



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002496

First-tier Tribunal No: EA/00999/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 12 August 2024

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

Sandra Gyasi
(NO ANONYMITY ORDER MADE)

Appellant

and

Entry Clearance Officer

Respondent

Representation:

For the Appellant: Mr S Hingora, counsel instructed by R Spio & Co Solicitors
For the Respondent: Ms S McKenzie, Senior Home Office Presenting Officer

Heard at Field House on 31 July 2024

DECISION AND REASONS

Introduction

1. This decision should be read in conjunction with the decision issued on 23 June 2023 in which the Upper Tribunal found that the First-tier Tribunal had erred in law and set aside that decision with the finding at [18] being, namely that the appellant 'is related as claimed to the sponsor's purported wife.' The appellant's appeal was adjourned to be re-heard by the Upper Tribunal as the sponsor was not in attendance at the error of law hearing.

Anonymity

2. No anonymity direction was made previously, and there is no reason for one now.

Background

3. The appellant is a national of Ghana, born in September 2001. This appeal is against a decision dated 14 December 2020 refusing a second application she made for an EEA Family Permit on 27 November 2020. The sponsor is Mr Antwi Agyei, who is said to be the husband of the appellant's mother, Mary Osei. Mr Agyei is a national of the Netherlands.
4. The reasons provided in the decision notice can be summarised as follows. The DNA report was incomplete and was not accepted as sufficient evidence of the appellant's relationship to her purported mother. Furthermore, the respondent did not accept the documents (a customary marriage certificate and a statutory declaration) to be reliable evidence of the relationship between the appellant's mother and the EEA sponsor.

The hearing

5. The hearing was attended by representatives for both parties as above. I heard oral evidence from the sponsor, Mr Antwi Agyei and the appellant's mother, Mary Osei. Both representatives submitted skeleton arguments and made submissions and the conclusions below reflect those arguments and submissions where necessary. A bundle was submitted by the appellant and the Secretary of State relied upon his bundle before the First-tier Tribunal.
6. At the end of the hearing the decision was reserved.

Decision on remaking

7. The issue in dispute is whether Mrs Osei and Mr Agyei are married. The case of *McCabe v McCabe* [1994]1 FLR 410 established that a Ghanaian customary marriage can be valid notwithstanding the absence of any documentary evidence to prove its validity. Therefore the marriage in this case can be valid regardless of the reliability of the registration documents.
8. The account given in the witness statements dated 22 July 2024, is that the marriage between Mrs Osei and Mr Agyei was contracted under Akan customary law. The statements explain that the custom is that a dowry was paid by Mr Agyei's family to the family of Mrs Osei. The dowry consisted of 'six pieces of cloth, drinks, a ring, a bible, and £100.' That dowry was accepted by the family of Mrs Osei, following which prayers and rites were performed and the couple were declared husband and wife on 27 May 2017 in Gbawe New Town, Accra. As the couple were resident in the United Kingdom at the time, they were represented by Mr Agyei's father and Mrs Osei's uncle at the customary marriage. There was no cross-examination in respect of the foregoing matters and none of this evidence was criticised by Ms McKenzie during her submissions.
9. The focus of the respondent's case are the two 'Form of Register of Customary Marriages' documents. These documents were obtained in order to provide documentary evidence of the customary marriage, for the purpose of the appellant's entry clearance application.
10. The first document contained a mistake as to Mrs Osei's marital status at the time of the customary marriage in that it stated she was a spinster. The second

document was obtained to address that error as Mrs Osei was previously married and divorced.

11. Ms McKenzie highlighted the differing information in the two documents. Those being that the second document had a different reference number and date to the first, that the ages of the parties to the marriage had been changed, varying signatures and the names/signatures of Mrs Osei and Mr Agyei were added to the documents despite their presence in the United Kingdom.
12. A letter from the legal department of the Accra Metropolitan Assembly dated 22 July 2024 addresses the anomaly regarding Mrs Osei's marital status in the earlier marriage document and confirms that the corrected document was issued on 14 July 2021 with receipt number 5079046 and that this is a valid document. This letter therefore explains the point raised by Ms McKenzie as to the new reference number which was assigned to the registration of the marriage in question after the marital status was corrected.
13. While Ms McKenzie questioned Mr Agyei regarding the date of this letter, his response, that the letter was obtained to address the discrepancy, was not subject to any criticism in her submissions. Indeed, the same point was made in Mrs Osei's witness statement. Nor was there any submission made to suggest that this document was unreliable.
14. When asked about the differing ages, Mr Agyei suggested that the official had stated their ages at the time each document was completed. Mr Hingora also submitted that there was no evidence to support the submission that the documents were required to state the circumstances in place at the time of the marriage as opposed to when the documents were completed.
15. As for the signatures, Mrs Osei and Mr Agyei explained that they had given consent for their respective relatives to sign necessary documents in their place. The same is confirmed by the attestation of the Judicial Service of Ghana as well as the sworn statutory declaration at page 14 of the appellant's bundle which also provides supporting evidence relating to the customary marriage.
16. It is relevant, while discussing the statutory declaration adduced in this case, to examine Section 3 of the Ghanaian Customary Marriage and Divorce Registration Law 1985 states:

The application for registration of the marriage shall be accompanied by a statutory declaration stating the following:-

- a. The names of the parties to the marriage
- b. The places of residence of the parties at the time of the marriage
- c. That the conditions essential to the validity of the marriage in accordance with the applicable customary law have been complied with.

The statutory declaration shall be supported by the parents of the spouses or persons standing in loco parentis to the spouses except where there are no such persons living at the time of the application for registration.

17. It suffices to say that the statutory declaration made on 9 June 2021, making reference to the customary rites being performed on 27 May 2017, on the face of the document, complies with the aforementioned requirements. Indeed, Ms McKenzie did not argue otherwise.

18. I further note that the Customary Marriage and Divorce (Registration) Amendment Law 1991 provided that registration of customary marriages and divorces would no longer be mandatory.
19. In *Cudjoe (Proxy marriages: burden of proof)* [2016] UKUT 00180 (IAC), the following passage rightly indicates, by use of the word ‘may,’ that a marriage certificate is but one method of discharging the burden of proof as to whether a proxy marriage was in accordance with the law.
- a. It will be for an 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 of validity consequent to such production. The reliability of marriage certificates and issuance by a competent authority are matters for an appellant to prove.
20. While the apparent anomalies in the documents appear to have been addressed by the additional evidence obtained on the appellant’s behalf from the Ghanaian authorities, I carefully consider the points made in Ms McKenzie’s skeleton argument to the effect that the second marriage document was not signed by a Notary Public in Ghana nor verified by the Ghanaian Judicial Service.
21. Furthermore, in *NA (Customary marriage and divorce - evidence) Ghana* [2009] UKAIT 00009 at [18], the Tribunal took into consideration guidance on marriages in Ghana from UKBIA. The following extract is useful.
- a. 15.5.2 Since it is possible for Ghanaians living outside Ghana to obtain the proper certificates, certificates of marriage or divorce authenticated by the Ghanaian High Commission, should be requested in all cases where the marital state of an applicant is important. Statutory declarations made by a parent or other family elder of either party to an unregistered customary marriage should only be accepted where they complete a chain of otherwise first class documentary evidence of a claim to citizenship.”
22. Owing to the absence of authentication along with the deficiencies therein, I place very little weight on the documents relating to the customary marriage. I should add that I am satisfied that Mrs Osei and Mr Agyei are not responsible for the quality of the supporting documents. They are not English speakers and according to their witness statements are not well-educated and struggle with reading. Notwithstanding the issues with the documents, I am satisfied that Mrs Osei and Mr Agyei have provided an honest and detailed account of the circumstances of their customary marriage in their witness statements upon which they relied. Furthermore, both were cross-examined robustly and provided evidence consistent with their statements and the other evidence adduced. In answer to my questions both were able to confirm the date and their respective ages when they married as well as their current cohabitation without hesitation.
23. Considering all the evidence in the round I find, on balance, that the appellant has discharged the burden of proving that her mother, Mrs Osei, and Mr Agyei are married as claimed.

Notice of Decision

The appeal is allowed under the Immigration (European Economic Area) Regulations 2016.

T Kamara

Judge of the Upper Tribunal
Immigration and Asylum Chamber

1 August 2024

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email