



Upper Tribunal (Immigration and Asylum Chamber)

Appeal Number: EA/01721/2015

**THE IMMIGRATION ACTS**

Heard at Field House  
on 24 July 2017

Decision & Reasons promulgated  
on 10 August 2017

Before

UPPER TRIBUNAL JUDGE HANSON

Between

FRANCIS KODWO BAFFOE  
(anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: no appearance

For the Respondent: Mr Jarvis Senior Home Office Presenting Officer

**ERROR OF LAW FINDING AND REASONS**

1. This is an appeal against a decision of First-Tier Tribunal Judge George promulgated on 28 November 2016 in which the Judge dismissed the appellant's appeal.

## Error of law finding

2. The appellant, a Ghanaian national born on 21 December 1990, applied for a Residence Card on the basis he was in a genuine relationship with his sponsor, an Austrian national exercising treaty rights in the United Kingdom.
3. The application was refused as it was not considered the appellant was validly married and that the marriage was a marriage of convenience.
4. The Judge noted that the first issue to be considered was whether the sponsor was a qualified person, namely a student within the meaning of Regulation 6(1)(e) which required the sponsor to have comprehensive sickness insurance and have sufficient resources not become a burden on the social assistance system of the United Kingdom during her period of residence. The Judge noted that it was only if the sponsor can satisfy those requirements that the Tribunal can look at whether or not this is a marriage of convenience [15].
5. Having analysed the evidence the Judge did not accept the appellant and sponsor had discharged the burden of proof upon them to the required standard to prove the sponsor was a qualified person. The Judge notes in particular that there was no documentary evidence to show there was comprehensive sickness insurance in place between June 2015 and January 2016 [46 – 53]. At [53] the Judge writes:

“In summary, the documentary evidence does not show that the sponsor was a student for the academic year beginning October 2015; nor does it show that they had comprehensive sickness insurance from June 2015 to January 2016 and that they are self-sufficient. I do not have documentary evidence to support when the sponsor went to Austria and for how long.

6. In relation to the challenge to the validity of the marriage the Judge sets out findings in relation to the credibility of the appellants claim between [55 – 61] in which the Judge noted contradictions in the evidence and a lack of consistency in relation to core aspects.
7. The Judge summarises his findings at [63 – 64] in the following terms:
  63. In considering the totality of the evidence and having identified that the appellant and sponsor lack credibility, I am not satisfied that the sponsor is and was a student at the date of the application or that she was a student up until June/July 2016. I am not satisfied that they had comprehensive insurance between June 2015 and January 2016. I am satisfied that they have had comprehensive insurance from January 2016 to date based on the bank statements filed. I am not satisfied that they were and are self-sufficient for the reasons set out above (a lack of documentary evidence and the lack of credibility). I am not satisfied to the requisite standard therefore that the sponsor is a qualified person in accordance with the Regulations.
  64. If I were to be wrong about that, I consider that the Secretary of State has satisfied the evidential burden that this marriage was entered into for the predominant purpose of securing residence rights for all the reasons identified above. I have borne in mind the dicta set out by the Court of Appeal in *Agho v SSHD [2015] EWCA Civ 1198* at paragraph 13 that “as a matter of principle a spouse establishes a *prima facie* case that he or she is a family member of an EEA national by providing the marriage certificate and the spouses passport; that the legal burden

is on the Secretary of State to show that any marriage thus proved is a marriage of convenience and that the burden is not discharged merely by showing reasonable suspicion". The prima facie case on the basis of their marriage certificate has been rebutted by the appellants and sponsor's own oral evidence as set out above with the fact they could not remember the date of marriage and even how it was celebrated and asserting that the marriage was wrong but having done nothing to rectify it being highly significant.

8. The Judge did not find it has been established that the sponsor is a qualified person exercising treaty rights and found that the marriage is one of convenience leading to the appeal being dismissed.
9. The appellant sought permission to appeal which was granted by another judge of the First-tier Tribunal. The appeal was listed for an Initial hearing before the Upper Tribunal on Monday the 24 July 2017 and notices of hearing validly served upon both the appellant and the appellant's representatives at the addresses provided for service. There was no attendance by or on the appellant's behalf. The court clerk, in addition to calling the case on at 10 AM to establish whether there was any attendance, telephoned the appellants representative at 11 AM when he was advised that they had been instructed by their client not to attend the hearing. The representative indicated a fax would be sent confirming their instructions. When the case was called on for hearing at 12 noon no one had attended to pursue the claim. There was no adjournment application and the demands of fairness and the overriding objectives did not require the hearing not to proceed.
10. The grounds on which permission to appeal was sought argued the Judge had erred in her analysis and consideration of whether the sponsor had exercised treaty rights and that the Judge had misinterpreted and not considered material evidence and had erred in law in requiring the appellant and the sponsor to demonstrate a sum of £1029.20p each month which, it was argued, was not a requirement of the EEA regulations.
11. A person making an allegation is required to do more than plead alleged errors. The grant of permission to appeal indicates that the grounds on which permission to appeal is sought maybe arguable, but nothing further. They do not find as a matter of fact that legal error has been made or established that any such error is material to the decision to allow or dismiss the appeal.
12. The failure of the appellant or his representatives to attend means the Upper Tribunal has no more than the bare assertions pleaded in the application for permission to appeal. The application is opposed by the Presenting Officer.
13. It is the finding of this tribunal that the appellant has failed to discharge the burden of proof upon him to the required standard to establish any error of law material to the decision to dismiss the appeal under the EEA Regulations in the decision under challenge. Accordingly, that decision shall stand.

### Decision

14. **There is no material error of law in the First-tier Tribunal Judge's decision. The determination shall stand.**

Anonymity.

15. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....  
Upper Tribunal Judge Hanson

Dated the 9 August 2017