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Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/50200/2013

THE IMMIGRATION ACTS

At Field House
on 27th May 2015

Determination Promulgated
on 29th May 2015

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL FARRELLY

Between

MR. GEORGE NARKWA ANDERSON
(NO ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance.

For the Respondent: Ms E Savage, Home Office Presenting Officer.

DECISION AND REASONS

Introduction

1. I refer to the parties as they were in the First tier Tribunal though it is the respondent who is appealing in the present proceedings.
2. On 7 April 2015 I set aside the decision of First-tier Judge Majid who had allowed the appellant's appeal.
3. The appellant had applied for a residence card further to European Treaty rights based upon his marriage to Ms Ansong. He had indicated that they

married by proxy in Ghana. She is a German national. The decisions of Kareem (Proxy marriages - EU law) [2014] UKUT 00024 (IAC) and TA and others (Kareem explained) Ghana [2014] UKUT 00316 (IAC) indicated that it is necessary for the appellant to demonstrate that the marriage would be recognised in Germany. Part of the Directions for the rehearing was that the appellant was to be given an opportunity to demonstrate this.

4. Alternatively, if it was not established that he and Ms Ansong were married then he could be considered an extended family member if he can demonstrate they were in a durable relationship. In order to achieve parity with domestic law the respondent uses a yardstick of two years cohabitation. Consequently, the Directions indicated if he was pursuing this he should seek the necessary proofs.
5. A final aspect of his appeal related to Article 8. An authoritative decision is awaited in respect of Article 8 rights in the context of application such as the present. The residence card sought is declaratory of the right to reside. The appellant is not being removed. It is open to the appellant to make a fee based application in relation to his Article 8 rights. The directions gave the appellant an opportunity to indicate how Article 8 was engaged.

The Upper Tribunal hearing of 27th May 2015

6. The appeal was listed today for 2 PM. The file indicates that notice of the hearing was issued to the appellant and his representatives on 30 April 2015. Neither the appellant nor his representative has attended. I have received two bundles of documents with a covering letter dated 20 May 2015 from the appellant's representatives. The bundles were received at Field House on 26 May 2015 and the writer refers to the hearing on 27 May 2015. Consequently, it is clear his representatives were aware of the hearing. I am satisfied that the appellant has been notified of the hearing and that is in the interests of justice to proceed with the hearing in accordance with rules 38 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

The evidence

7. The first bundle on behalf of the appellant consists of 19 items. Notably, there is no reference to any report from an authoritative source on German law and the validity of Ms Anson's marriage.
8. There are a number of documents relating to Ms Ansong. There is a self-assessment form from the Inland Revenue dated 6 April 2015. It gives her address as [-] Gardens, Middlesex. There is also a letter dated 4 October 2014 in respect of national insurance contributions due at the same address. There is a similar letter for contributions due, dated 29 March 2014. The address is given as [-] Court, Luton. There is also a self-assessment form sent to her at the same address, dated 17 February 2014. There are various payslips which give this address. They cover

November 2012, December 2012 and January 2013. Finally, there is a P 60 for the year ending April 2015 only this time her address is given as [-] Gardens. In her statement of 19 May 2015 she gives her address is [-] Gardens. She makes no reference to the alternative address used.

9. There is a TV licence in the name of the appellant, dated 30 June 2014. The address given as [-] Gardens. There is also a letter from Tesco and Iceland relating to loyalty cards using this address. In his statement he refers to no other address.
10. The appellant has produced two tenancy agreements. There is a tenancy agreement in respect of [-] Court dated 1 August 2012. There is also a tenancy for [-] Gardens, dated 24 April 2014. Both tenancies are in joint names. In both tenancies the landlord lives on the let premises. Both documents are virtually identical. I have borne in mind what was said in Tanveer Ahmed -v- SSHD [2002] UKIAT 00439. The tribunal at paragraph 31 pointed out the need to differentiate between form and content. It is for the claimant to show a document is reliable. The issue is reliability, not whether the document is a forgery. The document should not be viewed in isolation. The tenancy agreements do not contain contact details and so it is very difficult for the respondent to carry out any checks. In the circumstance I place little weight upon them.
11. It is fair to say minimal evidence has been produced to establish the parties are in a durable relationship. Notwithstanding issues about the appellant's status and consequently having problems opening bank accounts etc he should have been able to produce some documentation showing his presence, for instance, letters from home. This could then be tied to documentary evidence showing Ms Ansong's presence. There is no reason why she could not produce a volume of evidence showing her presence rather than the contradictory and limited evidence produced. It is for the appellant to show that he is in a durable relationship and I find he has not done so.
12. The second bundle provided consists of documents which were largely before the First-tier Tribunal. The skeleton argument although dated 20 May 2015 relates to the appeal as presented at the First-tier Tribunal and the error of law hearing. There is an expert report in respect of Ghanaian customary marriages. This however does not address the issue as to whether the marriage is recognised in Germany. The skeleton argument does not say how Article 8 is engaged in this situation.
13. In conclusion, I find it has not been established that the appellant is a family member of a qualified person. I also do not find it established that he is an extended family member. Finally, I can see no basis upon which his appeal should succeed under Article 8. The appellant is seeking a declaration as to his rights. Nothing indicates his right to family or private life is being interfered with at this stage. Should there be removal directions then these will carry appeal rights. Insofar as the present decision impacts upon those rights the appellant has the option of making

a fee based application to remain and I find this option is a proportionate response. Consequently, I see no breach of Article 8 occurring as a result of this decision.

Decision

14. The appeal is dismissed.

Francis J Farrelly
Deputy Judge of the Upper Tribunal.