



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

Appeal Number: IA/11022/2015

THE IMMIGRATION ACTS

Heard at Field House

On 24 May 2016

**Decision & Reasons
Promulgated
On 7th June 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MS SAIMINATU TEJAN SAVAGE
(ANONYMITY DIRECTION NOT MADE)**

Claimant

t

Representation:

For the Appellant: Mr N Bramble, Home Office Presenting Officer
For the Claimant: No legal representation. Claimant in person.

DECISION AND REASONS

1. This is an appeal by the Secretary of State against a decision and reasons of First-tier Tribunal (Judge Majid) promulgated on 11 November 2015 in which he allowed the appeal under the Immigration (European Economic Area) Regulations 2006, Regulation 7.

2. The First-tier Tribunal found that the marriage between the claimant, a citizen of the Gambia, and her sponsor/husband was genuine and was not a marriage of convenience entered into for the purposes of evading immigration controls. In a letter dated 3 March 2015 the Secretary of State raised concerns about the proxy marriage and the evidence of the EEA sponsor's employment. There was no evidence of domicile in Gambia and no evidence that the marriage was legally registered according to Gambian law. The claimant relied on a marriage certificate dated 20 August 2014 which stated that the marriage took place on 18 April 2014. The Secretary of State also considered Regulation 8 and found there was insufficient evidence to show that there was a durable relationship between the parties. Reliance was placed on a marriage interview in which there were major discrepancies in the answers given by the parties.

Ground of application for permission

3. In the grounds of appeal the Secretary of State contended that the First-tier Tribunal failed to engage with the particular issues in the appeal, namely proxy marriage, and failed to provide adequate reasons for concluding that the requirements of Gambian law were met. Further, there were inadequate reasons given for finding that the marriage was genuine and the parties were in a durable relationship. Concerns were raised that the decision and reasons was devoid of any significant reasoning and/or any understanding of the issues or legal principles involved.

Permission

4. Permission to appeal was granted by First-tier Tribunal Judge Robertson on 25 April 2016 who found that the grounds were arguable.

Error of law hearing

Application for adjournment

5. This morning the claimant has made an application for an adjournment on the basis that she wishes to instruct Counsel to represent her and has limited finances available to her. She had already consulted lawyers but the cost was prohibitive. A brief discussion took place involving the Tribunal, Mr Bramble and the Claimant as to how best to proceed. I had in mind the overriding objective Rule 2 of the Procedure Rules (Upper Tribunal) Rules 2008. I indicated that in the event that I found a material error in law that there would need to be a fresh hearing. Mr Bramble agreed. I explained to the Claimant that, whilst I appreciated that she wished to have a legal representative for the error of law hearing, it would in practice make little difference given that I find that the errors in the decision and reasons were so fundamental that a new hearing would be needed. To put it bluntly, I explained that she would be better off spending her money on legal representation at the next hearing. I refused the application for an adjournment as I was satisfied that the Claimant was not caused any disadvantage or unfairness.

6. I am satisfied that the grounds of appeal are made out. The decision and reasons makes no reference to the specific reasons for refusal of the application under the EEA Regulations and further fails to provide any adequate findings or reasoning with reference to the evidence to show that the proxy marriage was lawful under Gambian law and indeed under Spanish law. The decision and reasons, which fails to go beyond a finding that the marriage was genuine [10], is simply inadequate. It repeats the claimant's representative's submissions that there is no issue to be taken as to proxy marriage or Gambian domicile but there is no reference to evidence relied on in reaching this finding and furthermore there is no engagement with the evidential requirements under Gambian law. The main substance of the decision amounts to a generalised commentary on the issue of English language in EEA cases.
7. As there is no part of the decision and reasons to demonstrate the Tribunal has fairly and properly considered the issues and evidence relevant to the appeal, the findings as they are cannot be preserved and it is therefore necessary for this matter to proceed at the First-tier Tribunal for a hearing de novo. The matter is therefore to be relisted for further hearing at Taylor House on a date to be arranged in due course.

Decision

8. I find a material error in law and the decision and reasons is set aside.
The matter is to be reheard at Taylor House on a date to be fixed (excluding Judge Majid).

No anonymity direction is made.

Signed
GA Black
Deputy Upper Tribunal Judge G A Black

Date 6.6.2016

TO THE RESPONDENT **FEE AWARD**

No fee award.

Signed
GA Black
Deputy Upper Tribunal Judge G A Black

Date 6.6.2016