



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/53099/2013

THE IMMIGRATION ACTS

Heard at Field House
On 19 December 2014
Prepared on 19 December 2014

Decision & Reasons Promulgated
On 25 March 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR ERNEST ADJEI
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr P Duffy, Senior Presenting Officer

For the Respondent: Mr N Garrod, Counsel instructed by Justice and Law Solicitors

DECISION AND REASONS

1. In this determination the Appellant is referred to as the Secretary of State. The Respondent is referred to as the Claimant.
2. The Claimant, a national of Ghana, date of birth 3 July 1976, appealed against the Secretary of State's decision dated 13 December 2013 to refuse to issue a residence

card with reference to Regulations 7 and 8(5) of the Immigration (European Economic Area) Regulations 2006 (the 2006 Regulations).

3. In a determination promulgated on 2 October 2014 I found that First-tier Tribunal Judge Symes erred in failing to consider the claimed marriage between the Claimant and his European Economic Area partner national of Belgium, Ms Ruth Osei by reference to the considerations arising from Kareem (Proxy marriages - EU law) Nigeria [2014] UKUT 24 or TA (Kareem explained) [2014] UKUT 316. The judge also failed to go on to consider the alternative of whether the Claimant might qualify as a person in a durable relationship with an EEA National. Accordingly, I found for reasons given that the original Tribunal's decision could not stand and the matter would have to be remade.
4. Directions were given to address the issue of whether or not the proxy marriage is recognised by the EEA National's law or alternatively on the basis of an enduring relationship under the EEA Regulations.
5. At the hearing on 19 December 2014 there was produced on behalf of the Claimant a report, which had not been served as my directions had intended, from a Professor Dr Jinske Verhellen of the law faculty of the Institute of Private International Law in Ghent, Belgium, dated 12 December 2014.
6. The Secretary of State's grounds of appeal did not challenge the judge's findings on the validity of the marriage in terms of the processes of registration followed as set out in the findings from paragraphs 21 to 30 of the determination.
7. The expert opinion makes plain that for Belgian administrative and judicial authorities' purposes foreign marriages are governed by the Belgian Code of Private International Law (PIL Code). From this it appears that under the PIL Code recognition of foreign authentic acts means that they can be recognised by the Belgian authorities but also that the foreign marriage must comply with the same conditions that would have to be fulfilled under Belgian Conflict Rules if the marriage were to take place in Belgium. The Belgian authorities if presented with a foreign marriage certificate will check the applicable law and verify whether the foreign authorities have come to a similar result. The conditions regarding the validity of the marriage are governed for each spouse by the law of the state of the spouse's nationality when the marriage was celebrated.
8. Thus the key question is whether the Ghanaian marriage certificate in this case is recognised in Belgium; being a marriage that took place by proxy. There is nothing to indicate that the Claimant's Sponsor, Ruth Osei, a Belgian national, born on 20 May 1970, would not have the capacity to marry. It is clear that Belgian law recognises proxy marriages provided the formalities regarding the celebration of the marriage are governed by the law of the state of the territory in which the marriage is celebrated.
9. By reference to examples in Belgium law, Professor Dr Verhellen concluded that on the information provided of the relevant law where the marriage was celebrated was

met, the conditions concerning the validity of the marriage in Nigeria are on the face of it met and so far as Ms Osei's marriage is concerned it is valid under Belgian law.

10. The Claimant and his partner were not called to give evidence. What was essentially relied upon are:- the credibility finding made by the judge that the Claimant and the Sponsor's relationship was genuine and the Sponsor was exercising treaty rights in the United Kingdom. Further relied upon was the Claimant's statement (Appellant's Bundle) (AB) (AB pp 15 - 19) and the Sponsor's statement (AB pp 20 - 23). In addition relied upon are payslips, employers' letters (AB pp 151 - 163), a tenancy agreement and HMRC documentation and BT and utility bills (AB pp 222 - 226 and 164). Also relied upon was that the durability of the relationship was not substantively challenged. There was of course no testing of the evidence because the Claimant and the Sponsor did not give evidence.
11. At the hearing, given the very late receipt of Professor Dr Verhellen's report, I decided that the Secretary of State should have an opportunity to serve any written response to his report but not later than 12 January 2015 and if a response was served to serve any reply by 23 January 2015.
12. I was provided with an extensive CV of Dr Verhellen and it is plain that he is a distinguished academic as well as being a lawyer at the Ghent Barclays Bank PLC dealing in private international law (family law), immigration law and nationality law. He is currently a professor of law at Ghent University as well as a visiting lecturer elsewhere.
13. The allegation that it was a marriage of convenience was abandoned by Mr Deller for proper reasons on 22 September 2014.
14. Submissions for the Claimant made in writing to the effect that the burden is upon the Secretary of State to prove a marriage is not valid. I do not agree with those submissions and find that the burden of proof is upon the Claimant to show upon a balance of probabilities that the relevant marriage requirements, for the purposes of the EEA legislation, are met.
15. The response from the Secretary of State to the Verhellen report is really a criticism of the adequacy of its contents rather than an assertion of contrary law. From the Verhellen report part III, assessing there was capacity to marry by proxy and the marriage was properly celebrated and recorded in Ghana, it appeared that the marriage would have to be transcribed (registered) in the 'Belgian Civil Registry'. On the facts it does not appear that the marriage has been so registered in the Belgian Civil Registry. Thus I do not find that the Claimant has established that there was a valid marriage for the purposes of the requirements of the EEA Regulations.

I did not receive a reply from the Claimant, to the Secretary of State's comments.

16. I find upon a balance of probabilities on the evidence, particularly the finding that the relationship is genuine made by the judge, the Claimant has discharged the burden of proof that there is a durable relationship. There is a good deal of

unchallenged documentary evidence that supports the relationship and of living together.

17. In those circumstances I find that the Claimant and Sponsor are in a durable committed relationship.

NOTICE OF DECISION

The appeal on immigration grounds is dismissed, in relation to the proxy marriage and its status in Belgian, under Regulation 7 of the 2006 Regulations.

The appeal is allowed under Regulation 8 of the 2006 Regulations.

ANONYMITY ORDER

No anonymity order was requested or necessary.

Signed

Date **18 March 2015**

Deputy Upper Tribunal Judge Davey

TO THE RESPONDENT

FEE AWARD

The original Tribunal made a fee award in the sum of £140 in favour of the Claimant. I find the appeal has succeeded because of more recent documentation being provided properly addressing the issue of the durability of their marriage.

In the circumstances I find that a fee award is not appropriate.

Signed

Date **18 March 2015**

Deputy Upper Tribunal Judge Davey