



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: EA/07760/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 16 July 2018

Decision & Reasons Promulgated  
On 07 August 2018

Before

UPPER TRIBUNAL JUDGE KING TD

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MRS MERCY FRIMPONG  
(anonymity direction not made)

Claimant/Respondent

**Representation:**

For the Appellant:

Mr S Kandola, Home Office Presenting Officer

For the Claimant/Respondent: Mr K Siaw, Solicitor, KPP Oplex

**DECISION AND REASONS**

1. The claimant is a citizen of Ghana, seeking to appeal against the decision of the respondent made on 11 May 2016 refusing to grant her a permanent residence card as confirmation of a right to reside in the United Kingdom as the spouse of an EEA national.
2. The burden of the decision was that the marriage to Prince Sei was a sham marriage purely designed to acquire the right of residence in the United Kingdom. The claimant had sought indefinite leave to remain in the United Kingdom which application had

been refused on 29 October 2009. On 12 October 2010 the claimant was issued with a residence card.

3. On 23 October 2015 the claimant sought permanent residence on the basis of being the spouse of Prince Sei but, according to the decision maker, had produced no evidence of any continuing relationship with him, indeed had told lies in the application about the relationship. Neither the claimant nor indeed the sponsor had cooperated in any way at all to attend two interviews which had been arranged in order to determine the nature of their relationship.
4. The claimant sought to appeal against that decision, which appeal came before First-tier Tribunal Judge Skehan on 15 January 2018. In a determination dated 23 January 2018 the appeal was allowed.
5. Challenge is made to the decision on the basis of lack of anxious scrutiny to the concerns that were highlighted by the respondent in the refusal decision. The sponsor had not attended the hearing and the Judge relied upon what the claimant generally had to say. The Judge accepted the credibility on what the claimant had to say about the events.
6. It is contended on behalf of the Secretary of State, that such was a remarkably uncritical acceptance without any consideration of the core concerns as expressed in the decision letter.
7. An important element in that consideration was to determine the credibility of the claimant in what she had declared to the Secretary of State in the application. A copy of that application is in the bundle, particularly the answers in section 11 dealing with the spouse, civil partner or durable partner of the sponsor. Question (b), 11.5 asked the question whether she and her sponsor currently lived together and the box 'yes' has been ticked. In terms of accommodation at 13.7 the question is asked, 'Do you currently live with your sponsor' and once again the box has been ticked 'yes'.
8. It was the evidence, that was provided to the Immigration Judge by the claimant, that she had lived with the EEA national approximately to October 2010 when she was rehoused and has not resided with him since that time. Such therefore calls into question why she gave the answer that she did and that is a matter specifically highlighted in the refusal letter but not considered by the Immigration Judge even to the point of asking questions about it. The claimant, in the course of her evidence, seems to suggest that they lived together at weekends whereas no mention of that matter is made in either the statement that she prepared on 9 July 2018 in which she says "my husband continues to work in the UK and assists me with the children at weekends to give me respite".
9. Prince Sei in his statement of 9 January 2018 says, "we are separated, however I give her respite during the weekend by looking after the children so that she could go out and have rest".

10. In the refusal letter it is also a highlighted concern that the claimant and the spouse were invited to attend a marriage interview on 3 May 2016. The claimant stated that she could not attend as she could not leave the children. A further interview was arranged on 10 May 2010 and the claimant simply indicated that she would not be attending the interview. The position therefore of the Secretary of State in the decision was that there had been no valid reason why the claimant nor her spouse had failed to attend the interview, which allowed the decision maker, by reason of Regulation 20B(4) and 20B(5), to draw any factual inferences about an entitlement to the right to reside as may be appropriate. It was the view of the Secretary of State that there was nothing to establish any right to reside under Regulation 14(1) of the EEA Regulations.
11. The statement of Prince Sei says nothing about why he did not attend the interview and the claimant in her statement indicated that she saw no reason for attending the further interview as she had provided all the information that she considered to be necessary.
12. In her evidence to the judge it was indicated that she was unable due to her caring responsibilities to attend either of the interviews in Liverpool and that was an explanation seemingly accepted by the judge. No question was asked, however or evidence recorded from her, as to why the sponsor had not attended either of those interviews such as to give a different slant to that interpretation by the Secretary of State.
13. Indeed it seems to me that the Judge compounded the matter with the comments made at paragraph 13 of the determination "the respondent has not questioned the nationality or worker status of the claimant's sponsor. Therefore, this aspect of the claimant's claim is accepted". Such is to misunderstand the challenge that is being made as to the validity of the relationship. It is clear from the bundle and the documentation that was submitted that Prince Sei was working and indeed that he was a French national. Indeed it may well be that he enjoyed the status of permanent residence. The issue which the Secretary of State sought to clarify was whether there was indeed a genuine relationship between him and the claimant.
14. It is to be noted that although the claimant claims that she received some financial assistance from Prince Sei, there was nothing in the papers to indicate that that was the position. There was no attempt by the Judge to clarify the financial arrangements made as arising from the relationship. In terms of the children their birth certificates were submitted none of which had the name of Prince Sei as their father upon them. The explanation being offered was that because the claimant was not accompanied by her husband she was not permitted to enter his name in his absence. It is to be noted that all three children were born following the claimant's separation from her husband. A matter of some potential significance arose in the decision itself, namely that on 28 April 2015 there had been an application made on behalf of the claimant for a residence card as the spouse of Lldas Birnaibova. That clearly was a significant

matter but unfortunately, for whatever reason, was not dealt with adequately before the judge who in paragraph 10 gave it little weight and understandably so.

15. In terms of children, in fairness to the claimant, it was noted by the judge that they bore the name of Sei.
16. That having been said the photographs produced at pages 48 and 49 of the bundle are pictures of individuals with the children and with the claimant which appear to reflect more than one male figures.
17. It has long been recognised that appellate courts should be slow to interfere with findings of fact made by a judge who has had the opportunity of hearing evidence unless the same is irrational. That having been said, however, it is important that hearings are conducted to be fair to all. A Judge is not required in the course of coming to a determination to deal with every single point that is raised. It is incumbent upon the judge, as I so find, to deal with significant and substantial points of credibility. I find that in this case that was not done. Very significant concerns were raised by the Secretary of State that were not addressed properly or at all by the judge. I find that that constitutes an error of law such that there should be a rehearing before the First-tier Tribunal.
18. It would be of assistance in such a rehearing to have all the original grants of leave or relevant correspondence to hand. I note that this is a customary marriage although seemingly one recognised by the respondent. Whether it is a genuine marriage and whether it has continued are clearly important matters to be considered within the EEA context.

### **Notice of Decision**

19. The appeal by the Secretary of State for the Home Department before the Upper Tribunal is allowed. The decision of the First-tier Tribunal shall be set aside to be remade by a *de novo* hearing in the First-tier Tribunal.

No anonymity direction is made.



Signed

Date 27 July 2018

Upper Tribunal Judge King TD