



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

Appeal Number: IA/20967/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 4 November 2014**

**Decision & Reasons
Promulgated
On 3 December 2014**

Before

**THE HONOURABLE MRS JUSTICE ANDREWS DBE
DEPUTY UPPER TRIBUNAL JUDGE BLACK**

Between

**MR JAMES OWUSU ANSAH
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr O Ngwuocha, Resolve Immigration Consultancy
For the Respondent: Mr P Nath, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a decision by the First-tier Tribunal (Judge Hamilton) determined on the papers and promulgated on 18 July 2014, in which the Tribunal dismissed the appellant's appeal against the respondent's decision to refuse his application for a residence card as the spouse of an EEA national, or in the alternative on the basis of a durable

relationship, with reference to Regulations 7 & 8 Immigration (EEA) Regulations 2006 .

2. Permission to appeal was granted (Judge Coyler) on 24 September 2014 on the basis that it appeared that a bundle on the Tribunal file, containing documents referred to by the appellant's representative, which was date-stamped as having arrived on 11 July 2014, may not have been considered by the First-tier Tribunal at the time of the determination.
3. The reason for the concern that documents may have been overlooked emanates from paragraph 25 of the determination where the Tribunal, having found that there was insufficient evidence that the appellant was married to a Dutch citizen working in the UK, was considering the alternative ground for his application, namely, whether the appellant and his sponsor were in a durable relationship. Paragraph 25 states as follows:

“There is no evidence before me of the appellant and sponsor being in a durable relationship. No evidence has been filed to show that they live together or have a genuine and subsisting relationship. The only documents filed by the appellant are bank and utility bills which show his address as 122 Liverpool Road, Reading but are addressed only to him. There is no evidence that his sponsor lives with him. There is no other evidence to help me find that their relationship is durable or genuine or subsisting.” [our emphasis]
4. The Tribunal went on to state that there was an acknowledgement by the appellant in his grounds of appeal that he did not provide evidence of cohabitation to the respondent and he sought the opportunity to do so. Despite this, he had filed no evidence to support his “bald claim” that the relationship was durable. The appellant now says: “I *did* avail myself of the opportunity to supply such evidence to the Tribunal, but the Tribunal for whatever reason either did not receive it, or overlooked it.”
5. We should state at this juncture that we have had the opportunity of looking through the bundle of documentation dated 9 July 2014 that was served by the appellant and date stamped as received on 11 July 2014. It runs to 32 pages. Many of the documents within it are also exhibited in the respondent's bundle that was undoubtedly before the First-tier Tribunal at the time of the determination. These include the Ghanaian customary marriage certificate and a statutory declaration of marriage of the appellant and his sponsor; the relevant provisions of the Ghanaian statute relating to the legality of such marriages; and a Dutch certificate registering the sponsor's divorce from her previous husband. However some of the documents in that bundle are not duplicated in the respondent's bundle.
6. There is also on the Tribunal file another much thinner bundle filed by the appellant which is dated 11 July 2014 and date stamped as received on 14 July. That contains a letter addressed to the appellant from Sky, and some documentation from the Nationwide Building Society relating to his accounts with them, which are addressed to him only at 122 Liverpool

Road, Reading. It can be deduced that these are the “bank and utility bills” referred to in paragraph 25 of the determination.

7. Paragraph 25 indicates that the documentation that was before the First-tier Tribunal did not include any documents showing that the appellant’s sponsor was cohabiting with him at that address. The words “are addressed only to him” suggest that the Tribunal thought there were no documents produced by the appellant that were addressed to the couple.
8. Indeed those words could be read as going further than that, and suggesting that there were no documents before the Tribunal that were addressed to the sponsor at that address. However that interpretation would plainly be wrong, because there were numerous documents of that type in the respondent’s bundle. There was clear evidence that she had been employed since 12 September 2012, including various payslips relating to that employment from that date onwards, together with bank statements and utility bills, all of which were addressed to her at 122 Liverpool Road. As Mr Ngwuocha pointed out, some of those documents overlap with the period when the appellant was also living at that address, as evidenced by the bank and utility bills addressed only to him.
9. Therefore what the Tribunal must have meant in paragraph 25 was that no documents had been produced by the appellant that were addressed to both him and his sponsor at that address. There were a small number of documents falling into that category towards the back of the 32 page bundle filed by the appellant on 11 July, namely, a few BT bills addressed to both the appellant and the sponsor at the address in Liverpool Road. These bills covered a short (and fairly recent) period in 2014. The inference can be drawn, therefore, that the Tribunal either did not have those documents before it at the time when it made the determination, or else that it mistakenly overlooked them.
10. We have to ask ourselves, on the assumption that the 32 page bundle referred to above was not before the First-tier Tribunal, whether it would have made a difference if the Tribunal had taken all its contents into account. In other words, if there was a procedural error, was there prejudice or unfairness to the appellant? If there was an error of law, was it material? This Tribunal can only interfere if any error of law was a material one. Therefore if this appeal is to succeed, we have to be satisfied that any additional material in that bundle that was not seen or taken into account by the Tribunal would have made a difference or at least arguably could have made a difference to the outcome of the determination.
11. Although we initially thought that the point about unseen or overlooked documents was confined to evidence in relation to the durable relationship, it became apparent on further consideration that the complaint went further than that, and related also to the appeal based upon the Ghanaian customary marriage. As regards that, it appears from a comparison between the respondent’s bundle and the appellant’s 32 page bundle that the only corroborative document in the latter bundle that may not have been before the Tribunal which had a bearing on the issue of the validity of the proxy marriage, was the appellant’s translated birth

certificate. There are also two witness statements from the appellant and his sponsor, but they do not really take the matter much further.

12. The birth certificate, in and of itself, is unlikely to have taken the matter much further either. On the information before it, much of which was duplicated in the 32 page bundle, the Tribunal found that the appellant had provided no evidence in the course of his appeal to show that his Dutch sponsor was of Ghanaian descent and therefore able to participate in a proxy marriage in Ghana, and that there was no evidence to show that they were represented by relatives within the relationship stated in the statutory declaration. The appellant's own birth certificate could only have assisted on the latter point.
13. We are not satisfied that the birth certificate, statutory declaration or the witness statements or any other document in the missing bundle which was not duplicated elsewhere would have made up the deficiencies in the evidence relating to the marriage identified by the Tribunal. However, even if they would have done, there is the further insurmountable problem that the appellant had failed to provide any evidence of the legal recognition of the Ghanaian proxy marriage by the Netherlands authorities. Given that the sponsor is a Dutch national, that requirement was mandatory. As a matter of law, consideration of whether a person's marriage to an EEA national is valid has always to be undertaken in the context of the national legislation of the EEA country of the sponsor's nationality. There is nothing in the 32 page bundle that addresses or meets that requirement, which was spelled out in the case of **Kareem** (Proxy Marriages- EU Law) UKUT 24 - which had been decided by the time of the appellant's application and before the First-tier Tribunal's determination. It has further been underlined by the Upper Tribunal in the more recent case of **TA and others (Kareem explained)** [2014] UKUT 316.
14. Therefore even if the additional material in the 32 page bundle may have satisfied the First-tier Tribunal that there was indeed a valid proxy marriage in Ghana, the application on grounds of marriage would inevitably have fallen at the next hurdle because there was no evidence before the Tribunal on the basis of which it could be satisfied of the second of the requirements in **Kareem** that the Netherlands authorities would recognise the legality of that marriage. Therefore we cannot say that there was a material error of law or procedural unfairness in relation to the dismissal of the appeal based on marriage. The Tribunal did not need to consider **Kareem** because it was not satisfied that there was sufficient evidence that the couple were validly married in Ghana, but if it had considered it, the appeal on grounds of marriage would have failed come what may.
15. That means we have to turn again to the question whether the additional documents in the 32 page bundle provided the missing evidence of a durable relationship. In relation to that we have studied very carefully the additional evidence and the evidence that was unquestionably before the First-tier Tribunal. There is precious little evidence of the applicant and his sponsor living together as a couple. In particular, there is no evidence of

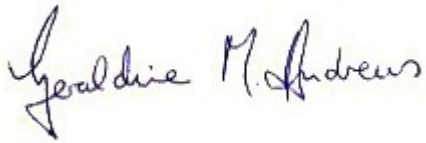
the kind that one might normally see from third parties attesting to that fact. There is simply the evidence of the couple themselves. There is also the oddity that the documents addressed to each of them individually indicated that they were both living at 122 Liverpool Road at the same time, but nevertheless they appeared to be keeping entirely separate bank or building society accounts and, at least until recently, they were not even sharing any of the utility bills.

16. We regard as particularly significant one of the documents in the respondent's bundle. That document is a tenancy agreement in the name of the appellant. It shows that he entered into a shorthold tenancy at the address in Liverpool Road as from 22 September 2013 for an initial period of six months, renewable thereafter on a month to month basis. That tenancy is in his own name and not in joint names but, even more significantly, it states on its face that it is a tenancy of a room on the top floor of that building. That suggests that the building is one of multiple occupancy, and that he is renting a room within it from the landlord. In the light of that document, any evidence to show that his sponsor is living at the same address would not in and of itself show that they are cohabiting together there in a durable relationship. Even the recent BT bills addressed to them both would not necessarily prove co-habitation in that sense, as utility bills could be jointly addressed to tenants in a building of multiple occupancy. The general point made in paragraph 25 of the determination therefore holds good regardless of whether those utility bills are taken into account.
17. No specific mention is made of the tenancy agreement in the First-tier Tribunal's determination, but the Tribunal has said in terms that there is no other evidence to help it to find that the appellant and his sponsor's relationship is durable or genuine or subsisting.
18. In our judgment the Tribunal was entitled to make that finding and would have been entitled to make that finding even if it had had specific regard to all the additional documents that were in the 32 page bundle, including the BT bills addressed to the couple at the Liverpool Road address. Even if those bills could be treated as some evidence of co-habitation as a couple, nevertheless, when the evidence is taken in the round it falls far short of establishing a relationship that was sufficiently long-term to qualify as "durable".

Notice of Decision

19. We find no material error of law in the determination which shall stand.
20. Therefore the appeal is dismissed.

No anonymity direction is made.



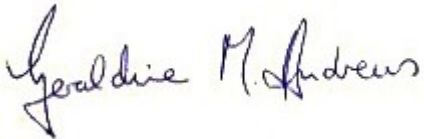
Signed

Date 4th November 2014

Mrs Justice Andrews

TO THE RESPONDENT
FEE AWARD

We have dismissed the appeal and therefore there can be no fee award.



Signed

Date 4th November 2014

Mrs Justice Andrews