



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

Appeal Number: UI-2022-005094  
EA/12890/2021

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 5 December 2022**

**Decision & Reasons Promulgated  
On 9 March 2023**

**Before**

**UPPER TRIBUNAL JUDGE PERKINS**

**Between**

**EUNICE AMPONSAH ACHEAMPONG**  
(anonymity direction not made)

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: No appearance

For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

**DECISION AND REASONS**

(extempore)

1. This is an appeal by a citizen of Ghana against a decision of the First-tier Tribunal dismissing the appeal of the appellant against a decision of the Secretary of State on 1 August 2021 refusing the appellant leave under the EU Settlement Scheme.
2. Ms Isherwood had prepared a Rule 24 notice where she accepted that the First-tier Tribunal had erred in law. The basis for that is narrow but clear. The First-tier Tribunal had neglected to make clear and proper findings on the appellant's assertion that her natural father had engaged in a proxy

marriage in the United Kingdom with her sponsor. It was Ms Isherwood's view that if that marriage was recognised as valid in English law the decision could impact favourably on the decision to refuse leave under the EU Settlement Scheme. It would have been a different case if the appellant's father and the appellant's sponsor were lawfully married. It was Ms Isherwood's position that the sponsor and father were *not* married and so the appellant was not entitled to the advantages of being the child of a marriage but her primary position was that the point was clearly raised and not dealt with by the First-tier Tribunal and it should have been and that is why she made the concession that she did which, if I may say so, was entirely sensible.

3. The case came before me but the appellant did not. It was convenient to hear it at approximately 11:58 in the morning. My usher confirmed there had been no explanation by the appellant for late arrival. The records showed that notice of hearing was sent to the Secretary of State and the appellant's representatives on the same occasion, I think 11 November of this year. It was sufficient to notify the Secretary of State, it was sufficient to notify the appellants, they just did not attend and there was no explanation.
4. Ms Isherwood, in her Rule 24 notice, had indicated that the hearing should be adjourned until the associated appeals on essentially similar facts by close family members had been finally resolved. When Ms Isherwood prepared her notice the appeals had been dismissed and permission to appeal had been refused by the First-tier Tribunal but there was no indication of the outcome of a renewed application to the Upper Tribunal. I have the advantage of having seen Upper Tribunal Judge Jackson's Decisions and Reasons refusing permission. It was dated, I think, 15 November and presumably by now has been sent to the parties.
5. The appellant had not given evidence before the First-tier Tribunal. The appeal was determined "on the papers".
6. In the circumstances I saw no point in further delay. I resolved to re-make the decision. The essential point is that it is for the appellant to prove, on the balance of probabilities, that she was in fact married at the relevant time. She has failed to do that.
7. I have seen the Decision and Reasons of First-tier Tribunal Judge Woolley dismissing appeals brought by close relatives of the appellant. There is before me the same bundle that was before the First-tier Tribunal and it is quite obvious that it is substantially the same bundle that was before the First-tier Tribunal dealing with the case of close relatives. The pagination is very similar if not identical but I have looked at the documents concerned to make up my own mind about their worth.
8. I respectfully adopt the reasoning given by First-tier Tribunal Judge Woolley dismissing the appeals before him because I agree with it but I make it plain that I have checked the documents myself, I am not simply copying out from the First-tier Tribunal's decision.

9. Judge Woolley was very unimpressed and gave good reasons. They particularly turn on the document identified as Form of Register of Customary Marriages. It is in a bundle before me (page 65). It is peculiar because although I am told that it relates to a proxy marriage there is nothing on the face of it to indicate that it does relate to proxy marriages as alleged. There are boxes for fingerprints or signatures and signatures are there on the form purporting to be the witnessed signatures of the appellant's father and sponsor. It is very difficult to see how that can possibly be right if the marriage was conducted by proxy when there is no explanation to say how people were able to sign when they were not present. Judge Woolley concluded "the evidence of this Form does not support the contention that this was a marriage by proxy" and I find that a very apt expression.
10. Judge Woolley was also concerned by a second document described as an Authentication of Customary Marriage because there is no obvious reason for this to have been prepared. It was dated the same date as the Form of Register which makes little sense unless it was assumed for some reason that the document would be an object of suspicion and there is no reason why that would have been the case if it was a genuine document reflecting a genuine proxy marriage at the time. There may have been a reason later but that is not what the document shows. Again to adopt Judge Woolley's phrase "this document seems to have been created in the expectation that the Form of Register would be objected to".
11. Judge Woolley was also very dissatisfied with a statutory declaration purportedly given by the fathers of the parties to the marriage but it is dated 31 May 2020 and indicates that at that time the husband was living in Luton and his wife at an address in Ghana but that is not right. According to the Form of Register of Customary Marriages the EEA sponsor lived at an address in Luton and her husband at an address in Ghana.
12. Even if the explanation for the error is just carelessness there is no obvious reason why a statutory declaration would have been prepared in May 2020.
13. I agree with Judge Woolley that these deficiencies undermine the reliance that can be given to it.
14. There is another point, again identified by Judge Woolley. It is said that an ordinary "face to face" marriage took place on 8 April 2021. It was only later when the convenient advantage of a customary marriage became apparent that there was any suggestion that the parties had been married in a customary marriage by Ghanaian law. I agree with Judge Woolley that this is just too suspicious, when taken in the round, to accept that there was a customary marriage by proxy before the later biding marriage.
15. With that finding any help the appellant may have had based on there being a customary marriage fails because I am wholly unpersuaded that there was. In fact, I go further, I am persuaded there was not. I also note the evidence of the relationship is skimpy and there is no clear evidence of cohabitation at the necessary times. This is a case which just does not

work on the evidence. The burden of proof is on the appellant and the appellant has failed to discharge that burden.

16. Having set aside the decision of the First-tier Tribunal I replace it with a decision of my own dismissing the appeal, I hope for better reasons.

**Notice of Decision**

17. The appellant's appeal against the First-tier Tribunal's decision is allowed BUT I substitute a decision dismissing the appellant appeal against the Secretary of State's decision.

Jonathan Perkins

Signed  
Jonathan Perkins  
Judge of the Upper Tribunal

Dated 13 January 2023