



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

Appeal Number: IA/26417/2013

**THE IMMIGRATION ACTS**

**Heard at Taylor House**

**On 7 May 2014**

**Determination**

**Promulgated**

**On 27 May 2014**

**Before**

**UPPER TRIBUNAL JUDGE ESHUN**

**Between**

**MR ISHMAEL DJAN**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr R Sharma, Counsel

For the Respondent: Mr C Avery, HOPO

**DETERMINATION AND REASONS**

1. The appellant appeals with leave against the decision of First-tier Tribunal Judge Fox dismissing his appeal against the decision of the respondent dated 6 June 2013 refusing his application for a residence card as the spouse of Lisete Solipa Gil Martins De Sousa, a Portuguese national. The respondent was not satisfied that the appellant had contracted a valid

proxy marriage recognised in English law as no evidence of the customary marriage's registration had been provided.

2. The judge determined the appeal on the papers as requested by the appellant.
3. The judge made the following findings:

*"10. The appellant has failed to discharge the burden upon him. The appellant has failed to provide reliable documents to corroborate his claim that he entered into a legally valid marriage with the sponsor.*

*11. The assembly letter carries a photocopied header and the main body of the letter is out of line from the header and the footer. Remarkably similar handwriting and ink type appears on the assembly letter and judicial services letter which it is reasonable to expect should have been issued by different officers of their respective authorities. The header of the judicial letter is also afflicted with contact details which fall out of line with the rest of the document.*

*12. It is unusual at best that the judicial services declaration is written on headed paper which differs from the judicial services letter. Another unusual feature of the judicial services declaration is that it carries an unembossed seal whereas the fathers' declaration has an embossed seal. It is unusual that a notary public would have an embossed seal whereas the official body would not.*

*13. The seal on judicial services declaration is also inconsistent with the seal on the judicial services letter which carries a reflective sticker at the top left hand side of the document.*

*14. The torn receipt is of no probative value as its presentation prevents any reliable information from being discerned from it. The assembly receipt is unusual in the fact that it is issued to I Djan which it is reasonable to conclude is the appellant who was in the UK at the time of its issuance. It is reasonable to conclude that the appellant's father is not the recipient of the assembly receipt as he would be represented as S Djan.*

*15. It is also unusual at best that the appellant should make comprehensive representations in the notice of appeal though fail to mention the registration certificate which existed at the date of application and at the date of appeal according to the available evidence. It is also an unusual feature that this omission of representations should occur when the respondent*

*made express reference to the need for the registration certificate in her decision.*

16. *I have considered CB (Validity of marriage: proxy marriage) Brazil [2008] UKAIT 00080 (“CB”). Paragraph 25 of CB states that a marriage is legally recognised in the country in which it is contracted will be recognised under UK law. The evidence relied upon by the appellant does not satisfy the burden upon him. Furthermore I am satisfied to a high degree of probability that the appellant has submitted false documents to the Tribunal to support his appeal.*

17. *For the reasons stated above the appellant has failed to demonstrate that he entered into a valid marriage with the sponsor. Articles 8, 12 and 14 ECHR fall with the appeal and therefore do not need to be considered in any meaningful detail.”*

4. The appellant was granted permission as follows:

*“2. The application for permission to appeal asserts that the F-tJ overlooked the respondent’s concession that the proxy marriage would be valid if it satisfied the Ghanaian Customary and Divorce (Registration) Act 1985; overlooked the statement of where the couple resided at the time of marriage; overlooked the fact that the couple were entitled to register the marriage for up to three months; overlooked that the relevant provision is Reg 7 not Reg 26 of the Immigration (European Economic Area) Regulations 2006; overlooked the fact that proof of entry and right of residence prior to marriage are not required; lacked impartiality for criticising the appellant for not providing a bundle but not the respondent; overlooked the appellant’s reference to the registration certificate meaning marriage certificate in his witness statement, wrongly invoked the Reg 8 extended family rule; unwarranted peremptory dismissal of authenticated documents from Ghana Judicial Services and Accra Metropolitan Assembly which operate in the most democratic and peaceful country in Africa.*

*3. It is arguable that the lex loci celebration principles of CB (2008} UKAIT 80 have not taken full account of the evidence referred to in the application.”*

5. Counsel said he was relying on the “perfected grounds of appeal”. These were the grounds upon which permission was granted. He submitted that two months prior to the hearing the appellant served a bundle of documents on the First-tier Tribunal and the respondent on 8 November 2013. This was acknowledged by the judge at paragraph 8.

6. Counsel submitted that at paragraphs 10 to 15 the judge dealt with each document by way of a summary. Counsel's main argument was that the judge took issues of his own volition without giving the appellant the opportunity to address them. Counsel said he would not go as far as to say that the judge was biased. He submitted that the judge's decision to take these points without reference to the appellant vitiated his decision by reason of unfairness.
7. I accept Mr Avery's submission that the grounds, whilst lengthy and in my opinion amateurish, did not raise the argument that Counsel was relying on. The grounds did not make the point that the judge took issues of his own volition without giving the appellant the opportunity to address those issues. I bear in mind that the appellant chose not to have an oral hearing. Counsel sought to rely on Section 12 of the Tribunals, Courts and Enforcement Act 2007 by submitting that once permission is granted, the Upper Tribunal may consider all the grounds raised by the appellant, including the argument he was relying on. I found this to be a complete misunderstanding of Section 12, which applies if the Upper Tribunal decides the First-tier Judge's decision involved the making of an error on a point of law.
8. I find that the judge was effectively saying was that the documents submitted by the appellant were unreliable for the reasons given by him. The only relevant response made by the appellant is at paragraph 11 of the grounds in which he states that it is common practice for the issuing authorities to issue the receipt/invoices in one of the couple's names and in most cases it is the male's name that should be written on them and that is why I. Djan was stated on the receipts by the Ghanaian authorities. Without any supporting evidence from the Ghanaian authorities who issued the receipts, I do not find his submission can be given any weight.
9. The appellant also stated in his grounds that the judge's comments about a "*torn receipt*" and manifestly showed that he was not interested in dealing with the issues raised in this appeal. He said that the receipt is mere paper which could be torn at any stage. It could be torn during the handling of the application by the Home Office or the Tribunal and that the judge's finding at paragraph 14 was totally irrelevant. I find that this ground totally misunderstands the judge's finding. I have seen the receipt and it is the torn on the left edge. It appears to have been torn from a receipt book and could not have been torn by the Home Office during the handling of the application.
10. Counsel took me to page 3 of 7 of the respondent's refusal letter where the respondent cites paragraph 3 of the PNDC (Provisional National Defence Counsel) Law 112, Customary Marriage and Divorce (Registration) Law 1985. Sub-paragraph (b) states "*the places of residence of the parties at the time of the marriage*". Counsel submitted that the "UK" stated on the marriage certificate and the statutory declaration complies with paragraph 31(b) of the PNDC law. I do not find that the UK is a

sufficient description of the place of residence. It is vague. It does not particularise the address of the appellant and his spouse.

11. The appellant stated in his grounds that he and his wife are in a genuine relationship. I note that the PNDC law Section 3(1)(c) states "*that the conditions essential to the validity of the marriage in accordance with the applicable customary law have been complied with*". There was no evidence in the papers as to what the applicable customary law is, the conditions essential to the validity of that marriage and whether these conditions were complied with. The statutory declaration of the appellant's father and the sponsor's father merely states that "the couple got married in accordance with the customary laws and usage. The marriage was contracted on 4 August 2012 in Accra and that the requisite dowry and other customary drinks and gifts were duly presented to the family of the bride and after the performance of the customary marriage rites, the couple were declared as husband and wife." There was no explanation as to what the customary marriage rites entail. Paragraph 6 of the statutory declaration states that the couple have been living together as husband and wife in the UK to date but there was no address for the couple and there was no evidence to support the claim that the appellant and his wife were indeed living together. I do not find that the judge's findings on the reliability of this document can be called into question.
12. The grounds claim that the appellant applied for a residence card as the spouse of his sponsor under Regulation 7 and not Regulation 26 as erroneously as stated by the judge in paragraph 1. At paragraph 1 the judge states that the appellant appeals under Regulation 26 of the Immigration (European Economic Area) Regulations 2006 or alternatively Section 82(1) of the Nationality, Immigration and Asylum Act 2002 against the decision of the respondent. Again the appellant has misunderstood what the judge was saying at paragraph 1. It is by way of Regulation 26 that the appellant is able to appeal the Secretary of State's decision.
13. It is said at paragraph 9 of the grounds that the appellant applied under Regulation 7A (as the spouse of an EEA national and not as a "*relevant EEA national*") family under Regulation 8 of the 2006 Regulations as the respondent asserted. I find that this ground is criticising the Secretary of State's decision and not the judge's decision. Indeed Regulation 7(1)(a) is an application to treat the appellant as a family member of another EEA national, namely his spouse. The appellant's application was refused under Regulation 8(5) of the 2006 Regulations because if he cannot satisfy the respondent that he is a direct family member as a spouse of the EEA national, he can satisfy 8(5) if he is the partner of an EEA national and can prove to the decision maker that he is in a durable relationship with the EEA national. In other words if the customary marriage was found not to be a valid marriage, then the alternative is to consider the appellant's application under Regulation 8(5).

14. The appellant made his application on the basis that he is the spouse of an EEA national and therefore comes under Regulation 7(a). He did not argue 8(5) in the alternative.
15. I find that there is nothing in the grounds that seriously raises an arguable error of law in the judge's decision.
16. I find that the judge made findings that were open to him. His decision dismissing the appellant's appeal shall stand.

Signed

Date 21/05/2014

Upper Tribunal Judge Eshun