



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/50694/2013

THE IMMIGRATION ACTS

Heard at Field House
On 14th January 2015

Decision & Reasons Promulgated
On 26th January 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD

Between

MRS JOYCE AGYEI-BAAH
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Garrod, Counsel instructed by Justice and Law Solicitors
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Ghana who applied for a residence card as confirmation of a right to reside here in respect of her marriage to her partner who holds Ghanaian and Italian nationalities. The case has a long procedural history

which I will summarise briefly. Her application was refused in a decision dated 29th November 2013 and a subsequent appeal to a First-tier Tribunal Judge Boyd dismissed. Grounds of application were lodged against that decision, permission to appeal granted and sitting on 22nd October 2014 I found errors in law in that decision, set the decision aside in its entirety and directed a second stage hearing which took place on 14th January 2015.

2. It is helpful to set out in brief terms the evidence of the Appellant and her Sponsor.

Witness statement of the Appellant

3. She is a Ghanaian national born in Accra, Ghana who entered the United Kingdom on 18th June 2015 with the benefit of a student dependent visa. She met her partner, Mr Aaron Adotey Allotey around 2009 in Ashford (England). In March 2012 they decided to get married and after informing her family their marriage took place by proxy on 13th July 2012 in Accra, Ghana. They could not personally attend their marriage ceremony due to their financial circumstances as she was unemployed at the time and her husband was the only breadwinner.
4. In accordance with their customs and traditions their marriage was registered on 19th September 2012.
5. Her husband works at Exclusive Contract Services Limited as a cleaner and has been employed there since 18th November 2013 earning about £933 a month. They plan on having children in the near future.
6. She maintains that all the necessary rites pertaining to the validity of the customary marriage were complied with. She loves her husband dearly.

Witness statement of Mr Aaron Allotey

7. He is also Ghanaian and met the Appellant around 2009 and in March 2012 decided to get married and the marriage took place by proxy on 13th July 2012 in Accra, Ghana. His statement mirrors that of the Appellant. He loves his wife dearly and they intend to live in the UK as husband and wife and are in a durable and subsisting relationship.

The Burden and Standard of Proof

8. The burden of proof is on the Appellant and the standard is a balance of probabilities.

Preliminary Matter

9. A report from Francesca Oliosi was lodged, albeit late. Ms Everett took no objection to its lodgement.

The Oral Evidence

10. The Appellant gave oral evidence as noted in my Record of Proceedings and adopted her witness statement as truthful.
11. In cross-examination she explained that she was not working and she lived on what her husband earned. He worked a 42 hour week full-time and started at 7:00pm and would come back at 3:00am. He worked Monday to Saturday and earned around £299 per week. Asked why they had not married in the UK they did not have enough money. She was a Catholic and sometimes went to church but not to any particular or local church. Her husband did attend church but not regularly. They had not discussed having a religious wedding and as to whether they would like to have children she said "if it happens". They had not really discussed it. Her husband would be working today. Nothing material emerged in re-examination.
12. Her husband, Aaron Allotey gave evidence as noted in my Record of Proceedings and also adopted his evidence as true.
13. In cross-examination when asked if they wanted to have children he said 'yes' and he had discussed this with her. They were trying to have children. He worked 42 hours a week. He started in the evening at 7:00pm and finished at midnight. He worked six days a week. He had Saturday off. He supported his wife and gave her money for shopping. He would give her £100 weekly on a Monday. He would be working today. Asked why they had not married in the UK they had decided to have a customary marriage in Ghana. He would go to a Pentecostal church and his wife would come with him. She was also Pentecostal. Asked if she had any other religion he said only Pentecostal. There was no re-examination of the witness.

Submissions for the Home Office

14. Reliance was placed on the Reasons for Refusal Letter. The parties were not in a durable relationship. There were a number of discrepancies which were significant. In terms of finance the Appellant had said she received money from time to time but the Sponsor was specific that it was £100 per week. The parties were not consistent about working hours and the Appellant was clear she was Catholic but he said that both went to a Pentecostal church. The Appellant was ambivalent about whether they were going to have children.
15. In terms of **Kareem (proxy marriages - EU law) [2014] UKUT 00024 (IAC)** it was necessary for the Appellant to produce "independent and reliable evidence" (paragraph 68(g)) which the "expert" did not possess. Her expertise seemed to be very much in ecclesiastical law. In short the expert did not have the required expertise.
16. I was asked to dismiss the appeal on all grounds.

Submissions for the Appellant

17. The starting point was the expert report. There was no particular reason for the expert to go into detail about whether the marriage was valid in Ghana but the expert had given an opinion that it was – see page 6. The report was quite detailed and should be accepted. There was also a letter at page 29 of the bundle which said, albeit very briefly, that Italian law recognised Ghanaian customary marriages.
18. In addition, while there were discrepancies in the oral evidence between the Appellant and her Sponsor many of these matters would be matters of perception. Persons perceived what had happened in different ways. There was no real difference in the working hours. There was a tenancy agreement at page 322 of the bundle and an insurance policy at page 167 to 171 of the bundle from Aviva which provided the plan details in joint names.
19. The application had been made on 4th February 2013 and accordingly the parties had been together for nearly two years.
20. The primary submission was that the marriage was valid under Ghanaian law (see my previous decision and paragraph 13 of the 1985 Act) and the appeal should be allowed on that basis.

Conclusions

21. I have an expert report from Francesca Oliosi who sets out her academic career, academic background, research and publications etc. towards the end of her report. It identifies the documentation which she looked at. Page 3 of the report notes at heading No. 2 “General Principles and Recognition of Foreign Marriages” that Italian law considers the right to marry as a fundamental right and, in addition, recognises the key principle of *favor matrimonii* according to which a particular *favor iuris* is reserved to marriage so that, in case of doubt, the marriage is deemed valid until proven otherwise. She goes on to say that a foreign marriage celebrated abroad is still valid when celebrated in compliance with the law of the state where the marriage took place, namely in this case Ghana.
22. At page 6, paragraph 3.1, she says that it follows from the document submitted by the spouses that the “marriage is valid in Ghana”. She goes on to say that the Ghanaian customary marriage, which is valid and recognised in Ghana, is valid in Italy as well.
23. Under paragraph 3.2 she says that the proxy marriage is “certainly valid under Italian law”. Further details are given. Her conclusion at page 9, paragraph 5, is that on the basis of the information provided it is clear that the Ghanaian customary marriage between the Appellant and her partner “would be regarded as a valid marriage according to Italian law”.
24. The expert opinion chimes with the submission of Mr Garrod in relation to paragraph 13 of the Customary Marriage and Divorce (Registration) Law 1985 which

says that in any proceedings a true copy of the entry in the register certified under the hand of the registrar shall be admissible in evidence as “sufficient proof” of the registration of the marriage. The Appellant relies on paragraph 13 and it was not disputed by the Home Office that the paragraph applied and the words “sufficient proof” would strongly suggest that the marriage was validly contracted under Ghanaian law.

25. The burden is on the Appellant to prove by sufficient evidence that the marriage is recognised under the law of the EEA country concerned. That evidence is said to have to be “independent and reliable” per what is said in **Kareem**. Looking at the CV of Ms Olosi who described herself as an “expert” in ecclesiastical law, comparative ecclesiastical law, canon law, history of canon law and comparative religious law it appears that she completed her LM with a particularly high mark and as I understand the CV she will finish her PhD in February 2015.
26. She declares in paragraph 1, on page 3, that she has no vested interest in the outcome of this case and is able to declare her impartiality in providing her opinion. She is clearly “independent” and is obviously qualified to give expert evidence on the subjects with which she is familiar. There is no contradictor to the fact that she is a reliable expert and I am prepared to accept her as such.
27. Her evidence is clear on both whether the marriage is valid under Ghanaian customary law and also that marriage is recognised under the laws of the EEA country concerned, in this case Italy. It seems to me this therefore meets the test of **Kareem**.
28. The remaining issue before me was whether or not the discrepancies in the evidence offered by the Appellant and her Sponsor are material enough to doubt the genuineness of the relationship. It can often be difficult to know how much weight should be attached to discrepancies when there may be a reasonable explanation which has not had emerged given the fact that the Home Office were relying not on differences in the written statements but differences in oral evidence. It was notable that the Sponsor was clear he gave his wife £100 per week while she said the arrangement was not as precise as that although he did give her money. There was a difference in the working hours as to when the Sponsor finished his work although, on reflection, it seems to me that that difference may arise from when the Appellant did actually finish work and when he came home. The Appellant was very clear she was a Catholic although, as Ms Everett fairly pointed out, this did not preclude her from attending the Pentecostal church which he said she did. There was a slight difference as to whether they wanted to have children – the Sponsor making it clear that they did want to have children and the Appellant was more ambivalent on that although I noted in her statement she expresses a desire to have children (paragraph 15 on page 17 of the Appellant’s bundle).
29. On the other hand, as Mr Garrod pointed out, the initial application was made some two years ago and there is documentary evidence that they are living together in

addition to what they both said in their oral evidence confirming the terms of the written statements.

30. On balance, I accept that this is a genuine marriage and the parties have the intention to continue to live together.
31. For the foregoing reasons this appeal must be allowed.
32. There is no need for anonymity. I was not asked to make a fee order and since much of the evidence which came to hand postdates the refusal letter I am not making a fee order.

Decision

33. The appeal is allowed under The Immigration (EEA) Regulations 2006.

Signed

Date

Deputy Upper Tribunal Judge J G Macdonald

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal I have considered making a fee award but have decided not to do so for reasons given above.

Signed

Date

Deputy Upper Tribunal Judge J G Macdonald