Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/06834/2012
OA/02498/2012
OA/06826/2012

THE IMMIGRATION ACTS

Heard at Birmingham	**Determination Promulgated**
On 1 July 2013	**On 3 September 2013**

Before

UPPER TRIBUNAL JUDGE HANSON
DEPUTY UPPER TRIBUNAL JUDGE SOMMERVILLE

Between

Regine Ngamba Sesep
Deborah Masieta
Rinedi Ngamba
(Anonymity direction not made)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Rutherford - counsel
For the Respondent: Ms Pleass Presenting Officer

DETERMINATION AND REASONS

Background

1. The appellants are citizens of the DRC. The first appellant is the third appellant's mother and the second appellant is the adopted daughter of

the sponsor's real brother. They applied for leave to enter the United Kingdom as the dependents of the sponsor Ngamba Masieta. Their applications were refused on the 1 March 2012. They appealed that decision and their appeals were dismissed on the 23 April by First-Tier Tribunal Judge Thomas (the FTJ) as she found that the marriage between the first appellant and the sponsor was not subsisting. They applied for permission to appeal which was granted by FTJ Hemmingway on the 5 June 2013.

The Hearing

2. The appeal came before us on the 1 July 2013 and was on submissions as to error of law only.

3. Ms Rutherford relied on the grounds of appeal which are attached to her instructing solicitors letter of the 23 May 2013 which she expanded by further oral submissions as to errors of law in the FTJ's determination. We heard submissions from Ms Pleass who made oral submissions that the FTJ finding that the marriage was not subsisting was open to her on the evidence. We reserved our decision which we now give.

Discussion

4. The grounds of appeal are lengthy but the appellant's solicitors letter of the 23 May contains a summary in which they contend that the FTJ's *"key finding that the marriage was not subsisting was the corollary of her finding that the first appellant did not intend to live permanently with the sponsor. She made no assessment of the sponsor's intention vis-à-vis the marriage. Her failure to assess his intention as an error of law especially given that it is normal in entry clearance appeals, the sponsor gave oral evidence and the appellant did no*t".

5. We do not accept that contention because as we pointed out at the hearing it is essential that for a marriage to be subsisting the matrimonial relationship must exist (see the head note to Naz (subsisting marriage –standard of proof) Pakistan [2012] UKUT 40. A "relationship" necessarily implies that if one party is found (in this case the appellant) not to have the necessary intention to live together as spouses then the marriage is not subsisting. That is what the FTJ found and that was within the range of findings the FTJ was entitled to make on the on the evidence. We are satisfied that the FTJ considered all of the evidence with the degree of care required. The foregoing leads to the second ground of appeal.

6. The second ground of appeal is that "*The finding regarding the appellant's intention was in any event flawed by the IJ's approach to the evidence and was*

illogical (the IJ held it against her that she had not applied to remain here following visits in 2008 and 2009; her decision to abide by the terms of her visit visa and return to the DRC to look after her children does not suggest that she now wishes to emigrate to the UK for economic reasons, as is implied. Moreover it was based on incidents that were four /five years old at the time of the hearing.

7. We note the use of the word "illogical" and Ms Rutherford did not in her submissions suggest the IJ's decision was perverse. We further note the reliance on GA (subsisting marriage) Ghana UKAIT 00046 but for the reasons given above at paragraph 5 we do not accept that both grounds "fall foul "of GA.

8. Having dealt with the two principal grounds of appeal we turn to the detailed grounds. Paragraphs 7 to 11 set out what are contended to be material errors of law.

9. Paragraph 7 asks the hypothetical question as to why the sponsor persists in the process at expense to himself if he did not believe that the appellant to be committed to the marriage. It is not our function to answer such questions as it is for the appellant and the sponsor to satisfy the FTJ as to their mutual intentions. As was recognised in GA it is a difficult problem which First-Tier Judges "must grapple with ". This is what the FTJ did and we find that her findings of fact were open to her for the extensive reasons she gave at paragraphs 17 (a) to (g).

10. Paragraph 8 relates evidence before the FTJ regarding the whereabouts of the sponsor's wedding ring. We do not see the logical connection between this and the reference to his commitment to his wife being questioned and this in our view is simply a repetition of the primary contentions as to mutual intention which we have dealt with above.

11. Paragraphs 9 and 10 amount to no more than a disagreement with the FTJ's findings of fact and the weight which the FTJ gave to the evidence before her and an attempt to reargue the case. They do not identify an arguable error of law.

12. The draftsman of the grounds would do well to read the decision of LJ Coombe in VW Sri Lanka [2013] EWCA 0522 in particular at [12] where it is stated.

> Regrettably, there is an increasing tendency in immigration cases, when a First-tier Tribunal Judge has given a judgment explaining why he has reached a particular decision, of seeking to burrow out industriously areas of evidence that have been less fully dealt with than others and then to use this as a basis for saying the judge's decision is legally flawed because it did not deal with a particular matter more fully. In my

judgment, with respect, that is no basis on which to sustain a proper challenge to a judge's finding of fact.

13. Finally it is significant that despite their length the grounds of appeal they do not challenge the FTJ's finding at paragraph 19 of the determination that the financial requirements of paragraph 281 (iii) nor the requirement for sole responsibility in Paragraph 281 (v) were not met. The decision that Article 8 family life did not exist was not challenged. For these reasons alone the appeal before the FTJ could not succeed.

Conclusions:

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

We do not set aside the decision

Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

We make no fee award.

Signed

Date

Judge of the Upper Tribunal