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

**Appeal Number: IA/17961/2014**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 29 October 2015**

**Decision and Reasons Promulgated  
On 6 November 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE BIRRELL**

**Between**

**ISAAC ANNAN  
(ANONYMITY ORDER NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr A Khan, Counsel instructed by Morgan Hall Solicitors  
For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

**DECISION AND REASONS**

- 1 There was no application for anonymity in this case.
- 2 The Appellant is a citizen of Ghana born on 11 November 1974. This matter came before me on 10 August 2015 when I set aside the decision of First-tier Tribunal Judge Buckwell allowing the Appellant's appeal against the decision of the Respondent made on 19 March 2014 to refuse to grant an EEA Residence Card. The refusal was on the basis that the requirements of Regulations 7 and 8(5) of the Immigration (European Economic Area) Regulations 2006('The Regulations') were not met in so far as the decision related to the validity of the Appellant's marriage to Christiana Serwaa an Austrian citizen under Austrian law. I also indicated that if the marriage was not valid under Austr4ina law I would

go on to consider whether the Appellant and his wife were in a durable relationship for the purpose of regulation 8(5) of the EEA Regulations as no findings had been made in relation to that. I preserved the finding that the marriage was recognised under Ghanaian law.

### **Application for an Adjournment**

3 At the start of the hearing, the Appellant's Representative Mr Khan applied for an adjournment on the ground that there was no evidence to address the issue of whether the marriage was valid under Austrian law. He stated that the Appellant's wife had travelled to Vienna last week and had been told that they would make enquiries of the Ghanaian authorities and come back to her. He had no documentary evidence of this either in the form of any correspondence to or from the Austrian authorities or from his instructing solicitors indicating to her what was required.

4 I asked Mr Khan both why instructing Solicitors had not provided this evidence 7 days before the date of hearing as they had been directed to do after the hearing on the 10<sup>th</sup> August 2015 and why they did not make the enquiries themselves so there would have been a paper trail. I also indicated that of course the evidence should have been provided with the original application or with the grounds of appeal, or before the Judge of the First-tier, or before me on 10 August 2015. I also indicated that there were also no witness statements and no further evidence of the durability of the relationship.

5 Mr Whitwell objected to the application for an adjournment. He argued that the issues in the case had always been clear. Much of the evidence that would normally be produced in order to establish that parties were in a durable relationship was available in the United Kingdom and had never been produced. He produced an email dated 28 October 2015 sent to those representing the Appellant reminding them that the required evidence in relation to the validity of the marriage in Austria or the durability of the relationship had not been produced and requesting a bundle prior to the court hearing. There was no response to that email or to the follow up phone calls that he made.

6 Pursuant to the overriding objective and the Procedure Rules I must not adjourn a hearing of an appeal on the application of a party unless satisfied that the appeal cannot otherwise be justly determined. It is for the party applying for an adjournment to produce evidence of any fact or matter relied upon in support of the application and to show good cause why an adjournment is necessary. That has not been shown and I therefore refused the application. I am satisfied that the Appellant and his representatives had been given ample opportunity to prepare the case and produce the required evidence not all of which was even required from abroad.

### **Late Evidence**

7 At the start of the hearing there was an application on behalf of the Mr Khan to admit late evidence, which was not filed in accordance with directions - specifically internet extracts in relation to Austrian legal requirements for valid marriages. I indicated to Mr Khan that one of the extracts related to Australian law so was irrelevant. The other related to the position of Austrians who married Australians and was dated 2013. The Appellant is not an Australian. I also indicated that even where I to consider it the extract indicated that there was 'usually' a requirement of a 'certificate of no impediment' to marriage for a valid

marriage outside Austria and there was no evidence before me that this was a case either where one had been obtained or was not required.

## The Law

8 The burden of proof in this case is upon the Appellant to establish any EEA right of admission or residence and the standard of proof is upon the balance of probability.

9 In relation to the relevant date I have considered Boodhoo and another (EEA Regs: relevant evidence) [2013] UKUT 00346 (IAC) where it was held that in an EEA appeal, a tribunal has power to consider any evidence which it thinks relevant to the substance of the decision, including evidence which concerns a matter arising after the date of the decision.

10 In relation to proxy marriages generally I have taken into account the most recent authority Kareem (Proxy marriages - EU law) [2014] UKUT 24(IAC) where it was held in so far as it is relevant to this case that

- (i) A person who is the spouse of an EEA national who is a qualified person in the United Kingdom can derive rights of free movement and residence if proof of the marital relationship is provided;
- (ii) The production of a marriage certificate issued by a competent authority (that is, issued according to the registration laws of the country where the marriage took place) will usually be sufficient. If not in English (or Welsh in relation to proceedings in Wales), a certified translation of the marriage certificate will be required;
- (iii) A document which calls itself a marriage certificate will not raise a presumption of the marriage it purports to record unless it has been issued by an authority with legal power to create or confirm the facts it attests;
- (iv) In appeals where there is no such marriage certificate or where there is doubt that a marriage certificate has been issued by a competent authority, then the marital relationship may be proved by other evidence. This will require the Tribunal to determine whether a marriage was contracted;
- (v) In such an appeal, the starting point will be to decide whether a marriage was contracted between the appellant and the qualified person according to the national law of the EEA country of the qualified person's nationality;
- (vi) In all such situations, when resolving issues that arise because of conflicts of law, proper respect must be given to the qualified person's rights as provided by the European Treaties, including the right to marry and the rights of free movement and residence;
- (vii) It should be assumed that, without **independent and reliable evidence** about the recognition of the marriage under the laws of the EEA country and/or the country where the marriage took place, the Tribunal is likely to be unable to find that sufficient evidence has been provided to discharge the burden of proof. Mere production of legal materials from the EEA country or country where the marriage took place will be insufficient evidence because they will rarely show how such law is understood or applied in those countries. Mere assertions as to the effect of such laws will, for similar reasons, carry no weight; (my bold)

- (viii) These remarks apply solely to the question of whether a person is a spouse for the purposes of EU law. It does not relate to other relationships that might be regarded as similar to marriage, such as civil partnerships or durable relationships.

## **Evidence**

11 On the file I had the Respondents bundle. I had a copy of the reason for refusal letter. The Appellant put in an appeal and following that no further evidence was provided to the Tribunal. I gave Mr Khan the opportunity to take witness statements from both the Appellant and Christiana Serwaa and adjourned for an hour to allow him to do so.

12 I heard evidence from the Appellant and Ms Serwaa. There is a full note of that evidence in the record of proceedings.

13 Mr Whitwell and Mr Khan made final submissions and I took them into account.

## **Findings**

14 On balance and taking the evidence as a whole, I have reached the following findings

15 The Appellant is a 40 year old citizen of Ghana who has applied for Residence Card as the spouse of a European Economic Area national who is exercising rights of free movement under the Treaty of Rome in the United Kingdom.

16 I preserved a finding that the proxy marriage contracted between the Appellant and Ms Serwaa who is an Austrian citizen was valid in Ghana. In relation to whether the marriage is valid in Austria I am satisfied that the Appellant has not met the evidential burden of establishing that the marriage is valid under Austrian law. Even had I been prepared to consider the internet evidence produced by Mr Khan it fell far short of being the persuasive and authoritative evidence as set out in Kareem. Discounting the extract that referred solely to the situation in Australia the other extract was from the Austrian Embassy in Canberra and appeared to address the situation of Australians marrying Austrians not British citizens marrying Austrians and set out a number of other requirements that were not addressed or discounted in the evidence before me.

17 In relation to whether the Appellant and Ms Serwaa are in a durable relationship for the purpose of the EEA Regulations I note that given the claim that they have been together since 2009 there was no up to date documentary evidence produced to me to show that they are in a continuing and durable relationship and that the Appellant is still living at a common address with Ms Serwaa and sharing a common life together.

18 In assessing the credibility of the claim that the Appellant and Ms Serwaa are in a durable relationship I have had to assess their credibility generally as to whether they do more than share a common address but actually have a substantive relationship, a shared life and I found both to be unreliable witnesses given that there were significant discrepancies in their evidence and concluded that they were not in fact in a durable relationship but were attempting simply to secure residence rights for the Appellant . Mr Khan urged me to consider that Ms Serwaa was hesitant giving evidence because she was nervous and while I accept that she was nervous the simple issues where the

inconsistencies arose were matters that should have been capable of being answered by both the Appellant and his wife consistently if they were telling the truth. Thus for example:

19 When asked whether Ms Serwaa had any children and where they lived he stated that there were 3 girls: Levin aged 10, Meyfre aged 24, and Nichola aged 11 and they all lived with him and Ms Serwaa, By contrast Ms Serwaa said the children were called Nichola aged 11, Francesca aged 10 and Meyfre aged 24 and that Meyfre lived in Leeds. Had they genuinely been living together as a couple I would expect that the Appellant would know that Meyfre did not live with Ms Serwaa.

20 I also noted that when the Appellant was asked whether Ms Serwaa had met his parents in Ghana he was very hesitant and evasive in answering the question finally stating they met in 2014 and 2012. Ms Serwaa by contrast said 2014 and 2002 and indeed Mr Whitwell wrote 2002 on a piece of paper to ensure there was no confusion in the date.

21 I have considered the issue of anonymity in the present instance. Neither party has sought a direction. The Appellant is an adult and not a vulnerable person. I see no reason to make any direction in this regard.

### **Conclusion**

22 I find that the Appellant has not discharged the burden of proof on him to show that the terms regulation 7 and 8 of the Regulations are met.

23 I therefore find that the decision of the Respondent appealed against is in accordance with the law and the applicable Regulations.

24 No order for anonymity is made.

### **DECISION**

25 The appeal in respect of the EEA Regulations is dismissed.

Signed

Date 2.11.2015

D Birrell  
Deputy Judge of the Upper Tribunal

### **TO THE RESPONDENT** **FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 2.11.2015

Debra Birrell  
Deputy Judge of the Upper Tribunal