



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/41115/2014**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On August 31, 2017

**Decision & Reasons
Promulgated**

On September 11, 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MR IMITAZ NAWAZ
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Uppal, Legal Representative

For the Respondent: Mr Armstrong, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I do not make an anonymity direction in this appeal.
2. The appellant is a Pakistani national. He first entered the United Kingdom in January 2010 and on March 31, 2011 he made an application for leave to remain as a Tier 4 (General) Student but the respondent refused this on January 17, 2013. The respondent had previously served the appellant with form IS151A on March 2005.
3. On June 6, 2013 the appellant lodged his current application for an EEA residence card as the spouse of an EEA national exercising treaty rights. In order to succeed under the Immigration (European Economic Area)

Regulations 2006 the appellant had to satisfy Regulation 7 and Regulation 17 of the 2006 Regulations.

4. The respondent refused this application on March 15, 2014 as she was not satisfied that proxy marriages were legal or possible under Ghanaian law.
5. The appellant lodged grounds of appeal on October 15, 2014 under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 and Regulation 26 of the 2006 Regulations.
6. His appeal initially came before Judge of the First-tier Telford on June 15, 2016 and in a decision promulgated on August 5, 2016 the Judge refused the appeal under both the 2016 Regulations and Article 8 ECHR. The appellant appealed that decision but permission to appeal was refused by Judge of the First-tier Tribunal Saffer on January 9, 2017. Grounds were renewed to the Upper Tribunal but these too met with a refusal on March 17, 2017 when Upper Tribunal Judge Jackson concluded there was no merit to the appeal.
7. The appellant, through his solicitors, then sought a judicial review and on May 23, 2017 the High Court found it was arguable that the Upper Tribunal's decision to refuse to give permission to appeal and the original determination promulgated on August 15, 2016 were wrong in law firstly in light of the recent Court of Appeal decision in Awuku v SSHD [2017] EWCA Civ 178, secondly the First-tier Judge's approach to the validity of the proxy marriage was wrong in law and/or based on a fundamental misunderstanding of the evidence and thirdly that the decision in Sala (EFMs: right of appeal) [2016] UKUT 00411 (IAC) was wrongly decided.
8. The matter then went before Vice President of the Upper Tribunal Ockelton who granted permission to appeal in light of the High Court decision. The matter was listed before myself on the above date and both parties were represented.
9. In the intervening period the respondent had filed a Rule 24 response dated 25 July, albeit that response merely took issue with the fact that she had not received the appropriate documents.

SUBMISSIONS

10. Mr Uppal relied on the grounds of appeal and submitted that documents contained in the respondent's bundle showed that this was a valid marriage and that evidence had been handed in at the hearing demonstrating proxy marriages were valid. The reason the marriage had taken place by proxy in Guinea was that the appellant's wife's family originated from Guinea and due to the fact that the parties were unable to travel to France to be married they underwent a proxy marriage in Guinea instead. At the First-tier Tribunal hearing the appellant's wife had not attended due to illness and the appellant was not asked any questions by the Judge after his statement was tendered in evidence. The respondent was unrepresented by at the hearing.

11. Mr Uppal submitted that as a valid marriage certificate had been produced and a presidential decree confirmed that proxy marriages are valid it was now up to the respondent to demonstrate that the marriage was not valid. He submitted the Judge had mistakenly assumed that the registrar was the same person as the proxy albeit he referred to the wrong person in paragraph 13 of his decision. The Judge also mistakenly assumed the proxy and the registrar were the same person when in fact the proxy was the appellant's wife's maternal uncle. Their names are similar but their surnames are spelt differently with the appellant's maternal uncle being Moussa Tarae and the registrar being Moussa Tarore.
12. Alternatively, if the Tribunal found there was no error in respect of this first issue he invited me to adjourn the Sala point in view of the fact the President of the Tribunal had referred the issue of whether national law precluded an appeal to a court or Tribunal against the decision of the executive refusing to issue a residence card to a person claiming to be an extended family member as being compatible with a directive to the CJEU. Mr Uppal handed up the decision of Banger (Unmarried Partner of British National) [2017] UKUT 00125 (IAC). This case was heard by President the Honourable Mr Justice McCluskey and Deputy Upper Tribunal Judge Rimington and they made a reference to the CJEU and stayed those proceedings. Mr Uppal invited me to do likewise.
13. Mr Armstrong opposed the grounds of appeal and submitted that the appellant's wife did not attend to give evidence and although it was said she was unwell there was no medical evidence since January 2016 to support her absence. The presidential decree was a photocopy of a document on a desk that had not been provided to the respondent immediately prior to the date of hearing and its authenticity could not be confirmed. Additionally, even if the presidential decree was correct and valid it makes it clear that in order for a proxy marriage to be valid the proxy must be a close family member of both parties. As the appellant's wife had not attended and there was no evidence about who the proxy was, save what was being submitted, the Judge was entitled to find that the presidential decree was not met and therefore the Judge was entitled to find that the proxy marriage was not lawful. The Judge's findings which were contained in [13] to [15] of the decision were well reasoned and open to him.
14. With regard to whether there was a right of appeal as an extended family member he relied on the decision of Sala. It was a matter for the Tribunal whether they felt that issue should be stayed or dealt with today. If it was dealt with today he submitted there was no right of appeal.
15. Having heard the representations I reserved my decision.

FINDINGS

16. Permission to appeal had been granted by Vice President of the Upper Tribunal Ockelton who followed the decision of the High Court who had given permission on May 23, 2017.

17. Initially when I considered these papers it appeared that this may be one of those cases which had been dealt with under the decision of TA and Others (Kareem explained) Ghana [2014] UKUT 00316 but a closer examination of the Judge's decision reveals that this was not something which was at the forefront of his mind. This was an appeal which came before him on June 15, 2016. Although Article 8 was addressed by the Judge in the hearing it is no longer an issue in this appeal. At paragraph 2 the Judge stated:

“The issues here were whether the couple had conformed to the laws of Guinea in regard to how to properly exercise the right to marriage by proxy which was thought by the respondent that the lack of evidence of either party having a family member as a proxy for each of them at the time of ceremony was fatal to their case according to the requirements under the (extract from presidential decree)” of April 7, 1996.
18. Between [13] and [15] of the decision the Judge considered the evidence that had been submitted. Mr Uppal today argues that as a valid marriage certificate had been issued the burden of proof shifted to the respondent. Mr Armstrong submitted that the burden of proof only shifted if the respondent could demonstrate that the marriage entered into was valid as a proxy marriage.
19. In Cudjoe (proxy marriages: burden of proof) [2016] UKUT 180 (IAC) the Tribunal decided it was for the appellant to prove that their proxy marriage was in accordance with the laws of the country in which it took place and that both parties were free to marry. The burden of proof may be discharged by production of a marriage certificate issued by a competent authority of the country in which the marriage took place and reliance upon the statutory presumption validity consequent to such production. The reliability of marriage certificates and issuance by a competent authority are matters for an appellant to prove. The means of proving that a proxy marriage was contracted according to the laws of the country in which it took place was not limited to production of a marriage certificate.
20. In this case there was contained within the respondent's bundle of documents at page C2 a marriage certificate. The registrar on that marriage certificate was a Mr Moussa Traore and he indicated that the appellant and his wife a French national were married in front of Ahmed Toure and Maurice Cape. On page C6 of the respondent's bundle the appellant's wife appointed Mr Moussa Trare to be her proxy. It is unclear from the paperwork in the respondent's or appellant's bundle who the appellant's proxy was.
21. The presidential decree makes it clear that the proxy representing the parties must be a close relative and must produce the relevant and necessary papers and documents. The Judge considered the evidence presented to him and concluded that the registrar may well have been the proxy. There was no evidence therefore that the proxy was properly assigned as a member of the family although the Judge mistakenly identified this person as Mr Ahmed Toure instead of Mr Moussa Trare. The

Judge went on to say that there was no evidence from the appellant's wife who the proxy was. There was a bundle of documents that been submitted by the appellant's solicitors and that contained a witness statement from the appellant and also from his wife. Neither the appellant's or his wife's witness statement deal with who the proxy was. Those statements concentrate on stating that because they had produced a full marriage certificate that was evidence their marriage had taken place and was valid.

22. Mr Uppal criticised the Judge for not raising these issues at the hearing but neither the appellant nor his wife had addressed those issues and in any event the presidential decree appears to have been photographed and produced at the hearing.
23. The Judge was therefore placed in an invidious situation and he concluded there was a lack of evidence to support the marriage was valid as he was not prepared to accept the marriage was in accordance with the presidential decree. Whilst the marriage certificate can be sufficient to prove a marriage was lawful the presidential decree makes it clear that the proxy must be a close relative and goes further by saying they must be represented by their close relatives.
24. I am satisfied that the Judge who dealt with this case in the First-tier Tribunal was entitled to find paperwork to be unsatisfactory. If the witnesses had addressed the issue of who the proxy was and how they were related then the Judge may have had more evidence to go on. As it happens the decree was presented at the beginning of the court hearing and had not been served on the respondent and the appellant's wife, whose relation was said to be the proxy, did not address the issue in her statement and did not attend the hearing.
25. I therefore find the Judge was entitled on the evidence before him to find the marriage had not been validly undertaken and he was entitled to dismiss the appeal under Regulation 17 of the 2006 Regulations.
26. The second issue raised was whether these parties had a right of appeal as extended family members. Mr Uppal accepted that under current legislation and law extended family members do not have a right of appeal. He asked that I adjourn this aspect of the case pending a decision from the European Court. There is no general stay on such cases in the Upper Tribunal and whilst the Tribunal in Banger adjourned that case that does not mean every case should be adjourned in the same manner albeit I accept the principle arose is potentially the same. It should be noted that the decision of Sala took place after the Tribunal in Banger had heard submissions and therefore postdated the hearing date. At paragraph 14 of the order for reference the Tribunal noted this and commented that if correctly decided the effect of Sala would appear to be that applicants would have no right to pursue an appeal.
27. In the circumstances, I decided not to adjourn this case, and following Sala there was no right of appeal as extended family members.

NOTICE OF DECISION

28. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law. I uphold the original decision.

Signed

Date 09/09/2017

Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT
FEE AWARD

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

Signed

Date 09/09/2017

Deputy Upper Tribunal Judge Alis