



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/07029/2017

THE IMMIGRATION ACTS

Heard at Field House
On 14th November 2018

Decision & Reasons Promulgated
On 4th December 2018

Before

UPPER TRIBUNAL JUDGE KING TD

Between

KWABENA ANTWI BOSIAKO

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Collins of Counsel, instructed by Fortwell Solicitors

For the Respondent: Mr S Walker, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Ghana born on 15th July 1974. He appeals the decision of the respondent dated 31st July 2017, refusing to issue him with a permanent residence card as the former spouse of an EEA national.
2. The context and chronology is of importance in this matter. Seemingly the appellant came to the United Kingdom in 2011 on a visit visa. He met his wife, Miss [P], at McDonald's restaurant buying food. They married by a proxy marriage on 31st May

2012. In July 2012 the appellant applied for an EEA residence card which was initially refused by the respondent on 21st November 2013.

An appeal was lodged to the First-tier Tribunal. It was considered on the papers by First-tier Tribunal Judge Robson on 14th February 2014. The Judge found upon the basis of the documentation that there was cohabitation and concluded on the formal documents that there had been a lawful marriage and consequently that marriage overall was a genuine one.

3. On the basis of that he was issued with a residence card on 15th August 2015 valid until 14th August 2019. That residence was however revoked on 14th July 2016. That date coincided with the divorce of the couple.
4. On 1st March 2017 the appellant sought a residence card on a permanent basis under the EEA Regulations and that was refused on 31st July 2017 for the reasons set out in the decision.
5. What had come to light following a joint investigation was that an individual had been organising a highly sophisticated criminal enterprise. Mr Ndoli was convicted of a number of charges of conspiracy to defraud. Such a fraud included the use of hundreds of French identities that had been “hijacked” for the benefit of immigration purposes. Applications were made for a national insurance card which was then exploited for benefits and financial gain. In addition there were some 224 sham marriages that had been organised, 75 of which had been between Ghanaian nationals and French nationals. A link had been established between the organiser of such enterprises and Miss [P], which reinforced the consideration that she had been involved in a sham marriage and certainly had been involved in dishonest enterprises involving applications for national insurance certificates. A copy of her application for a national insurance number was attached to the papers. It was concluded that the marriage conducted was a sham and that no credence could be put in any event upon what she had to say as to her circumstances and situation in the United Kingdom.
6. The appeal came before First-tier Tribunal Judge Nightingale on 31st July 2018. In the light of that evidence which is summarised in some detail at paragraphs 24 to 30 the Judge concluded that the marriage was one of convenience entered into solely for the purposes facilitating the appellant’s residence in the United Kingdom.
7. Challenge is made to that decision and leave to appeal to the Upper Tribunal was granted. The matter comes before me to determine the issues joined as between the parties. The first submission that Mr Collins makes is to rely upon the decision in **Devaseelan v SSHD [2002] UKIAT 00702**. He contends that the issue as to whether the marriage was a genuine one was firmly settled by First-tier Tribunal Judge Robson and that there was no safe evidence currently presented to go behind that.

8. As the determination of Judge Robson indicates there was a consideration of documents as presented that satisfied the Judge that the parties were living together since May 2012. Consideration of the documentation relating to the proxy marriage revealed no irregularities.
9. Mr Collins expanded his argument by indicating that even were it the case that the “sponsor” was involved in illegal activities to do with fraudulently obtaining national insurance certificates, such did not necessarily impinge upon the validity of the marriage between herself and the appellant.
10. Mr Collins develops his argument further by reference to ground 2, contending that the Judge considering the issue of the relationship, failed to pay attention to the clear documentation that was enclosed in the appellant’s bundle concerning cohabitation. I was referred to a large number of documents in that bundle. There was correspondence from HMRC directed to Miss [P] at [~], Palmers Green, also the address at which the appellant resided. In particular there was a letter from Lloyds TSB dated 28th May 2012 to Miss [P] at that address.
11. From time to time there were also documents addressed to the appellant at that address over the period covered in the bundle up until about 2015/2016. It is said that there was cogent evidence of cohabitation, which is indicative of a genuine relationship. Such he submits simply serves to reinforce the findings which were made initially by First-tier Tribunal Judge Robson.
12. Although that is a reasonable point to make on behalf of the appellant, clearly the function of obtaining the national insurance card would be to give the impression of working and/or claiming benefits and it would be part and parcel of the overall conspiracy that there be an identifiable address to which correspondence could be sent.
13. It seems to me that the First-tier Tribunal Judge was right to focus upon the criminality of the appellant’s partner, most particularly because it was very specific to the marriage itself. The proxy marriage between a French national and Ghanaian citizen matched the profile of some 75 such marriages in the context of 224 sham marriages spanning that particular period.
14. Further it was noted in the determination, that the appellant claimed that Miss [P] had been working when he knew her before the marriage and that she already had a national insurance number before he knew her. Significantly however the application for a national insurance number was made 28th May 2012, days before the claimed marriage, from [~], Palmers Green, it being said by Miss [P] that she had started living at that address on 12th April 2012. The phone number was one that was used in the criminal enterprise by a significant number of other people making such an application for a national insurance number. It was said in that application that Miss [P] was working for Café Bleu and a letter from that café dated 25th May 2012 accompanied that application saying that she had been offered a job as a chef in

that company. The template for that letter was also found on the computer of the organiser of the dishonest enterprise.

15. Thus it is very obvious from that application, which she made, that the appellant's sponsor was actively engaged in the purposes of the wider conspiracy which covered not only obtaining national insurance numbers fraudulently but sham marriages.
16. It was also noted from the oral evidence of the appellant that he had insisted that his wife had always been a self-employed hairdresser. However when he submitted his application for a residence card on the basis of the marriage on 12th July 2012, he had given her occupation as being in Accounts Tax Limited, an accountancy firm who had stamped the application form. Such was said to be permanent employment. When questioned he seemed to know little about that matter or indeed much about any earnings related activity which she carried out. At the time of the hearing he did not have any photographs of the marriage ceremony nor know his wife's mobile number.
17. It was the view of the Judge it was inconceivable that the appellant would be unaware of his wife starting a new job on 1st May 2012 or who her employer was at the time that the form was completed. All these matters led cumulatively to the consideration as to the genuine nature of the relationship.
18. So far as the issue of **Devaseelan** it is entirely right to note at paragraph 23 of the determination that that matter was borne in mind by the Judge. Mr Collins makes the point that the Judge was wrong to consider that it focused mainly on the legal validity of the proxy marriage as it also incorporated the assessment of the documents that had been submitted.
19. It is clear, however, that the Judge considered the oral evidence of the appellant together with the other documents.
20. The decision letter raised concerns as to the nature of the employment of the sponsor and again that is of fundamental importance in determining whether or not she was exercising treaty rights at the material time. Clearly being involved in a criminal enterprise does not assist her credibility, nor indeed is there any particularity advanced as to the nature of her employment. A significant feature of the communication received from HMRC for the tax years 2011 to 2016 is that for the most part any declaration of earnings were self-declarations. They were always under the tax threshold so the tax did not fall to be paid. What needed to be paid, however, was of course the contribution towards the national insurance contributions. So, for example, page 30 of the bundle is a demand for year 2014 for income tax and class 4 national insurance contributions of £54.72. The tax calculation for 2012 showed payment on income tax of £80.40 and national contributions of £58.68. All the earnings generally speaking were either under the threshold or attracted very little tax indeed and clearly were not verifiable by the HMRC. If it was

the purpose to obtain a national insurance certificate or a number, then it was clearly important to maintain that number and appearance.

21. There are a number of bank accounts that are presented in the documents but they relate essentially to the appellant. There are in fairness a number of documents from Lloyds Bank addressed to the sponsor. The statement from January 2015 to February 2015 shows an overdraft with £101.79 overdrawn. From May 2015 there was limited funds coming in and out of the bank account. There is little evidence as to the source of such funds in any event and nothing from an employer to indicate the nature of the employment which the sponsor undertook if at all.
22. It seems to me that the dishonesty of the spouse as clearly demonstrated on the evidence presented creates credibility difficulties, not only in terms of the genuineness of the marriage, but also of the reality of her exercising treaty rights.
23. Overall I find that the First-tier Tribunal Judge has conducted a proper exercise. Although it could have been fuller in terms of the documentation relied upon in the appellant's bundle and highlighted by Mr Collins before me, I do not find that even a consideration of that matter could conceivably have resulted in any material difference of the outcome.
24. In those circumstances therefore I do not find there to be a material error of law.

Notice of Decision

The appellant's appeal before the Upper Tribunal is dismissed. The decision of the First-tier Tribunal shall stand, namely that his appeal is dismissed in respect of the EEA residence card.

No anonymity direction is made.



Signed
Upper Tribunal Judge King TD

Date 30 Nov 2018