a) a valid passport; and

(b) proof that the applicant is such a family member.”

8. Regulation 7 sets out which family members are considered to be family members of an EEA national and therefore entitled to apply for a family permit. The definition includes the spouse of an EEA national except where the marriage is a marriage of convenience.

9. Regulation 17(4) of 2006 EEA Regulations provides discretion to the Secretary of State to issue a residence card to an 'extended family member'. The definition of such a person is found in Regulation 8(5):

"(5) A person satisfies the condition in this paragraph if the person is the partner of an EEA national (other than a civil partner) and can prove to the decision maker that he is in a durable relationship with the EEA national."

10. "Durable relationship" is not defined in the Regulations, and whether a person is in a durable relationship is a matter to be determined on a case-by-case basis although guidance is given in the European Casework instructions to include evidence that the parties have been in a relationship akin to marriage for 2 years.
11. The burden of proving that any of the documents submitted by the Appellant in support of the application are not genuine rests on the Respondent. Otherwise, "the onus of proving either a customary marriage or dissolution rests on the party making the assertion" (NA) and the standard of proof is upon the balance of probability.
12. In relation to the relevant date I have considered Boodhoo and another (EEA Regs: relevant evidence) [2013] UKUT 00346 (IAC) where it was held that in an EEA appeal, a tribunal has power to consider any evidence which it thinks relevant to the substance of the decision, including evidence which concerns a matter arising after the date of the decision.
13. In relation to proxy marriages generally I have taken into account the most recent authority Kareem (Proxy marriages - EU law) [2014] UKUT 24(IAC) where it was held that
 - (i) A person who is the spouse of an EEA national who is a qualified person in the United Kingdom can derive rights of free movement and residence if proof of the marital relationship is provided;
 - (ii) The production of a marriage certificate issued by a competent authority (that is, issued according to the registration laws of the country where the marriage took place) will usually be sufficient. If not in English (or Welsh in relation to proceedings in Wales), a certified translation of the marriage certificate will be required;
 - (iii) A document which calls itself a marriage certificate will not raise a presumption of the marriage it purports to record unless it has been issued by an authority with legal power to create or confirm the facts it attests;
 - (iv) In appeals where there is no such marriage certificate or where there is doubt that a marriage certificate has been issued by a competent authority, then the marital relationship may be proved by other evidence. This will require the Tribunal to determine whether a marriage was contracted;

- (v) In such an appeal, the starting point will be to decide whether a marriage was contracted between the appellant and the qualified person according to the national law of the EEA country of the qualified person's nationality;
 - (vi) In all such situations, when resolving issues that arise because of conflicts of law, proper respect must be given to the qualified person's rights as provided by the European Treaties, including the right to marry and the rights of free movement and residence;
 - (vii) It should be assumed that, without independent and reliable evidence about the recognition of the marriage under the laws of the EEA country and/or the country where the marriage took place, the Tribunal is likely to be unable to find that sufficient evidence has been provided to discharge the burden of proof. Mere production of legal materials from the EEA country or country where the marriage took place will be insufficient evidence because they will rarely show how such law is understood or applied in those countries. Mere assertions as to the effect of such laws will, for similar reasons, carry no weight;
 - (viii) These remarks apply solely to the question of whether a person is a spouse for the purposes of EU law. It does not relate to other relationships that might be regarded as similar to marriage, such as civil partnerships or durable relationships.
14. I have also taken into account TA and Others (Kareem explained) Ghana [2014] UKUT 00316 (IAC) where the Upper Tribunal found that following the decision in Kareem, the determination of whether there is a marital relationship for the purposes of the Immigration (EEA) Regulations 2006 must always be examined in accordance with the laws of the Member State from which the Union citizen obtains nationality.

Evidence

15. I had before me the original bundle of documents that were before the First-tier Tribunal.
16. The Appellant produced a letter dated 6 February 2015 in which she stated that after the last hearing
- 'her husband gave the documents to his brother in Accra who took them to the Spanish Embassy for legalisation and I humbly draw the Judge's attention to the stamp in Spanish language that has now been translated into English Language.'*
17. Ms Ampofo gave oral evidence adopting the contents of that letter.
18. She confirmed that her and her husband had moved to the address 32 Relstone Avenue Oldham 6 months ago. They attended the local Church St Andrews where the vicar was Nick Andrews.

19. She stated that her husband worked for Emprice Cleaning Services and he was full time earning about £700 per month.
20. She said that they had first met in about 2012 at a friend's party in London.
21. In cross examination she explained that her husband had attended the court on a number of previous occasions but could not attend today as he feared being sacked.
22. She was unable to explain why there was no deposit in her husband account that equated to the figure she had given for his earnings.
23. She confirmed that there were no documents in her name for their address and said that was because she was not working so no one wrote to her there apart from the solicitor. She had not thought to bring the council tax demand or indeed a statement from her husband although the letter she produced from her solicitor to show her address stated that she needed a statement from her husband.
24. The letter from the vicar referred to her having a son called Emmanuel whose father was a Macklin Pipra in Ghana. She confirmed that Emmanuel was referred to in a different name and date of birth in her visit visa application of 2004. She stated that the child's father had changed her sons name a date of birth because he married someone else.

Final Submissions

25. On behalf of the Respondent Ms Johnstone made the following submissions:
 - (a) The Appellant had not met the evidential burden of establishing that her proxy marriage was valid under Spanish law as she had not provided evidence that it had been registered at the Spanish consulate in Accra they had merely authenticated the documents in relation to the marriage.
 - (b) In relation to the durability of the relationship no evidence had been produced in relation to the them living together apart from one bank statement and a solicitor's letter: by way of example no council tax, nothing from the electoral role.
 - (c) The Appellant's claimed EEA partner was not before the court and had not provided a witness statement.
 - (d) She suggested that the Appellant's credibility was damaged by the discrepancies in relation to her son in that he was here illegally under a false name.
 - (e) The bank statement produced does not support her claim of his earnings.
26. Ms Ampofu re iterated that Emmanuel was her biological son and his father had changed his name and they had argued about it.

Findings

27. On balance and taking the evidence as a whole, I have reached the following findings
28. The Appellant is a 49 year old citizen of Ghana who has applied for a residence Card on the basis of her claimed relationship with Mensah Quansah a Spanish citizen who she claims she married by proxy in Ghana on 21 April 2012.
29. I am satisfied that the Appellant has failed to establish that her proxy marriage was valid under Spanish Law which was the only live issue in relation to the validity of the proxy marriage before me. The letter from the Spanish Consul general dated 24 June 2014 that sets out the requirements for validity of a Spanish nationals marriage requires that the marriage is registered at the Spanish Embassy or Consulate where the proxy marriage took place in this case Accra. The Appellant has now re produced the documents relating to her proxy marriage one of which now bears a stamp from the Spanish Embassy confirming it is authentic but not addressing the issue of whether the marriage was registered as required under Spanish law.
30. Having failed to establish that her proxy marriage is valid I have considered whether the Appellant can establish that she is in a durable relationship.
31. The Appellant, I remind myself bears the evidential burden of establishing her case either from documentary or oral evidence. While the Appellant was in court to give oral evidence her claimed partner was not nor was there a statement from him. The Appellant cannot claim to be ignorant of the importance of his confirming their relationship as she produced a solicitor's letter dated 16 January 2015 which confirmed that witness statements would be required for the hearing. Given that the genuine nature of their relationship is central to the case I find that the absence of evidence from her claimed partner in any form is fatal to her appeal.
32. I am also satisfied that there is , in any event, little evidence of the claimed relationship other than the documents in relation to the proxy marriage. There is one letter, the solicitor's letter, to show that the Appellant lives at the same address as her partner. There is one bank statement in his name with the same address. Given her claim that they have lived there for 6 months I do not find it credible that there would be such a dearth of evidence relating to them sharing this address if they were both living there. The Appellant's claim in relation to her husband's employment, which might suggest a knowledge of his affairs that supported her claim, was not supported by his bank statements.
33. I also find that the Appellant's credibility is significantly undermined by the serious discrepancies in relation to the child, Emmanuel, who she claims is her son. In her visa application from 2004 she accepts that this child had a different name and date of birth and has been living in the United Kingdom illegally. I reject as incredible her explanation for the difference in names.

34. I have considered the issue of anonymity in the present instance. Neither party has sought a direction. The Appellant is an adult and not a vulnerable person. I see no reason to make any direction in this regard.

Conclusion

35. I find that the Appellant has not discharged the burden of proof on him to show that the terms regulation 7 and 8(5) of the Regulations are met.
36. I therefore find that the decision of the Respondent appealed against is in accordance with the law and the applicable Regulations.
37. No order for anonymity is made.

DECISION

38. The appeal in respect of the EEA Regulations is dismissed.

Signed

Date 15.2.2015

Deputy Upper Tribunal Judge Birrell

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

Dated 15.2.2015

Deputy Upper Tribunal Judge Birrell