



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/17334/2014

THE IMMIGRATION ACTS

Heard at Field House

On 31st October 2014

Determination

Promulgated

On 5th November 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE LINDSLEY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR PRINCE BOADU

Respondent

Representation:

For the Appellant: Mr P Armstrong, Home Office Presenting Officer

For the Respondent: Mr E Akohene of Afrifa & Partners acting as agents for KA & Co Law Practice

Interpretation:

Ms Linda Ofori in the Twi language.

DETERMINATION AND REASONS

Introduction

1. Although this is an appeal by the Secretary of State I will refer to the parties as they were before the First-tier Tribunal.

2. The appellant is a citizen of Ghana born on 16th June 1983. He married Ms Larissa Dogbo, a citizen of France, by proxy on the 12th September 2012. He applied for an EEA residence card in accordance with Regulation 7 of the Immigration (EEA) Regulations 2006. His first application was refused on 26th April 2013. He appealed this refusal and Judge of the First-tier Tribunal Burns found that there was no legal marriage and no arguable Article 8 ECHR case before him in a determination promulgated on 12th September 2013. A new application was made by the appellant on 24th December 2013. This application was refused on 28th February 2014, again it was said that there was no legal marriage although in addition it was also implied that there were doubts about the genuine nature of the relationship as well. The appellant appealed. His appeal against the decision was allowed by First-tier Tribunal Judge McGinty in a determination promulgated on the 4th July 2014 on the basis that he found that the appellant and his wife were lawfully married. The Secretary of State was given permission to appeal to the Upper Tribunal.
3. The matter came before me to determine whether the First-tier Tribunal had erred in law. I found that Judge McGinty had erred in law, for the reasons set out in my decision which is appended to this determination at Annex A, and set his decision aside.
4. The matter came before me to remake the appeal de novo.

Evidence & Submissions

5. Mr Akohene informed the Tribunal that the appellant's partner, Ms Dogbo, had gone to France on 28th October 2014 with a return ticket for 6th November 2014. The Tribunal was shown evidence of Eurostar tickets to Paris for Ms Dogbo corresponding to these dates. She was not therefore able to give evidence. She had gone to see her sick mother. The appellant did not want to adjourn the hearing, but the respondent applied for this to happen on the basis that it was necessary to hear the evidence of the appellant's wife to assess whether this was a durable relationship.
6. The appellant informed the Tribunal that his wife's mother had had a stroke which was affecting her right side. She only had a brother in France (who did not live nearby), and her husband was in Africa but would join her after his wife left France. Ms Dogbo was her only child. He did not know when Ms Dogbo would return as his mother-in-law was getting worse. She had four weeks holiday she could take from work, and he did not know if his wife would return after this period. She had initially booked a return ticket for 6th November 2014 as her mother had not been so unwell, but she had got worse after she travelled. His mother-in-law was in hospital. He had been in text contact with his wife since she left. He could not be sure that his wife would attend if the hearing was adjourned for another date of their choice as he believed

that his wife would not return even for a day to give evidence if her mother was unwell.

7. On the basis of this evidence I refused to adjourn the hearing. Ultimately it was the appellant's decision as to which evidence to present to the Tribunal and according to the appellant there seemed to be no real likelihood in the foreseeable future that his wife would attend if the matter was adjourned.
8. The appellant attended the Tribunal and gave evidence. He confirmed he understood the Twi interpreter. He adopted his statements of the 13th June 2014 and 15th October 2014. In brief summary in his statements he says as follows. He met Ms Dogbo (a French citizen) when he was on a business visit to the UK. They were both buying second hand shoes and clothes in a warehouse in Hainault. She was shipping them to her parents in Ghana where they lived. He discovered that her parents lived in Ghana not far from his family home. They became lovers and were married proxy in Ghana on 12th September 2012. Their Ghanaian customary marriage is valid under Ghanaian law. This was the appellant's second marriage and he is determined to make it work. They continued to live together as husband and wife. The appellant and his wife lived at 17 Garratt Road until April 2013 (where the appellant had lived prior to his relationship with Ms Dogbo) when they moved to 28 Lonsdale Avenue due to hostility from the landlord at Garratt Road. They do not have documentation to show they lived together at 17 Garratt Road.
9. In summary in oral evidence the appellant added the following. He and Ms Dobgo had been in a relationship for two years and four months. They do not go out with other friends. His wife does not have close friends. The appellant produced four photographs of himself with his wife taken on one day in June 2012. They had no photographs relating to their wedding as it was performed without them in Ghana. They were planning to have a white wedding after he got his status documents. He had no further photos, and no photos in his telephone. His wife is not religious but he goes to church. He had no evidence of himself and his wife celebrating any anniversaries or special events. The appellant said he was not literate so he did not write his wife cards, and they were always together and she knows he cannot read so she did not send him cards either. He and his wife went out together. The appellant's previous wife lives in Ghana. His wife's name was added to their bills by him calling the utility company (BT and Thames Water) and their agreeing to do this. She was helping to pay the bills and this was why they did this. She was known as Mrs Dogbo on the utility bills and Miss Dogbo on her payslips and bank statements as the latter just related to her. He had supported himself from money he bought from Ghana, and his wife helped him survive. The only evidence he had of his relationship was the documentation, which included the utility bills in the bundle, together with the four photographs. He did not have a tenancy agreement.

10. At 17 Garratt Road there were two dwellings: he and his wife lived at the top with another man called Mr Cefa; and a man, with his wife and child lived at the bottom. This man downstairs was called Cosmos. He did not know anyone called Osafo-Bio.
11. The appellant said he had not wanted to adjourn the hearing as it was the third hearing, and he wanted it done and dusted. His wife's mother had been in Africa when he met his wife but had gone to France when she was unwell.
12. Mr Armstrong submitted that the appellant was not in a durable relationship. He relied upon the refusal letter and the statement from Mr Kenneth Muir, which I had indicated I accepted was a statement from an Immigration Officer. The statement of Mr Muir supported the fact that the appellant and Ms Dogbo had not cohabited at 17 Garratt Road. We had not heard evidence from the appellant's wife or any friends; and there was no tenancy agreement, council tax or electoral roll evidence. The only evidence was from bills and this could be obtained simply by calling the company and asking them to put the name on the bill. If the appellant and his wife were in genuine relationship he would have asked for a short adjournment so that she could give evidence particularly as she had a return ticket. He submitted that this had not been done as the evidence would have been contradictory.
13. Mr Akohene submitted it was reasonable not to adjourn the hearing as it was unclear when Ms Dogbo's mother would be well enough for her to leave her or when another relative might be available to be present. It was reasonable for Ms Dogbo to want to be with her sick mother all of the time and not to attend the Tribunal. It was accepted that the appellant could not show he was the spouse of Ms Dogbo, in EU law terms, due to TA and Others (Kareem explained) [2014] UKUT 316 and the marriage being by proxy, but it was argued that the appellant was entitled to a residence card as a durable "unmarried" partner of Ms Dogbo.
14. Ms Dogbo's identity card was in the bundle and she looked like the woman in the photos taken in 2012. (Mr Armstrong indicated at this point that he did not think she was necessarily the same person.) It was quite possible that the appellant had lived at 17 Garratt Road despite what was said by Mr Osafo-Bio as he may not have known the appellant. There was evidence of cohabitation in this case in the form of bills, and also in terms of the marriage certificate. The Secretary of State had not produced any real evidence that this was a sham relationship. As such it was not for the appellant to rebut any such allegation.
15. At the end of the hearing I reserved my determination.

Conclusions

16. I accept that Ms Larissa Laure Dogbo is a French citizen. The appellant has provided a copy of her French identity card. I also accept that she is in employment with ICM Ltd as a cleaner. I have seen a letter from her employer and her payslips. I therefore find that Ms Dogbo is a qualified person under Regulation 6 of the Immigration (EEA) Regulations 2006 (henceforth the EEA Regulations) as she is a worker in the UK.
17. The appellant does not qualify for a residence card as the family member (spouse) of Ms Dogbo, a qualified person, under Regulation 7 of the EEA Regulations because it is conceded by Mr Akohene that the marriage does not entitle the appellant in this way. This is because, in accordance with TA and Others (Kareem explained), the appellant could not show his Ghanaian proxy marriage was valid in French law.
18. The appellant argues that he is entitled to a residence card under Regulation 8(5) of the EEA Regulations on the basis that Ms Dogbo is his partner, and they are in a durable relationship. The evidence which is said to support this is the oral and statement evidence of the appellant, a statement from Ms Dogbo, marriage documents and four photographs of the couple in June 2012. There are also bank, work documents and utility bills placing Ms Dogbo at 28 Lonsdale Avenue in 2013 and 2014. There is also an Aviva life insurance document, EDF Energy bills and British Gas bills in both names for 2014 for this address; and a Mastercard document for the appellant dated 2014. The evidence placing Ms Dogbo at 17 Garratt Road is a receipt from Paks Business Services and another from Peckham Cosmetics dated 2012. There are also BT bills for the appellant for 2012 for this address. In joint names for 17 Garratt Road for 2012 there is a Thames Water bill.
19. As set out in TA and Others (Kareem explained) durable relationship is not defined in the EEA Regulations and must be determined on a “case-by-case” basis. The burden of proof is of course on the appellant to establish this is the case on the balance of probabilities.
20. I accept that there are Ghanaian marriage documents between the families of the appellant and Ms Dogbo from September 2012, and some photos of the appellant and a woman whom I am prepared to accept is Ms Dogbo on one occasion before their marriage in June 2012. There is however no detailed personal account of their relationship since their marriage given in the statements, but simply a bald assertion that their relationship is genuine and subsisting. The appellant did not call any witness evidence to support his contention that his relationship with Ms Dogbo was durable and had subsisted for over two years; he had no photos of them together since their marriage to show the Tribunal; he adduced no evidence of the proxy marriage in Ghana in terms of personal statements from the parents or photographs; and was unwilling to adjourn the hearing to a date when Ms Dogbo was able to leave her unwell mother in France for a day to give evidence, despite the fact that his mother-in-law has a brother in France and a husband who is expected to join her there. The appellant also did not give any

detailed oral evidence about his relationship with Ms Dogbo in response to a number of questions from Mr Armstrong seeking this. Ultimately, when all the evidence is considered, I do not find the appellant a credible witness with respect to the nature of his relationship with Ms Dogbo; or that the photographic and marriage documents together with the statement and oral evidence show that he is in a durable relationship with Ms Dogbo.

21. I now turn to the other documentary evidence submitted. Whilst the appellant and Ms Dogbo may have shared, and perhaps continue to share, accommodation at the two addresses given the evidence in terms of bills, bank statements and payslips for Ms Dogbo this does not mean they are in a relationship at all beyond that of flat-sharers. There is only one document which is not in the category that flat-sharers might have, which is the life insurance policy which was taken out very recently on 2nd June 2014. I do not find that this document, when placed with the statement evidence, marriage documents and in the light of my assessment of the appellant's credibility, suffices to show the appellant is in a durable relationship.
22. I do not place much weight on Mr Cosmos Osafo-Bio's denial that the appellant and Ms Dogbo had lived at 17 Garratt Road (as recorded by Mr Muir) as he may have had his own reasons for saying this in terms of not wishing to be involved with the Immigration Service, particularly as we know nothing about him and his status in the UK. It is also clear that the appellant had left the address after some issues with the landlord by the time "West London Arrest Team" visited, so his and Ms Dobgo's absence at that point is consistent with the history he gives.
23. However when consideration is given to the documentary evidence as a whole and taken with the other oral and statement evidence examined above I do not find on the balance of probabilities that the appellant has shown he is in a durable relationship with Ms Dogbo.
24. As I do not find that the appellant is in a durable or genuine or subsisting relationship akin to marriage with Ms Dogbo I do not find that his removal can affect his right to respect for family life under Article 8 ECHR (as embodied in Appendix FM or otherwise) as I do not find he has family life in the UK. The appellant is also not able to show that he has private life in the UK which would entitle him to remain in the UK as he cannot fulfil the requirements at paragraph 276ADE of the Immigration Rules. He has not lived in the UK for 20 years and has not shown that there would be very significant obstacles to his integration in Ghana if he were to return there. I do not find it is necessary to examine Article 8 ECHR outside of the Immigration Rules as I do not find that there are any arguable good grounds for so doing, Gulshan (Article 8 - new Rules - correct approach) [2013] UKUT 00640.

Decision

25. The decision of the First-tier Tribunal involved the making of an error on a point of law.
26. The decision of the First-tier Tribunal is set aside.
27. The appeal is remade and dismissed under the EEA Regulations.
28. The appeal is remade and dismissed under Article 8 ECHR.

Deputy Upper Tribunal Judge Lindsley
3rd November 2014

Annex A

DECISION AND DIRECTIONS

Introduction

1. Although this is an appeal by the Secretary of State I will refer to the parties as they were before the First-tier Tribunal.
2. The appellant is a citizen of Ghana born on 16th June 1983. He married Ms Larissa Dogbo, a citizen of France, by proxy on the 12th September 2012. He applied for an EEA residence card in accordance with Regulation 7 of the Immigration (EEA) Regulations 2006. His first application was refused on 26th April 2013. He appealed this refusal and Judge of the First-tier Tribunal Burns found that there was no legal marriage and no arguable Article 8 ECHR case before him in a determination promulgated on 12th September 2013. A new application was made by the appellant on 24th December 2013. This application was refused on 28th February 2014, again it was said that there was no legal marriage although in addition it was also implied that there were doubts about the genuine nature of the relationship as well. The appellant appealed. His appeal against the decision was allowed by First-tier Tribunal Judge McGinty in a determination promulgated on the 4th July 2014 on the basis that he found that the appellant and his wife were lawfully married.
3. Permission to appeal was granted by Judge of the First-tier Tribunal Page on 22nd July 2014 on the basis it was arguable that the First-tier Tribunal had erred in law as Kareem (proxy marriages - EU law) [2014] UKUT 00024 had not been properly applied, as the First-tier Tribunal should have assessed whether the appellant's marriage was lawful in accordance with French law.
4. The matter came before me to determine whether the First-tier Tribunal had erred in law.

Submissions

5. Mr Akohene conceded that the First-tier Tribunal had erred in law in the application of Kareem. In these circumstances it was not necessary for me to ask Mr Nath for submissions.

6. Mr Akohene said he was not ready to proceed with re-making as he had requested a Twi interpreter from the Tribunal for the error of law hearing (he produced a Tribunal letter which confirmed this) and the Tribunal had refused to book one, saying the re-making hearing would be adjourned if one was needed. He said that he needed to call evidence from the appellant which, as there were clearly issues raised about the genuine nature of his relationship with his French wife and their cohabitation, I found to be correct. In addition the appellant's wife had not been well enough to attend, and was clearly also needed as a witness with regards to this issue. Mr Nath opposed the adjournment request but in the circumstances I found it just to adjourn the re-making hearing.

Conclusions

7. Judge McGinty interpreted Kareem as meaning that if a marriage certificate from a competent authority was issued this would normally suffice to show a marriage in relation to an application for a residence card, see paragraph 9 of the determination. However the case of TA and Others (Kareem explained) [2014] UKUT 316 has clarified that in fact: "the determination of whether there is a marital relationship for the purposes of the Immigration (EEA) Regulations 2006 must always be examined in accordance with the laws of the Member State from which the Union citizen obtains nationality". It is therefore clear that it was necessary to assess whether the appellant's marriage was valid in accordance with French law. This was not done by Judge McGinty, and constituted an error of law.
8. I also note that Judge McGinty did not deal with issue as to the genuineness of the relationship raised in the reasons for refusal letter (at paragraphs 61 and 62) either.
9. In these circumstances I set aside the determination of the First-tier Tribunal with no findings preserved.

Decision

10. The decision of the First-tier Tribunal involved the making of an error on a point of law.
11. The decision of the First-tier Tribunal is set aside.
12. The decision of the First-tier Tribunal will be re-made on 31st October 2014 in accordance with directions set out below.

Directions

13. The matter is to be listed before me on Friday 31st October 2014 for 1 hour and 30 minutes.
14. A Twi interpreter is required.

15. If the Secretary of State wishes to rely upon what is said at paragraph 62 of the refusal letters she should produce a signed report from the Immigration Office who visited the address at 17 Garratt Road and serve this on the appellant and file this with the Tribunal 14 days prior to the hearing date.
16. The appellant should file and serve with the Tribunal and the respondent 14 days prior to the hearing date any additional statements from the appellant and his wife and any additional material regarding their cohabitation, the genuine nature of their relationship or the validity of their marriage in French law.

Deputy Upper Tribunal Judge Lindsley

9th September 2014