



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

Appeal Number: IA/13779/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 10 October 2013
Prepared 10 October 2013**

**Determination Sent
On 16 October 2013**

Before

UPPER TRIBUNAL JUDGE MCGEACHY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ALHAJI BANGURA

Respondent

Representation:

For the Appellant: Miss Z Kiss, Senior Home Office Presenting Officer
For the Respondent: None

DETERMINATION AND REASONS

1. The Secretary of State appeals, with permission, against a decision of Judge of the First-tier Tribunal M J H Wilson who, in a determination promulgated on 16 August 2013, allowed the appeal of Alhaji Banguar against a decision of the Secretary of State made on 2 April 2013 to refuse

him leave to remain under Regulations 7 and 8 of the Immigration (European Economic Area) Regulations 2006.

2. Although this is the appeal of the Secretary of State I will for ease of reference refer to her as the respondent as she was the respondent before the First-tier Tribunal. Similarly I will refer to Mr Alhaji Bangura as the appellant as he was the appellant before the First-tier Tribunal.
3. At the hearing before me there was no appearance by or on behalf of the appellant. I am satisfied from a perusal of the file that the notice of hearing had been correctly served on the appellant at the address of his representatives, that being the address which he had given in the notice of appeal. In these circumstances I consider it appropriate to determine the appeal taking into account the documents on the file before me.
4. The Secretary of State had refused the appellant's application because it was not accepted that he had produced a valid marriage certificate nor was it considered that he was in a durable relationship. The appellant had claimed that he was married to an EEA national in a native, proxy marriage in Sierra Leone. When making the application he had produced a Certificate of Native Marriage dated 29 June 2012 together with an affidavit supporting the Sierra Leone Certificate of Native Marriage dated 29 November 2012 as well as a Portuguese identity card for his claimed wife and a copy of his own passport.
5. In the notice of refusal it was pointed out that the provisions of the Sierra Leone Registration of Customary Marriage and Divorce Act required that a statutory declaration should accompany the Certificate of Native Marriage and that that declaration should contain certain specified evidence but that what had been produced was an affidavit which did not contain the relevant evidence.
6. The appeal was determined on the papers by Judge M J H Wilson. He referred to the terms of the Registration of Customary Marriage And Divorce Act which stated that the application for registration of a marriage should be made within six months of the marriage and that it should be accompanied by a statutory declaration setting out the names of the parties to the marriage, the place of residence of the parties at the time of the marriage and the conditions essential to the validity of the marriage in accordance with the applicable Customary Law had been complied with.
7. The judge stated that he had before him a statutory declaration which covered all relevant requirements. He therefore allowed the appeal on the basis that the requirements of the Act were met and therefore that the appellant had entered into a valid marriage and qualified for leave under the provisions of Regulation 7 of the Immigration (EEA) Regulations 2006.
8. The Secretary of State appealed pointing out that the declaration to which the judge had referred was dated more than six months after the date of

marriage and that therefore the registration was invalid. On that basis permission to appeal was granted on 3 September 2013.

9. As I have stated above, there was no appearance before me. I did have a copy of the document which had been lodged with the application which is clearly an affidavit. It is not a statutory declaration. It was sworn on 29 November 2012. It does not have the necessary evidence required by the Sierra Leonean Customary Marriages Act. The Secretary of State was therefore correct to refuse the application as there was no evidence as the required evidence to show that this was a valid marriage was not produced.
10. I have seen the statutory declaration to which the judge refers. The reality is, however, that it is dated 27 June 2013. It is not dated within six months of the marriage. Again the requirements of the Sierra Leonean Registration of Customary Marriages and Divorce Act 2009 have not been met.
11. I consider that the Immigration Judge made a material error of law when he relied on the statutory declaration as it is clearly not dated within six months of the marriage taking place.
12. I therefore set aside the decision of the Immigration Judge. For the reasons which I have set out above I find that the appellant has not entered into a valid marriage and that therefore he cannot succeed under the provisions of Regulation 7 of the Immigration (EEA) Regulations 2006. Moreover there is no evidence whatsoever to indicate that he is in a durable relationship with an EEA national here and therefore his appeal could not succeed under the terms of Regulation 8.
13. I therefore, having set aside the decision of the Judge of the First-tier Tribunal, remake the decision and dismiss this appeal on immigration grounds.
14. The determination of Judge Wilson was silent with regards to the issue of the appellant's rights under Article 8 of the ECHR, and, as the appeal was dealt with on the papers, he heard no submissions in that regard. I note that there was a Statement of Additional Grounds which referred in general terms to the rights of the appellant under the ECHR. However, there is no evidence before me that would indicate that the appellant is exercising private and family life here to the extent that the rights of the appellant under Article 8 of the ECHR could be engaged. I therefore also dismiss this appeal on human rights grounds.

Decision

15. This appeal is dismissed on both immigration and human rights grounds.

Signed
Upper Tribunal Judge McGeachy

Date