



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

Appeal Number: IA/53516/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 3 December 2014**

**Determination Promulgated
On 16 December 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCWILLIAM

Between

DANIEL OSCAR ASARE

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Subramaniam instructed by Lambeth Solicitors

For the Respondent: Mr P Nath, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Ghana and his date of birth is 5 May 1975. He entered the UK illegally on 30 December 2007. On 16 August 2013 he made an application for a residence card pursuant to the Immigration (European Economic Area) Regulation 2006 on the basis of his marriage to a French national, Maureine M A Mbika Houbba. It is the appellant's case that he and his wife married by proxy in Ghana on 15 March 2013. The application was refused by the Secretary of State in a decision of 27 November 2013. The decision maker did not accept that the marriage

was recognised in Ghana or that the appellant had established that he had a durable relationship with the sponsor.

2. The appellant appealed against the decision of the Secretary of State and his appeal was dismissed by Judge of the First-tier Tribunal Kanagararatnam in a decision that was promulgated on 11 September 2014 following a hearing on 12 August 2014. Permission was granted to the appellant to appeal against the decision of the First-tier Tribunal on 24 October 2014 by Judge of the First-tier Tribunal Levin.

The Decision of the First-tier Tribunal

3. At the hearing before the First-tier Tribunal the appellant attended. The sponsor did not attend and the Judge asked the appellant questions about this. The Judge recorded the evidence at [4] and [5] of his determination as follows:

“4. At he hearing the appellant was present and after having confirmed his name and address was asked by his representative why his sponsor spouse was not at the hearing. He stated that his mother-in-law had had a fall and had to receive emergency treatment, he relied on a ticket found within the bundle of documents and asked about his own passport, stated that there were copies of the passport at pages 37 and 38 while the passport itself was with the Home Office. Asked about the proxy marriage, he said both parties, he had, celebrated the marriage been living with his spouse since January 2013. Asked why her document had stated that they had been living together only since May, he said she comes and goes but only settled later. Asked whether Ghanaian proxy marriages were accepted under French law, he said they were not. Referring to the customs he said the bride and groom meet and the bride and groom’s family come up with certain items, they normally ask for cash, drinks or clothes. Asked what they requested in this instance, he said it was £1,000 cash. Asked when he had given the money, he said he had given the money to his father, he had sent it at different times, sometime in 2013. His father had to borrow some money as well. Asked how much money he sent, he said he sent £300 while his father had to borrow £700. Asked about celebrations he said his family had a celebration around March, asked for evidence on the occasion, he said they did not take photographs as his wife was not happy with the photos. Asked why his wife had gone to see her mother, he said she had a fall which occurred around the end of July, she had to go to hospital as she had broken a leg. Asked about the hospital record, he said there was non-available up to now. She however had broken her leg, he later added that it was twisted. Asked in re-examination when he spoke to his wife last, he said it was on Sunday.

5. I then asked the appellant who was present at the proxy marriage and he said both parents were present at the proxy marriage. I asked him if anyone was nominated as his proxy and he said no one had nominated for

him or his wife. There were no photographs taken. Asked where in Ghana he lived, he said he lived in Accra. Asked about his religion, he said that he was a Christian and that the denomination was Pentecostal. I asked him if his pastor was aware of the proxy marriage and he said he was. Asked whether both the families were Pentecostal, he said they were. Asked about his marriage vows, he said in a customary marriage they do not have marriage vows. He worshipped at the victory believer's church, which was international."

4. The Judge went on to make findings at [8], [9] and [10] of the determination as follows:-

"8. The burden of proof is on the appellant and the standard of proof is on the balance of probabilities. In this instance the appellant would have to establish that he is in a genuine and legal marriage with the appellant or that he is an extended family member who is in a durable relationship with his EA national party who is exercising treaty rights. I have heard the evidence of the appellant and note with some concern that the sponsor is not present at the hearing. Produced is an unsigned witness statement by the appellant, which appears to have been sent to the legal representative by e-mail. Asked as to why his sponsor's wife was not present at the hearing, the appellant stated that his mother-in-law had a fall and had broken her leg. He said it was an accident and she had to receive emergency treatment in the hospital. There were no hospital records although there was a ticket at page 34 dated 2nd August 2008.

9. In considering the validity of the marriage between the appellant and his EEA sponsor, it is the appellant's evidence that they entered into a proxy marriage. I have considered the law relating to proxy marriages and am able to accept that in accordance with the principles of Lexloci in accordance with CB Brazil [2008] UKAIT 00080, which sets out the required compliances as to the celebration and form sufficient to recognise it in Ghana in this instance. I have noted that there is a disillusion of the previous marriage and that there are registration documents, which of course may be freely available in Ghana in accordance with the objective evidence. My concern, nevertheless relates to the validity of the proxy marriage. It is the appellant's evidence that proxy marriage in this instance was celebrated by the families. He however said no one was nominated as a proxy by him or his wife. He also stated that no photographs were taken of the celebration as his wife does not like photographs. He had no evidence to offer as to the celebration of what would have been a customary celebration. Asked about the gifts exchanged, he said they would ask for money and in this instance it was £1,000 and in cross-examination said he had sent £300 while his father had to borrow £700. He could not clearly remember the time he sent the money or what other gifts were exchanged. His evidence on a customary

marriage which would normally be celebrated with a feast was vague and did not appear to observe any of the customs. Upon my asking him about his faith, he said he was a Christian of a Pentecostal persuasion. He went on to say that both he and his partner were of a Pentecostal persuasion and that he attended an evangelical church. When I asked him about the marriage vows, he said that there were no marriage vows in a customary marriage. I find that the appellant has not been able to reconcile the conflict between his faith and customary marriages in addition to being unable to provide any form of evidence as to the proxy marriage or the celebration. Considering the lack of the evidence before me, I do not find that a valid marriage in accordance with the customs have taken place in Ghana.

10. In considering whether the appellant is an extended family member of his EEA national partner, the appellant has failed to demonstrate that the parties have cohabited. Having stated initially that they began living together in June 2013, later in cross-examination he stated that she comes and goes and that they had settled subsequently. I am therefore not satisfied that the appellant has demonstrated to the required standard that he is in a durable relationship with his EEA national partner to demonstrate that he is an extended family member."

5. The Judge found that there had been no valid marriage in Ghana and that the relationship was not durable and he dismissed the appeal under Regulations 7 and 8 of the 2006 Regulations.

The Grounds Seeking Permission to Appeal and Oral Submissions

6. The grounds of appeal were clarified by Mr Subramaniam who conceded that as a result of the Tribunal decisions in **Kareem (proxy marriages - EU law) [2014] UKUT 00024** and **TA & Others (Kareem explained) Ghana [2014] UKUT 00316**, any error of law in relation to reg 7 of the 2006 Regulations is not material because there was no evidence that a proxy marriage is recognised under French law.

7. Mr Subramaniam argued that the Judge's findings in relation to durability are unsafe because the Judge did not take into account the extensive documentation including the marriage certificate which established that a proxy marriage had taken place between the parties and that the Judge took into account irrelevant considerations at [9] where the Judge found that the appellant had not been able to reconcile the conflict between his faith and customary marriage.

Conclusions

8. There are a number of reasons why the Judge did not accept the durability of the relationship. He did not accept the validity of the proxy marriage. He noted that no one was nominated as a proxy for the appellant or his wife, that registration

documents are readily available in Ghana, that no photographs had been submitted of the celebration and that the appellant's evidence was vague about gifts and the normal celebrations for customary marriages. The Judge made a finding about the appellant's faith. If this was an irrelevant matter to take into account it is not in my view material because it was only one of a number of reasons why the Judge did not accept that here had been a valid proxy marriage. It was in no way a determinative factor in relation to the durability of the relationship and it did not make a material difference to the outcome of this appeal.

9. There is no reason to suggest that the Judge did not take into account the documents in support of the appeal contained in the appellant's bundle. However it is clear for the reasons that the Judge gave that he did not find that it was reliable. There is no articulated challenge to the Judge's findings at [10] of the determination. The Judge did not have the benefit of hearing oral evidence from the sponsor and I note that there was no application by the appellant to adjourn the proceedings to enable the sponsor to attend. The sponsor's witness statement was in my view insufficiently detailed. There was an appellant's bundle consisting of 80 pages to which the Judge makes reference at [3] of the determination indicating that he had taken it into account.
10. There is no reason to believe that he did not do so. It is not necessary for the Judge to make findings on each piece of evidence. The Judge made findings on material areas of conflict. His findings in relation to durability are reasoned, lawful and sustainable. There is no material error of law and the decision to dismiss the appeal under the 2006 Regulations, Regulation 7 and Regulation 8 is maintained.

Signed Joanna McWilliam

Date 15 December 2014

Deputy Upper Tribunal Judge McWilliam