



IAC-PE-SW-V1

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

Appeal Number: IA/51536/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 28<sup>th</sup> October 2014**

**Determination  
Promulgated**

**On 5<sup>th</sup> November 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MCCLURE**

**Between**

**MS JAINABA JUM  
(NO ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms Grubb, Counsel instructed by Gracelands Solicitors  
For the Respondent: Mr Nath, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant, Ms Jainaba Jum date of birth 10<sup>th</sup> September 1977, is a citizen of Gambia. Having considered the circumstances I do not make an anonymity direction.
2. This is an appeal by the appellant against the determination of First-tier Tribunal Judge Britton promulgated on 28<sup>th</sup> July 2014. The judge dismissed

the appeal of the appellant against the decision of the respondent dated 16 November 2013 to refuse the appellant a residence card.

3. The appellant was seeking a residence card as confirmation of her right of residence under EEA law and the Immigration (EEA) Regulations 2006 as the spouse of a qualified EEA national.
4. Permission to appeal was granted on 17 September 2014.
5. The basis of the appellants claim is that she is married to a Mr Babucar Jallow, a Swedish National. It is accepted that Mr Jallow is a Swedish National. A copy of his Swedish passport has been submitted.
6. The appellant claims to have entered the United Kingdom on 23 January 2007 on holiday and has remained here ever since. She first met Mr Jallow in April 2012. By the 7 April 2013 the parties were marrying. The marriage was celebrated by a proxy marriage carried out in Gambia.
7. Both the appellant and Mr Jallow had been married previously. Mr Jallow has been married on at least two occasions. To prove that the parties were free to marry what are claimed to be "*divorce certificates*" have been produced in respect of one of Mr Jallow's former marriages and in respect of the former marriage of the appellant. Those divorce certificates appear at E in the Home Office bundle and at pages 103 and 104 of the appellant's bundle.
8. The documents, whilst headed "Divorce Certificate" under the Crest and Area allegedly from which they emanate, are from a Notary Public, who certifies that the "Divorced Certificate" for Mr Jallow [page 103] and "Divorced Certificate" for Ms Jainaba Jum [page 104] are legal documents. The documents produced are not the original divorce certificates but comments by a notary public on documents produced to him.
9. I would point out that the documents have been issued in the city of Banjul in the Republic of the **GAMIBA**. The bold type emphasis is mine.
10. I would also note that the dates for the two alleged divorce certificate issued ostensibly by the same Notary **Republic** for Oaths/Affidavits [see bottom of the documents] is the 6<sup>th</sup> day of December 2012. Again the emphasis is mine. The actual documents do not appear to be the divorce certificates but aver that the "**DIVORCED CERTIFICATE**" are legal documents.
11. Whilst the documents are headed divorce certificates it does not appear that they were issued by a court of law or government organisation but have been issued by a notary public to confirm that the divorce certificates are legal documents. The original divorce certificates do not appear to have been produced. No explanation has been given for the original divorce certificates not being produced.

12. There were other features of the two documents which also brought into question their authenticity. Both appear to have been issued by the same person on the same day but relate to divorces carried out at other places at other times. One relates to a divorce in Bakau on 3 May 2009 [page 103] and the other to a divorce at Churchill Town on 2 January 2008 [page 104].
13. The judge at paragraph 30 states that the original divorce certificates have not been produced. He concludes that he is not satisfied that the parties were free to marry. He determines that he is not satisfied that the parties were legally married.
14. As set out above there appear to have been two previous marriages in respect of Mr Jallow. At best a divorce certificate for only one of those marriages has been produced. In interview Mr Jallow claimed that he had not seen the other divorce certificate for at least eight years.
15. However the judge was not satisfied on the basis of the evidence presented that Mr Jallow had terminated his other marriage by divorce. When exactly that marriage took place is also open to question.
16. The marriage referred to in the alleged divorce certificate took place in 2006 in Bakau and the alleged divorce took place on the 3<sup>rd</sup> May 2009. The appellant's representative referred to the other marriage having taken place in Sweden, although the exact source for that is unclear. There is reference to Mr Jallow having children in Sweden, who are living with his ex-wife. Admittedly the children are aged 13 and 15.
17. However the judge was not satisfied that a valid divorce certificate had been produced in respect of the marriage in Sweden or Gambia. At paragraph 30 of the determination the judge has concluded as the sponsor had not produced the original divorce certificates, the judge was not satisfied that the sponsor was free to marry the appellant. The judge concluded that it had not been proved that the sponsor was free to marry and was therefore not satisfied that this was a lawful marriage in Gambia. Having regard to the evidence presented that was a conclusion of fact that the judge was entitled to make.
18. That would be sufficient to dispose of this appeal.
19. It has to be noted that whilst the parties appear to have married in April 2013 there was little or no evidence that the parties have lived together. Certainly the evidence before the judge at the date of the hearing was that the appellant was living in Crawley and at least looking for work in that region even at the time of the marriage. The sponsor by comparison was living in Plymouth.
20. There is some suggestion that he was not working by reason of depression or other medical problems. The only evidence with regard to work appears to be set out in paragraph 5 of the determination. The appellant appears

to have been working for Sports Direct, although the letter confirming that is not on official headed notepaper. The contract gives an address for the appellant in Manchester but the contract gives an address for the sponsor as Plymouth.

21. The sponsor and appellant were interviewed at length about their relationship. Indeed full interview is set out in the papers. The judge has carefully considered that full interview. The judge has identified in paragraphs 11 and 12 clear discrepancies between the accounts given by the appellant and the sponsor. The judge has carefully considered that interview and the evidence otherwise, such as the photographs of the wedding as at 12<sup>th</sup> April but the marriage certificate is the 7<sup>th</sup>. No explanation has been given for the difference in dates.
22. Whatever else can be said the judge was not satisfied that this was a genuine marriage. Given the details set out above the judge was entitled to come to that conclusion on the basis of the evidence presented. The judge was entitled to conclude that it had not been proved that the sponsor was free to marry.
23. Issues have been raised with regard to whether or not this was a genuine proxy marriage. If the sponsor was not free to marry then clearly it is not a marriage that would be recognised in the United Kingdom. Whilst there is evidence with regard to the recognition proxy marriages in Sweden there is no evidence that Sweden would recognise polygamous marriages. Whilst it may be that there was evidence before the judge that the Swedish authorities would recognise proxy marriage, given the finding by the judge that he was not satisfied that the sponsor was free to marry such issue makes no difference.
24. Accordingly for the reasons set out there is no material error of law within the determination by the judge and I uphold the decision of the judge to dismiss this appeal on all grounds.

Signed

Date

Deputy Upper Tribunal Judge McClure

**3<sup>rd</sup> November 2014**