



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000160
First-tier Tribunal No:
EA/04815/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 05 June 2023

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

OSEI KWAKU ACQUAH

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D. Coleman, instructed by Elegant Solicitors
For the Respondent: Mr D. Clarke, Senior Home Office Presenting Officer

Heard at Field House on 01 June 2023

DECISION AND REASONS

1. The appellant appealed the respondent's decision dated 07 May 2022 to cancel leave to remain as a durable partner under the immigration rules relating to the EU Settlement Scheme (EUSS). The appeal was brought under The Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020 ('the CRA Regulations 2020').
2. First-tier Tribunal Judge S.J. Clarke ('the judge') dismissed the appeal in a decision sent on 23 December 2022.
3. The appellant and his partner say that they met at a party in July 2019. They say that a proxy marriage was registered in Ghana on 03 October 2020, but they did not contract a marriage in the UK because of Covid restrictions in place at the time. There is no evidence to suggest that they have contracted a marriage in the UK in the two and a half years since then. Although the proxy marriage certificate appears to record both parties to the marriage at the same UK address, the exact

date when the appellant and his partner claim to have started living together is unclear. The appellant's partner said in her witness statement that it was July 2019, but the First-tier Tribunal judge recorded their evidence at the hearing to be that they did not live together full-time until August 2021, some 10 months after the proxy marriage.

4. On 07 May 2022 the appellant was stopped and interviewed on his return to the United Kingdom. Having spoken to the appellant and his wife in English the ECO was not satisfied that they were in a genuine relationship. Having concluded that the relationship was one of convenience the respondent made a decision to cancel the appellant's existing leave to remain under the EU Settlement Scheme.
5. Having heard evidence from the appellant and his partner the judge was satisfied that the respondent had produced sufficient evidence to show that the relationship was one of convenience. She concluded that the appellant and his partner had given a variety of different accounts, contradicting themselves and each other. She did not find them to be credible witnesses and dismissed the appeal.
6. The appellant applied for permission to appeal to the Upper Tribunal on the following grounds:
 - (i) The First-tier Tribunal failed to take into account the full background adequately.
 - (ii) The First-tier Tribunal failed to take into account the transcript of the interview adequately. There was a 'strong suspicion' that the judge had only considered matters raised by the respondent in the decision letter.
 - (iii) The First-tier Tribunal erred in failing to take into account the fact that the appellant and his wife were interviewed in English but needed the assistance of a Twi interpreter when giving evidence at the hearing.
 - (iv) It is submitted that the First-tier Tribunal did not understand the evidence given about how and when the couple began to co-habit and their description of their accommodation.
 - (v) The First-tier Tribunal failed to consider other evidence relevant to the genuine nature of the relationship, including bills and photographs.

Decision and reasons

7. It is not necessary to give detailed reasons for this decision because the parties were in agreement that the decision involved at least one material error of law. Whilst I consider that many of the judge's findings were open to her to make on the evidence, and that not all of the grounds of appeal were persuasive, the ground identified by the parties raises a sufficiently serious concern to justify setting aside the decision.
8. At [20] of the decision the judge made a material error of fact that affected the rest of her reasoning relating to the credibility of the appellant's evidence. She found that 'the only trigger for them claiming the Appellant moved in to live with the wife in 2021 was because the Appellant was stopped at the airport and had his leave curtailed, and they have been trying to build up a shared life together in

her home.’ In the next paragraph she found that ‘the recent claim which is the Appellant has now moved in full-time... [was] only... to try and succeed on appeal.’ I accept that this finding formed a key plank of the decision and appears to have been based on a mistake of fact. The appellant was not stopped and questioned at the airport until 07 May 2022. Therefore, the chronology outlined by the judge did not indicate that the couple only began to live together after the decision to cancel his leave to remain.

9. For the reasons given above, I conclude that the First-tier Tribunal decision involved the making of an error of law. The decision is set aside.
10. Mr Coleman suggested that the appropriate course for remaking the decision would be to remit the case to the First-tier Tribunal because it was anticipated that as many as six witnesses might give evidence. Mr Clarke seemed to agree. However, it is a matter for the Upper Tribunal to decide the appropriate forum for remaking.
11. The usual course of action is for the Upper Tribunal to remake the decision even if it involves making further findings of fact. I have considered the guidance given in the recent decision of *Begum (Remaking or remittal) Bangladesh* [2023] UKUT 00046 (IAC). The error of law did not relate to any fairness issues arising in the First-tier Tribunal. Although six witnesses might sound like a lot, in cases where friends or relatives might attend to testify about a relationship, those witnesses are rarely questioned for long. Although I consider that the Upper Tribunal could remake the decision, I bear in mind that the decision as a whole has been set aside and that no findings can be preserved. I also bear in mind the significance of the issue given that the appellant was initially granted leave to remain on this basis and the case involves cancellation of that leave. On this occasion, I find that it is just appropriate to remit the matter to the First-tier Tribunal for a fresh hearing given that it is anticipated that a significant amount of further evidence might be produced.

Notice of Decision

The First-tier Tribunal decision involved the making of an error of law

The case is remitted to the First-tier Tribunal for a fresh hearing

M.Canavan
Judge of the Upper Tribunal
Immigration and Asylum Chamber

01 June 2023