



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

Appeal Number: IA/43845/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 18th November 2014**

**Decision and
Promulgated
On 19th November 2014**

Reasons

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MRS GEORGINA OBENGWAA
(ANONYMITY ORDER NOT MADE)**

Respondent

Representation:

For the Appellant: The Appellant and Sponsor in person

For the Respondent: Mr M Shilliday (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is an appeal to the Upper Tribunal, with permission, by the Secretary of State in relation to a Determination of the First-tier Tribunal (Judge Scott-Baker) who, in a determination promulgated on September 2014 remitted the appeal to the Secretary of State for a decision to be made taking into account the findings in her determination.
2. Mrs Obengwaa (who I shall call henceforth the applicant) was, before the First-tier Tribunal and until the date of the hearing before me, represented

by Malik and Khan, Solicitors. 10 minutes prior to the start of the hearing I was given a fax from Malik and Khan explaining that they would not be representing the applicant at the hearing and that she and her husband had opted to attend the hearing in person to represent themselves. The same letter indicated that the applicant and her partner required a Twi interpreter. The Upper Tribunal sent out directions which are standard in such cases and the contents of which will be well known to the solicitors. Those clearly indicate that no interpreter will be booked by the Upper Tribunal unless the applicant is unrepresented and requests an interpreter no less than 7 days before the hearing. It is far too late, 10 minutes before to expect one to be provided.

3. The applicant, a Ghanaian national, had made application for a residence card as confirmation of a right of residence under the EEA Regulations on the basis of her marriage to a German national.
4. The Secretary of State refused the application on the basis that it was a marriage of convenience and in the alternative that the couple were not in a durable relationship.
5. In the determination Judge Scott-Baker notes that the couple had produced a customary marriage certificate indicating that the applicant had been married in Ghana and the certificate suggested both she and her husband had been present at the ceremony. As the Judge pointed out this was quite simply not possible because both their passports had been produced and neither contained corresponding entry stamps.
6. The Judge went on to find for reasons which have not been challenged, at paragraph 63 that the marriage was not valid, and that a proxy marriage was not recognised in Germany.
7. The Judge then pointed out that the Secretary of State had gone on to consider, before refusing the application, whether the couple were in a durable relationship and concluded that they were not. The Judge, having heard evidence came to the conclusion at paragraph 68 to find that although the couple were in a relationship there was insufficient evidence to satisfy her that it was a durable relationship.
8. None of those findings have been challenged and there is no cross appeal on the Appellant's behalf. Thus far there is no error of law on the part of the First-tier Tribunal.
9. The Judge however, having reached this conclusion then found at paragraph 69 that the Secretary of State had not established that the marriage was a sham marriage or a marriage of convenience and remitted it on that basis. This, with respect, makes no sense. If there was no marriage then it can neither be sham nor a matter of convenience. On that basis therefore and in so far as the First-tier Tribunal allowed the appeal and remitted it to the Respondent for another decision I set it aside.

However, I have no reason to set aside the unchallenged findings made by the Judge up to and including paragraph 68 and on the basis of those findings the appeal cannot succeed. The applicant has not shown any basis upon which she is entitled to a residence card as either the family member or extended family member of a qualified EEA national. Furthermore, in light of the Judge's findings, Article 8 is not engaged. This appeal cannot possibly succeed.

10. The applicant told me that she spoke no English but her husband who was present in court with her did understand English. I explained to him the nature of the error of law made by Judge Scott-Baker and I also explained to him that on the basis of Judge Scott-Baker's findings the appeal was not winnable and it was for that reason I proceeded to remake the decision and dismissed the appeal. He confirmed that he understood.
11. The appeal to the Upper Tribunal is allowed such that the applicant's appeal against the decision of the Secretary of State to refuse to issue her with a residence card is dismissed.

Signed

Date 18th November 2014

Upper Tribunal Judge Martin