



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case Nos: UI-2024-001668
UI-2024-001736

First-tier Tribunal Nos: EU-
51971-2023
EU-51973-2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 10 July 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

MR BRIGHT AWUKU (FIRST APPELLANT)
MR ALEX AWUKU ANNOR (SECOND APPELLANT)
(NO ANONYMITY ORDER MADE)

Appellants

v

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss D Ofei-Kwatia, Counsel instructed by BWF Solicitors

For the Respondent: Mr K Ojo, Senior Home Office Presenting Officer

Heard at Field House on 21 June 2024

DECISION AND REASONS

1. The first Appellant, Mr Bright Awuku, was born on 31 August 1985. His son Alex was born as a consequence of a short relationship on 1 April 2016. The Appellant married the Sponsor soon after on 17 August 2016. The Sponsor is an EEA national. Having registered the marriage on 16 January 2023 she made an application for the Appellants to join her in the UK. This application was refused on 13 March 2023 and a Home Office

review dated 1 September 2023 also took further issue with the documents and evidence in support of the validity of the marriage.

2. Following an appeal hearing before the FtT on 23 November 2023 the appeal was dismissed in a decision dated 13 December 2023. In essence, the judge found that there were discrepancies in the marriage certificate in terms of the ages of the parties as recorded. The judge expected to see evidence from the competent authorities in Ghana to confirm that it is possible to register a marriage late and in accordance with the law in Ghana, and whilst the Weija Gbawe Municipal Assembly purport to confirm the veracity of the marriage, it states that the marriage was a proxy marriage, whereas the legal representative says in a letter that the Sponsor travelled to Ghana for the marriage ceremony. The judge was not satisfied the Sponsor was present in Ghana at the time of the marriage, nor that there was evidence of an ongoing relationship between the parties: there were no dated photographs.
3. Permission to appeal was sought in time on the basis that the Judge failed to have regard to material evidence *viz* the letter from the Weija Gbawe Municipal Assembly dated 2 August 2023 stating that the Sponsor and first Appellant had married on 17 July 2018 under Ghanaian customary law and was registered as such and the fact that parties are present or not present and marry by proxy at a customary marriage does not change the nature of such a marriage; a further letter from the Municipal Assembly dated 25 October 2023 stated that the ages of the couple were their ages at the date the marriage was registered [29 November 2022]. The grounds assert that it is not necessary for a marriage to be registered and this was done in order to obtain the marriage certificate to support the application for an EEA Family Permit. The Judge did not explain why he doubts the explanation from the Municipal Assembly. No allegation was made against the authenticity of these documents. A challenge was further brought to [16] of the decision of the FtT where the judge seemed to indicate that there was scant evidence of time spent together since the marriage and reference was made to evidence in the form of a travel itinerary, boarding passes etc showing that the Sponsor visited Ghana in October 2022 and October 2023.
4. In a decision dated 14 May 2024 permission to appeal was granted by Upper Tribunal Judge Pickup on the basis that:

“In summary, the grounds put to the First-tier Tribunal assert that the First-tier Tribunal failed to have regard to material evidence, taking immaterial matters into account; provided inadequate reasoning; misunderstood or misconstrued Ghanaian law; disregarded statutory provisions; failed to give effect to superior court decisions in both Ghana and the UK; and made an irrational decision. Unhelpfully, the renewed grounds to the Upper Tribunal primarily criticise the decision of the First-tier Tribunal in refusing permission and do not set out the

grounds relied on. The grounds argue that the judge has misunderstood that parties can be in attendance at a proxy marriage and that the age discrepancy is explained by the ages being given as at the date of registration rather than marriage. The judge did consider this latter explanation but rejected the letters from the Weija-Gbawe Municipal Assembly. Unarguably, there was a clear issue in the appeal as to the validity of the marriage between the sponsor and the lead appellant. There were discrepancies as to ages stated on the marriage certificate and as to whether this was an in-person or proxy marriage. There was also a delay of some four years in registering the marriage. I also note that Awuku [2017] EWCA Civ 178 was not considered by the judge, who relied on Karim, now overruled by the Court of Appeal, which held that in the law of England and Wales the general rule is that the formal validity of a marriage is governed by the law of the country where the marriage was celebrated, not the national law of the EU member state of the party or parties.

It is arguable that the judge misconstrued the evidence and made findings based on a misunderstanding of the law in Ghana. However, it is not clear that the evidence on this was sufficient. It also remains unclear whether there was sufficient evidence before the Tribunal to discharge the burden of proof as to the validity of the marriage”.

Hearing

5. At the hearing before the Upper Tribunal, Ms Ofei-Kwatia appeared via CVP and the Sponsor attended in person. Ms Ofei-Kwatia sought to rely on the original grounds of appeal. She submitted there were two main issues in the refusal, the age on the marriage certificate and the fact that the marriage was registered four years after it took place. She submitted that the judge failed to consider that a competent authority, i.e. the municipal authority, had provided letters stating that the age of the marriage certificate was the relevant date, not the date of registration, and the judge did not give a sound reason for going behind this statement. Essentially the marriage was contracted and registered according to the laws of Ghana and was recognised in the country in which it took place and that this was the key issue and that the judge had erroneously applied the decision in Kareem (Proxy marriages - EU law) [2014] UKUT 00024 (IAC).
6. In response to a question as to whether the marriage was in person or by proxy Ms Ofei-Kwatia submitted that one party attended as is clear from the Municipal Assembly letter at page 42, see also the marriage certificate at page 53 and pages 57 to 59 of the bundle. She submitted that the terms were essentially being used interchangeably, both customary marriage and customary proxy marriage, but irrespective of how it was termed, the Sponsor's attendance at the wedding did not invalidate the validity of the marriage.

7. As to the fact the judge did not believe the evidence, Ms Ofei-Kwatia drew attention to the evidence before the FtT, including WhatsApp communications, pages 123 to 140 dated between May and July 2023, photographs at pages 89 to 117, and flight itinerary tickets between the UK and Ghana in relation to the Sponsor's journey there at pages 71 to 78. Ms Ofei-Kwatia submitted that it was almost as if a marriage of convenience was being raised only indirectly and no questions were asked to that effect.
8. It then materialised that Ms Ofei-Kwatia had not seen the Respondent's review so the case was put back so that Mr Ojo could provide her with a copy of it and she would have the opportunity to consider it.
9. On her return, Ms Ofei-Kwatia submitted that the main point is that whilst there are credibility issues that were taken, nowhere was it raised or suggested that the Appellant and Sponsor were parties to a marriage of convenience and it does not appear that this aspect was pursued at the hearing in any particular detail and unfair in circumstances where there was evidence in the form of WhatsApp messages and photographs and open to the parties at the hearing to explore the nature of the relationship. She submitted that it did not appear in light of the evidence from the competent authorities that the credibility points made were of such gravity that they could lead to the findings made by the FtT. She submitted in relation to the delay in the registration of the marriage that there was in any event no requirement for a customary marriage to be registered and there is nothing to suggest that the validity of that marriage is affected by any delay in its registration, see e.g. the document from the competent authority. Consequently the Appellant and Sponsor could live in Ghana as a married couple. She submitted there was enough evidence before the Tribunal from the competent authority that was overlooked or questioned without adequate reasons and that the evidence had not been considered holistically or properly which amounted to material errors of law.
10. In his submissions Mr Ojo submitted there was an allegation as to what constituted a valid marriage in Ghana. He submitted the fact the judge referred to Kareem rather than Awuku did not in fact make any material difference in terms of the outcome as the judge would still have had to make findings as to whether the marriage is valid on the basis of the documentary evidence before them. If one looks at the documents themselves it is clear there are questions as to whether the marriage is a valid one, see PDF page 42 the Municipal Assembly letter dated 2 August 2023 and that dated 2 October 2023 which indicates the ages only at the date of registration rather than the date of marriage and that any background evidence as to Ghanaian legislation attesting to the rules around at what point age is recorded was absent and had not been submitted. Mr Ojo drew attention to page 54 of the composite bundle which was a blank registration form without a stamp and without any details being provided. In relation to the issue of a proxy he submitted there was no consistency between the different documentary evidence or

letters from the municipal authority and the judge would have had this in mind. Mr Ojo submitted the judge directed herself properly in relation to the case of Tanveer Ahmed and if the documents could not be relied upon there could not be a valid marriage.

11. In reply Ms Ofei-Kwatia submitted in terms of the background evidence that the relevance of that would be questionable in circumstances where you have the relevant competent and municipal authority which should have been sufficient in the circumstances, and in relation to the customary marriage form the reason there was a blank page is that the marriage has not been dissolved and obviously one has to look at that evidence holistically.
12. I reserved my decision which I now give with my reasons.

Decision and reasons

13. Dealing first with the fact that the judge applied Kareem (Proxy marriages - EU law) [2014] UKUT 00024 (IAC) which had been overturned by the case of Awuku [2017] EWCA Civ 178 and thus applied law that was out of date, I find this did make a material difference to the outcome of the appeal and is a material error of law. It was not in fact a point raised by the Appellants on appeal but it was identified by the various judges who considered the application for permission to appeal. The test per Awuku is whether a customary marriage - which is the nature of the marriage between the first Appellant and the Sponsor in this case regardless of whether or not a proxy was utilised - is valid in Ghana. Whereas in Kareem the focus was whether the marriage would be accepted by the law of the Member State (in this case Germany). Leaving aside the fact that the judge did not make a finding on that point and was not required to light of Awuku it is clear from the evidence including the Municipal Assembly letters that customary marriages are valid in Ghana and that formal registration of the marriage is not an essential requirement. Consequently in line with the *lex loci celebrationis* principle set out in Awuku at [23] the marriage is arguably valid.
14. Whilst the judge may not have been particularly assisted by the evidence of the Sponsor and the presentation of her case by her legal representatives because it is clear there was confusion as to eg whether the marriage was proxy or customary and whether it was necessary for the marriage to be registered, I find the judge materially erred at [10]-[15] in her understanding of the necessary constituents of a customary marriage in Ghana and focused on the subsequent registration and marriage certificate which are not constituent requirements. I find she gave insufficient consideration to the content of the letters from Weija-Gbawe Municipal Assembly and insufficient reason for apparently rejecting the entirety of their contents.

15. I consider that this may have then infected the judge's approach to the evidence that was before her as to ongoing contact between the Sponsor and first Appellant in the form of whatsapp messages, photographs and evidence of the Sponsor's visits to Ghana which caused her to reject this evidence. I find this is also a material error in that the judge failed to properly take this evidence into consideration when it was capable of demonstrating that the relationship is genuine and subsisting.

16. In light of the fact that the decision will need to be re-made in its entirety and bearing in mind the guidance in Begum (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC) I remit the appeal for a hearing *de novo* before the First tier Tribunal. Given the lack of clarity at the previous hearing the Sponsor would be well advised to obtain updating evidence and expert or other evidence concerning marriage in Ghana.

Notice of Decision

17. I find material errors of law in the decision and reasons of the First tier Tribunal Judge. I set that decision aside and remit the appeal for a hearing *de novo* before the First tier Tribunal.

Rebecca Chapman
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

9 July 2024