



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

Appeal Number: IA/51480/2013

THE IMMIGRATION ACTS

Heard at Bradford

On 16 July 2014

**Decision & Reasons
Promulgated
On 24 March 2015**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**STEPHEN AMEYAW
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mrs Pettersen, a Senior Home Office Presenting Officer
For the Respondent: Ms Khan, instructed by BWF Solicitors

DECISION AND REASONS

1. I shall refer to the appellant as the respondent and the respondent as the appellant as they appeared respectively before the First-tier Tribunal. The appellant, Stephen Ameyaw, was born on 31 March 1976 and is a male citizen of Ghana. He applied in August 2013 for a residence card as confirmation of his right to remain as the spouse of Dorcas Adusei, a

French citizen exercising EEA treaty rights in the United Kingdom. The application was refused on 29 November 2013 both on the basis that there was no evidence sufficient to prove that the appellant and Ms Adusei were married, as they claimed, by proxy in Ghana nor was there sufficient evidence to show that they were in a durable relationship of at least two years' duration. The appellant appealed to the First-tier Tribunal (Judge Saffer) which, in a determination promulgated on 22 April 2014, allowed the appeal under the Immigration Rules.

2. Ms Khan, who now appears for the appellant, agreed that there was no evidence to show that the marriage purportedly contracted by the appellant and Ms Adusei was recognised in the law of France. Accordingly, the First-tier Tribunal should not have allowed the appeal (see *Kareem (proxy marriages - EU law)* [2014] UKUT 00024 (IAC). Accordingly, I set aside the determination of Judge Saffer and have remade the decision.
3. I heard evidence from the appellant (who adopted his two written statements and his evidence-in-chief) and also from the appellant's sponsor, Ms Adusei. Both witnesses were cross-examined by Mrs Pettersen. I heard the oral submissions of both representatives, I reserved my determination.
4. The cross-examination of the witnesses did not expose any inconsistencies of any significance between the two accounts which they have respectively given in their written evidence. The parties both claim to have met in 2012 and became engaged in August 2012. Their purported Ghanaian marriage (under Ghanaian customary law) took place in September 2012. Both the appellant and Ms Adusei claimed to live in a flat in Leeds with her children. Curiously, those children were not mentioned by the appellant in his original statement. I am prepared to accept that the professional advisers of the appellant who prepared the written statement were, at that time, concentrating on the customary marriage of the appellant and Ms Adusei though it was likely that they did not consider any lengthy discussion of the children to be in any way significant to the outcome of the forthcoming appeal in the First-tier Tribunal.
5. I also have a considerable volume of documentary evidence as regards the exercise of Treaty rights by Ms Adusei who works in this country and who has produced payslips and P60s of proof of doing so. Her Barclays bank statements dating back to 2013 showing the appellant living at the same address as Ms Adusei. It was also clear from the cross-examination that the appellant was aware in some detail of the nature of Ms Adusei's employment in the health sector. I am satisfied that the parties are in a genuine relationship and that their current arrangement (the appellant looks after Ms Adusei's children while she works and earns money for the family) operates in the manner in which they claim. There is no evidence that this may be a mercenary relationship only and I am prepared, on the standard of proof of the balance of probabilities, to accept the accounts given by both witnesses as to how they met and how their relationship

developed towards marriage. I am concerned that both of these parties should have undertaken a proxy marriage when they might have taken steps to marry in the United Kingdom or in France. However, both Ms Adusei and the appellant are of Ghanaian origin and I accept that they may have wished that their marriage be conducted according to the customary laws of their mutual country of origin. I am aware also that the relationship is of less than two years' duration but I accept Ms Khan's submission that that fact alone need not prevent the issue of a residence card to the appellant on the basis of the durability of the relationship. I find that both the appellant and Ms Adusei have given credible and reliable evidence. I accept that they are in a durable relationship as claimed and that the appellant is entitled to a residence card by virtue of Regulation 8(1) of the 2006 Regulations. Accordingly, I allow the appellant's appeal against the Secretary of State's decision of 29 November 2013.

DECISION

The determination of the First-tier Tribunal which is promulgated on 22 April 2014 is set aside. I have remade the decision. The appellant's appeal against the Secretary of State's decision dated 29 November 2013 is allowed.

No anonymity direction is made.

Signed

Date 28 February 2015

Upper Tribunal Judge Clive Lane