



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/08789/2016

THE IMMIGRATION ACTS

Heard at Field House
On 20th July 2018

Decision & Reasons Promulgated
On 24th August 2018

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ABABIO FRANK KUMAH
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Ms Kiss, Home Office Presenting Officer

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

DECISION AND REASONS

1. Although this is an appeal by the Secretary of State, I shall refer to the parties as in the First-tier Tribunal. The Appellant is a national of Ghana born on 11 January 1982. He was previously issued with an EEA residence card on 11 June 2013. His appeal against the decision of 7 July 2016 to revoke his residence card was allowed by First-tier Tribunal Judge Boyes in a decision dated 17 January 2018.
2. At the hearing before the First-tier Tribunal, the Respondent applied for an adjournment to enable him to establish the evidential basis upon which the decision was made, as it was not clear from the refusal letter or the witness statement of Detective Constable David Shahbazi. The judge refused the request for an adjournment for the following reasons:

“The decision was made by the Respondent over sixteen months prior to the

hearing. The Respondent was not able to indicate what evidence in particular she might seek to obtain or even confirm that any such evidence is necessarily available. As I indicated at the hearing I would have expected the relevant evidence, or at least reference to it, to be on the Respondent's file, or recorded on her electronic case management system. If that were the case I would have expected the evidence to be easily available, without the need for the appeal to be adjourned to another date. I did not consider it in the interests of justice for the appeal to be adjourned in circumstances where it was not even clear that the evidence concerned exists. Whilst I refused to adjourn to another date, I put back the case in the list to enable Ms Chopra (the Appellant's representative) to make further enquiries if she wished to do so".

3. Permission was granted by Designated First-tier Tribunal Judge McClure on 30 May 2018 on the grounds that it was arguable that this case was part of a large number of cases in which sham marriages were part of a criminal enterprise. The Respondent asked for the case to be adjourned to enable further evidence to be submitted as to the nature and extent of the enterprise. In refusing the application the judge failed to follow the guidance given in the case of Nwaigwe [2014] UKUT 00418.
4. Ms Kiss applied to submit evidence under Rule 15(2). This was a witness statement dated 19 July 2018. I refused the application to submit the evidence because it was only received by the Respondent at 5.30am on 20 July 2018 and it would appear that it was not in existence prior to 19 July 2018. It was not in the interests of the overriding objective to allow the submission of such evidence so late in the day. There was no explanation for why the evidence was not obtained prior to 19 July 2018. I accept that there was an allegation of involvement in a large criminal enterprise, but the decision was made in July 2016. The Respondent has had ample opportunity to submit evidence to substantiate her case.
5. After a brief discussion as to the future conduct of the case, I came to the following conclusions. The refusal of an adjournment was not unfair. It was clear from the application made today that the evidence upon which the Respondent now seeks to rely did not exist at the time of the First-tier Tribunal hearing on 22 November 2017. The Respondent made the decision to revoke the residence card in July 2016 on the basis of the evidence of Detective Constable Shahbazi, which the judge set out in full at paragraph 18 of the decision. There was insufficient evidence in that witness statement to justify the revocation of the Appellant's residence card.
6. Further, the Appellant's residence card expired in June 2018 and therefore any unfairness caused by the refusal of an adjournment was academic. It is not in the interests of the overriding objective to proceed with an appeal against the revocation of a residence card that has now expired.
7. The evidence which the Respondent sought to adduce today was served on the Appellant and the Respondent will be able to take such evidence into account in relation to any future application made.

8. The judge's findings were open to her on the evidence before her and there was no error of law in the decision dated 17 January 2018. The Respondent's appeal is dismissed. No anonymity direction is made.

Signed:

Date: 6 August 2018

J Frances

Upper Tribunal Judge Frances