



**Upper Tribunal
(Immigration and Asylum Chamber)**
IA/11190/2014

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 27 October 2014**

**Determination Promulgated
On 21 November 2014**

Before

DESIGNATED JUDGE MURRAY

Between

**MR DIVINE MUFFUH AZUKIBOH
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Saifolahi, Counsel for CASA UK

For the Respondent: Mr Whitwell, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Cameroon born on 19 August 1985. He appealed against the decision of the respondent dated 15 February 2014 refusing his application for a residence card as confirmation of his right to reside in the UK as the spouse of an EEA national exercising Treaty rights in the UK. His appeal was heard by Judge of the First-tier Tribunal Steer on 9 May 2014. The appeal was allowed under the EEA Regulations 2006 in a determination promulgated on 21 May 2014.

2. An application for permission to appeal was lodged by the respondent and permission was granted by Judge of the First-tier Tribunal Parkes on 26 June 2014. The judge found that the appellant's proxy marriage was legal but the permission states that he erred in not applying the case of Kareem [2014] UKUT 24. The grounds state that the judge did not consider the validity of the marriage in the EEA national's home state and so he erred in his approach to the issues involved.
3. On 19 August 2014 the appellant appeared before me and I found that there was a material error of law in the First-tier Tribunal's determination. Based on the said case of Kareem and the case of TA and Others (Ghana) [2014] UKUT 00316 (IAC) I found that the marriage between the appellant and the sponsor is not valid but I found that the appellant is the partner of an EEA national. The First-tier Judge did not make a decision on whether the appellant and his partner are in a durable relationship. "Durable relationship" has to be decided on a case by case basis.
4. I directed a second stage hearing on the issue of the durability of the relationship. I adjourned the second stage hearing until 27 October 2014 and this is the adjourned hearing.
5. There were no preliminary issues.
6. The appellant took the stand and asked that his statement dated 20 October 2014 be used as evidence for the hearing.
7. The Presenting Officer questioned the appellant asking him when he and Hanna Ako Baiye, a Dutch citizen started living together as a couple. He said that that was at the end of September 2013 so they have not been living together as a couple for 2 years.
8. The Presenting Officer asked the appellant what his partner's nationality is and he said she has Dutch nationality. She does not have a British passport. Her place of residence is in the United Kingdom. There is a Lloyds Bank form in the appellant's bundle and under the heading "Country of Residence and Nationality" it is stated that her first nationality is Dutch and her second nationality is British. The appellant said that that is not the case, she does not have a British passport.
9. The Presenting Officer asked the appellant where he was living and where his partner was living in September 2013 before they moved in together and he said she was living with her mother and he was living in Brixton and they had been looking for somewhere to stay after they had undergone their customary marriage.

10. The appellant was asked if his leave to remain in the United Kingdom expired on 31 October 2011. He said it did and that he was an overstayer when he applied for his residence card. He was then asked when he and his partner met and after that how long it was before they got married. He said they met in April 2013 and got married in August 2013. He was asked if they have ever honeymooned or holidayed together and he said they have been outside London to see friends and family and have spent a lot of time together but they have not been any holidays together. He was asked where they were at Christmas and he said he was at his sister's in Leicester but his partner had had to work. He said she is a support worker and has to live in with her clients when she is working. He said his partner is pregnant.
11. It was put to him that his partner has been to a second trimester scan and he was asked who his midwife is. He said the scan was at the hospital which is Grays and St Thomas Hospital and the midwife was not there.
12. The Presenting Officer asked the appellant if his wife is on the tenancy agreement for their present address at 3 Broster Gardens, South Norwood, London. He said there is no tenancy agreement. There is a private landlord but no paperwork.
13. The Presenting Officer asked him if he and his wife had a civil marriage in the United Kingdom but he said they had not as they consider themselves married. He was asked about the documents on file from the Worldwide Marriage Encounter (England and Wales). He said he and his partner went to a marriage encounter weekend with that body and it is for couples who have just got married and you are taught how to live together happily as a couple.
14. The Presenting Officer asked the appellant why he has not married civilly in the United Kingdom and he said his passport is with the Home Office and he was asked if they have any plans to marry civilly in the UK or as he and his partner are Christians if they plan to have a Christian marriage. The appellant said they want to do this but they may have the Christian marriage in Cameroon and not in the United Kingdom.
15. He asked the appellant if he can drive and he said he cannot.
16. There was no re-examination.
17. A second witness took the stand being Hanna Ako Baiye, date of birth 1 October 1990. She asked that her statement be used as evidence for the hearing.
18. Counsel asked her why the letters from St Thomas Hospital London from her GP show her address as her mother's address.

She said when she found out she was pregnant she could not change GPs because the Home Office had her passport. She said she liked the GP she had used when she was with her mother and trusted him so she just kept the same address.

19. The Presenting Officer questioned the witness asking her if she now has her passport from the Home Office and she said she has. She was asked about her GP and she said she trusts the GP she had when she stayed with her mother so she has not changed him. She said she only sees the one doctor when he goes to her GP clinic.
20. The witness was asked when she started living with the appellant and she said that was in September 2013 shortly after they married in August 2013. She said she could not stay with him at his address and they had to find somewhere to stay so they started looking after the marriage. She was asked why she could not move into his address and she said that the person who owned the property said there was not enough room for her.
21. The witness said she is on maternity leave but she used to work as a carer. She said she graduated in July 2012 and then started working in November/December 2012 after all her checks had been done by her employer.
22. It was put to her that a customary marriage is not recognised as being legal under EU law so has she any plans to enter into a civil ceremony in the UK with the appellant. She said they have considered this but they have not done anything about it because they want to see the result of this appeal.
23. She was asked if they have ever gone on holiday together and she said they go out a lot and visit family and friends but they have not been a proper holiday. She was asked about last Christmas and she said she had been working but the appellant went to his sister's.
24. A third witness took the stand being Clara Beiye whose nationality is Dutch. She is the mother of the second witness and has been in the United Kingdom for 14 years. She asked that her statement, which is on file, be used as evidence for the hearing.
25. There is another statement on file by Phyliss Navti who is the sister of the appellant. Unfortunately she did not arrive at the hearing centre on time but I am going to take account of her statement, which is on file when making my decision.
26. The Presenting Officer made his submissions relying on the refusal letter of 15 February 2014.

27. I was referred to the original First-tier determination and he submitted that there is nothing in this determination regarding durability of the relationship. The First Tier hearing was based on the proxy marriage.
28. I was referred to pages 2 and 3 of the refusal letter which refers to durability of the relationship and the respondent's position on this. He submitted that at that time there were 2 separate addresses for the appellant and his partner and because of this and the other matters referred to therein, it was found that the relationship was not durable. He submitted however that this is an EEA appeal and I can consider all the evidence before me up to today's date. He submitted that matters have moved on since the date of the refusal letter.
29. I was referred to the appellant's partner's pregnancy and he submitted that if I accept the oral evidence of the witnesses then the appeal should be allowed, but I have to take into account all the circumstances of this case.
30. He submitted that the couple married very shortly after they met. He submitted that when the application was made there was an issue about cohabitation but the documentary evidence shows that the situation is different now. I was referred to the fact that the GP letter and the hospital letter have a different address from the matrimonial home and that this may have a bearing on my decision. The appellant and his partner have never holidayed together and have never had a civil marriage ceremony in the United Kingdom. He submitted however, that if I accept that the appellant is the father of his partner's child and if I find the witnesses to be credible then a residence card should be issued to the appellant.
31. Counsel for the appellant made her submissions submitting that the original decision has not aged well and that new evidence has now been produced. She asked me to consider the oral and documentary evidence in the round. She asked me to find that the appellant and his partner are in a durable relationship. She submitted that the issue is not whether they have been living together for 2 years. I was asked to consider in particular, the pregnancy. The second and third witnesses both state that the appellant is the father of the second witness's child and I was referred to the additional documents now supplied. I was referred to the document headed "My Birth Plan" in the appellant's bundle in which the second witness states that she would like her partner, the appellant, to be with the baby when she is being checked after delivery. She also refers to him in the Guy & St Thomas NHS document headed "patient details" as her husband. Counsel submitted that even though the marriage has not been recognised, the proxy marriage has not been challenged and it is clear from the evidence that the

couple is in a durable relationship. They have entered into a cultural proxy marriage.

32. I was referred to the photographs in the bundle which show that the appellant has now been adopted into his partner's family. It is clear that he socialises with them and I was referred to the cards to the appellant and his partner congratulating them on the impending birth. I was also asked to give weight to the marriage encounter weekend that they attended. She submitted that all of these things demonstrate commitment and durability.
33. Counsel submitted that the appellant and his partner both stay at the same address and that a good explanation has been given for why the GP and the hospital have her mother's address. I was asked to consider all the evidence in the round and find that the appellant and her partner intend staying together permanently as a couple. With regard to a civil marriage she submitted that this is not important to them as, as far as they are concerned, they are married.
34. She submitted that the evidence is consistent and the only issue I have to consider is whether the appellant can be deemed to be an extended family member of an EEA national under the Regulations. She submitted that if I find that is the case a residence card should be issued to the appellant.
35. Counsel also pointed out to me that the appellant has named his partner on his life insurance policy. She submitted that when the application was made it was on a different basis from now and although durability is an issue in the refusal letter, what the judge at the First-tier Tribunal considered was whether the marriage was valid but the decision now will be on a very different basis and the evidence all supports durability. I was asked to take account of all of the evidence.
36. The appellant's partner is due to give birth on 26 November 2014.

Determination

37. The burden of proof is on the appellant and the standard of proof is the balance of probabilities.
38. I have considered all the evidence on file, the oral evidence given at the hearing and the submissions of both parties. I am able to consider all the evidence up to date of this hearing as this is an EEA case.
39. As submitted to me, the situation now is very different to what it was on 15 February 2014, the date of the refusal letter. In May 2014, the date of the First-tier hearing, there is an error of

law in the determination. The marriage of the appellant and his partner is not valid. The First-tier Judge did not consider the durability of the relationship although it was mentioned in the refusal letter.

40. There is evidence that the appellant's partner is pregnant. I have noted the documents in the appellant's bundle, in particular the NHS documents in which the appellant's partner names the father of the unborn child as the appellant and asks for him to be present after the birth. I have considered the cards and photographs in the appellant's bundle and the evidence of all the witnesses.
41. Although the GP documents and the NHS documents refer to the appellant's partner living at a different address, a good reason has been given for this and I found all the witnesses to be credible.
42. I therefore believe that although the marriage has been found not to be valid the appellant and his partner consider themselves to be married. Their evidence is consistent and I find that the relationship is a durable and subsisting one.
43. The appellant's situation has moved on since the application was made. Although the appellant and his partner have not stayed with each other for 2 years, I believe that they intend living together in a genuine subsisting relationship and that the documentation provided shows this.
44. I therefore find that this appellant is an extended family member as defined in Regulation 8 of the Immigration (European Economic Area) Regulations 2006.

DECISION

45. I allow the appeal and direct the respondent to issue the appellant with a residence card as confirmation of his right to reside in the United Kingdom.

Signed
2014

Date **21 November**

Upper Tribunal Judge Murray