



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/13011/2014

THE IMMIGRATION ACTS

Heard at: Field House  
On: 18 December 2014

Decisions and Reasons Promulgated  
On: 02 January 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

MR KWAME OWUSU  
(NO ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr M Ume-Ezeoke, counsel

For the Respondent: Ms L Kenny, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Ghana, born on 11 September 1969. His appeal before the First-tier Tribunal against the decision of the respondent dated 26 January 2014 refusing to issue him a residence card pursuant to the 2006 Immigration (EEA) Regulations - 'the 2006 Regulations' - was dismissed by First-tier Tribunal Judge Hutchinson in a determination promulgated on 1 July 2014. The Judge found that he had not shown that his marriage was validly contracted according to French law.
2. However, the First-tier Tribunal Judge did not consider the alternative claim, namely, that he was in a durable relationship with his EEA National sponsor pursuant to Regulation 8 of the Immigration (EEA) Regulations 2006.
3. On 20 August 2014 Judge Gillespie granted the appellant's application for permission to appeal on the basis that the First-tier Tribunal had not addressed his appeal pursuant to Regulation 8.

4. The respondent's Rule 24 response noted that there was no opposition to the application for permission to appeal. The Tribunal was ".....invited to determine the appeal with a fresh oral (continuance) hearing to consider whether the appellant is in a durable relationship."
5. The matter was accordingly set down for a hearing on 2 October 2014. On that date, there was no attendance by the appellant or a representative. However, I was not satisfied that the directions which were supposed to accompany the notice of hearing had in fact been given; they were not attached to the notice of hearing in the Tribunal bundle. I considered that it would be appropriate and just to afford the appellant an opportunity to present his appeal.
6. In the circumstances, the notice of hearing was re-served on the appellant and on the 18 December he attended the hearing with his legal representative.

#### Hearing on 18 December 2014

7. I have had regard to the bundles presented by the appellant and respondent.
8. The appellant, Mr Kwame Owusu attended the hearing and gave evidence. He adopted his witness statement which he signed and dated at the hearing. It appears to be the same witness statement that he produced before the First-tier Tribunal, and which is dated 14 April 2014.
9. He was born on 11 September 1969 at Accra, Ghana. He has lived in the UK for 12 years. He married his wife, Ms Tania Sylvie Alphonse, a French national, who is residing and exercising Treaty rights in the UK. He asserted that they married on 25 June 2013 according to Ghanaian customary marriage laws.
10. He also contends that he has a subsisting and durable relationship with his wife which has lasted for about two years. His wife and his entire family are aware of his appeal and are in support of his application. He therefore 'requests' that he be granted a residence card.
11. In his oral evidence, he said that his wife has not attended the hearing . She is not at work. She is not feeling well. He claimed that she is two months pregnant. She is also "afraid of coming to court." The pregnancy has, he claimed, been confirmed by his GP. However, apart from his assertion, no evidence has been produced that she is pregnant.
12. He said that she suffered a miscarriage two years ago, namely, in or about October 2012. She was four months pregnant prior to the miscarriage.
13. Mr Ume-Ezeoke asked him why no utility bills and the like had been produced for the hearing showing that they have been living together. He said they rented a room. They do not have their names on any of the bills. They moved into that accommodation in February 2013, i.e., one and a half years ago. The relationship is still subsisting.

14. In cross examination, he was asked when their relationship started. They started seeing each other since 2010. They decided to get married in 2013.
15. He was asked why then he stated at paragraph 11 of his statement that his relationship has lasted for about two years. He said they lived together for a time, and “along the way there have been misunderstandings.” They have known each other for four years. After two years, they have lived together.
16. He said they pay money to the “sub-lessor”, Mr Yawu Usa. The amount of £80 a week is paid by his wife. She gives him cash. This is 'all inclusive'. His wife has a bank account. Those documents are however not part of the bundle of evidence.
17. Both he and his partner have mobile phones. They are pay as you go. His wife has bank statements which are sent to the address. She has an account with Barclays.
18. Before living at their current address, they stayed in Catford in 2011. They lived together until moving to Dagenham.
19. He said that they have separated on five or six occasions during the course of the relationship. They sometimes separated for two or three months and sometimes for two weeks. The last time they separated was about two years ago. Since 2011 they have lived together without separation. They did not separate after the earlier miscarriage.
20. They got married as they had been together for a while. It was decided that if they wanted to get into the relationship and be committed to each other they should get married.
21. He was asked how the Tribunal can be sure that they are in a durable relationship having regard to the history of separations. He said they are committed to each other now. This is because the baby is due.
22. Since she became pregnant she has been to hospital. She has a midwife. He said that she went to a GP. He said shortly thereafter that he does not think it was the hospital.
23. He did not go to any of these appointments with her. This is because she attends the GP either on the way to, or on returning from work. The GP is close to where they live. He does not know the name of the GP practice or the name of her doctor.
24. He was referred to paragraph 4 of his partner's statement where she stated that she is employed with London Cleaning and Support Services. She also referred to her wage slips attached to the bundle. I have had regard to documentation before the First-tier Tribunal. There are two such wage slips for September and October 2013. However, they do not identify her address.
25. Although the appellant stated that there were no documents relating to utilities that were presented to the Tribunal, I have had regard to pages 14 and 15 of the First-tier Tribunal bundle (not referred to by the appellant or his counsel) showing three British Gas bills in

joint names containing the address at Dagenham; they are dated 28 February 2012, 30 May 2012 and 30 June 2013. However, there are no further utility documents of that nature or any other document that has been produced as part of the First-tier Tribunal bundle.

26. Mr Owusu confirmed that no updating wage slips have been produced. Ms Alphonse is said to be employed as a maintenance assistance. She does 36 hours a week, working in the Enfield area. She earns about £6.20 per hour. This is paid into her bank electronically. He is “fully supported by my wife.”
27. He spends his days reading. He and his partner go to the park or stay at home, or visit friends. Neither of them has any family in the UK. He has met her sisters, who live in France, and they visited in 2013. Her brother came here in 2014.
28. He was referred to paragraph 12 of his witness statement where he claimed that his wife and the entire family are aware of his appeal and support it. This, he said, referred to his wife’s relatives.
29. He has read the reasons for refusal letter. Ms Kenny took him to page 8 of the reasons for refusal dated 26 January 2014. The respondent stated that they had failed to provide any evidence of a durable relationship. She drew his attention to the relevant paragraph in the reasons for refusal letter at page 8 where it is stated that evidence of cohabitation and joint responsibility of assets are to be expected. The list of expected evidence is detailed. This includes bank statements, utility bills in joint names, evidence of joint finances or joint business ventures. This may include tax returns or business contacts.
30. Ms Kenny read the out the evidence requirements at page 8 and drew his attention to the fact that the respondent had contended that he had provided insufficient evidence demonstrating that he is in a durable relationship. The application had accordingly refused on that basis under Regulation 8(5) of the 2006 Regulations.
31. Having read out that paragraph to the appellant Ms Kenny asked him why, when he decided to appeal against the decision, he did not provide examples of the evidence expected as identified in the letter. He said that he did not have it at the time. He said the Home Office did not make him aware as to what was required. He understood that no further evidence would be produced.
32. Mr Ume-Ezeoke confirmed to the Tribunal that he was only relying on the appellant’s and his partner’s witness statements. There is no further documentation that has been produced before the Upper Tribunal.
33. The appellant said that his wife gives him money sometimes when he has needs. No benefits are claimed.
34. Ms Kenny asked how he met her. This was at a party or function in 2010. After that they spoke to each other and started to go out. They exchanged telephone numbers. They

met two or three days later and from there the relationship developed. He had lived with her since 2010 when she was in Catford.

35. On re-examination, when asked who was responsible for “household chores” he said that he does the cooking.
36. He said that his wife is not attending the hearing because she is not feeling well. She is not sick as such. She is not at work today. She was at work yesterday, i.e., the day before the hearing. She is “not feeling comfortable” about the whole procedure and how it is dragging on. She is more concerned about not having a miscarriage. She does not want to risk “a shock.”
37. The ‘sub-lessor’, Mr Usu, has gone to work. He knows about the appellant’s situation. He has never refused to give a statement. There is however no witness statement from any friends whom they have met socially.

### Submissions

38. Ms Kenny submitted that there is no evidence of a documentary nature that has been produced to show a durable relationship. The appellant’s partner was not in attendance. There is no proper evidence of her pregnancy. There is not even an updating witness statement from either the appellant or his partner.
39. She submitted that such witness statements as there are, are vague in relation to the alleged durable relationship. They claim to have lived together for two years. There is no evidence as claimed, that “the entire family” support the appeal. No supporting documentation or witness statement from any such person has been produced. There is no evidence of the history of the relationship. The appellant’s partner stated in her witness statement that her family has been supportive of the relationship. Accordingly there has been only sparse evidence produced in respect of the durability of their relationship.
40. As to the alleged pregnancy, the appellant has “a concerning lack of involvement” which Ms Kenny submitted is not expected in a situation such as claimed. The appellant has never attended any appointment with her. He originally stated that the pregnancy has been monitored at hospital, and later that this was only the GP. She submitted that ‘...you would expect somebody in those circumstances to have attended and to have shown more interest’.
41. There is moreover no evidence produced in confirmation of the pregnancy from the hospital, or from any other source. At four months there would be such evidence in the form of either scans or GP notes.

42. Given that the respondent lists the documents that should be produced in a case like this the appellant's response has been unsatisfactory. He originally contended that the respondent's refusal letter in this regard was "legal jargon." However, the letter is clear and details the kind of evidence which should be produced. There is nothing legally technical about that.
43. In the event she submitted that no documentary evidence has been produced confirming the durability of the relationship.
44. Ms Kenny also referred to the Rule 24 reply by the respondent in this case. The respondent did not oppose the application for permission to appeal and invited the Tribunal to determine the appeal with a fresh oral hearing to consider whether the appellant is in a durable relationship. Accordingly, the appellant was again given notification of the nature of the issues on appeal.
45. Ms Kenny also referred to the periods of separation which were "concerning." This has not only amounted to a separation for a few days but has sometimes resulted in a separation of some three months, "... a long time. This does not conform with any notion of a durable relationship".
46. She repeated that there was no documentary evidence such as bills. Although Ms Alphonse obtains bank statements, there is no attempt to produce them nor any explanation as to why they have not been produced. Furthermore, the payslips are said to be sent to the home address. No payslips have been produced which might reveal on the face of the slip what his partner's address is.
47. The appellant was also vague as to the circumstances relating to their meeting for the first time. He has given no detail. He cannot remember when this took place. He stated that it was a party and then a function. Nor was there evidence about their residing in Catford.
48. Ms Kenny referred to the fact that his partner was not here to give evidence. The explanation for the non appearance comes only from the appellant. It is not clear why she is unwell. She still works. She could at least have given some explanation as to why she is not at Court.
49. Ms Kenny thus submitted that the appellant had not discharged the burden of proof that rests on him.
50. On behalf of the appellant, Mr Ume-Ezeoke informed the Tribunal that he had only '...come into the case two days ago'.
51. He relied on both the appellant's and Ms Alphonse's witness statements. He submitted that the Tribunal should attach weight to them. He submitted that the explanation as to why she is not at the hearing is credible. This morning she was not feeling comfortable and did not want to come. She has had a miscarriage before.

52. Insofar as his lack of knowledge about the pregnancy is concerned, the appellant explained that she goes to appointments either before or after work. This does not mean that he is not interested.
53. As to the submission that the statements are vague and lacking in detail, he submitted that the application was refused on two grounds. The appellant “felt passionate” about his assertion that they had been lawfully married according to Ghanaian law. Documentation had been produced in relation to that issue.
54. He submitted that the evidence in any event was not vague. They have lived together ‘on and off’. He has not gone into any great detail in his witness statement. However, having been asked questions he has given answers.
55. As far as the documentary evidence is concerned, the documentation he produced has related to Regulation 7 of the 2006 Regulations. The appellant has acted in person. He has not had proper advice as to documentation.
56. With regard to separation periods, the last separation was in 2011, since when they have lived together.

### Assessment

57. The appellant elected to have his appeal considered on the papers before the First-tier Tribunal.
58. The bulk of the written evidence submitted to both the first-tier Tribunal and the Upper Tribunal, consisted of documentation relating to Ghanaian customary marriage. Apart from British Gas bills sent to the appellant and Ms Alphonse, at Dagenham in February 2012, May 2012 and June 2013, no other documentation evidencing their living together at the same address has been produced. There is no updating evidence of his kind.
59. The only payslips produced were for September and October 2013. However, those payslips do not identify the employee’s address.
60. I have had regard to a letter from the Manager of London Cleaning and Support Services Ltd, the employer, dated 19 July 2013 which simply confirms that Ms Alphonse has been employed by the company. This letter is addressed “to whom it may concern”.
61. There is no further documentation produced evidencing cohabitation.
62. I do not regard the reasons or explanation given for the non-attendance of Ms Alphonse to be plausible or credible in the circumstances. Ms Alphonse in her witness statement dated 14 April 2014 stated that she wishes “.....to passionately appeal that my husband’s appeal should be considered compassionately.” His removal “will be very devastating and detrimental to us as a family.”

63. Notwithstanding the importance of her evidence in this case, she decided on the day of the hearing that she did not wish to come as she was not well.
64. However, apart from that assertion by the appellant, no evidence has been produced as to her current condition. She has been able to work, even on the day prior to the hearing. The further contention that she does not wish to attend the hearing in any event as she is feeling uncomfortable about the whole procedure and how it is dragging on, is not consistent with a claim that she “passionately” wants the appeal to succeed.
65. I find that the appellant’s statement that she is more concerned about not having another miscarriage and does not want to have “a shock,” (implying that for some undisclosed reason she does not want to risk attending the hearing), is not plausible.
66. I also find that it is clear from the reasons for refusal that the appellant was clearly informed by the respondent as to the nature of the evidence required to be produced in support of a claim of a durable relationship. This is set out clearly at page 8 of the refusal letter. There is no legal or technical jargon involved as asserted by the appellant. In any event, the need to produce that kind of evidence is obvious.
67. The appellant was subsequently also informed by the respondent in the Rule 24 response that a continuance hearing would explore the alleged durable relationship. However, no single document has been produced since the date the application was submitted. No further or updating payslips or bank statements or any other documents evidencing joint tenancy have been produced. His application for permission to the Upper Tribunal appears to have been drafted with the assistance of either a legal representative, or a person who is aware of what evidence is required. The application has included reference to case law.
68. I thus find that the appellant has had ample opportunity to produce relevant documentation for this appeal.
69. Nor has there been any attempt to obtain a witness statement from the “sub-lessor” confirming the fact that they have lived together at the same address for the period alleged. No reason has been given as to why such statement could not have been produced.
70. Nor has the appellant produced any evidence from any family member of his partner or from any of their friends or neighbours confirming the existence, nature, and extent of the relationship.
71. The appellant’s oral evidence in that respect was vague and sometimes contradictory. He stated that his wife has been attending at hospital in relation to her current pregnancy. However, he subsequently stated that she had only gone to her GP. No evidence has been produced confirming either the fact of his partner’s alleged current pregnancy nor any evidence relating to her alleged miscarriage some two years ago.



72. I also take into account that there have been five or six significant periods when they separated. Although this is said to have occurred more than two years ago, this indicates more than a “misunderstanding” which is the way the appellant described it.
73. Having regard to the evidence as a whole, I find that the appellant has not shown on the balance of probabilities that he is an extended family member as set out in Regulation 8 of the 2006 Regulations.
74. I accordingly find that his application was properly refused under Regulation 8(5) of the Regulations. The decision of the respondent was thus in accordance with the law and the 2006 Regulations.

### **Notice of Decision**

The appeal is dismissed under the immigration rules

No anonymity direction is made.

Date 30 December 2014

Judge C R Mailer

Deputy Judge of the Upper Tribunal