IAC-PE-SW-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/03065/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons Promulgated**
On 8th May 2015	**On 15th May 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

Richmond Gabriel Abredu
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Owusu of BWF solicitors
For the Respondent: Mr Tarlow, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Mr Richmond Gabriel Abredu date of birth 12th July 1979 is a citizen of Ghana. Having considered all the circumstances I do not consider it necessary to make an anonymity direction.

2. This is an appeal against the decision of First-tier Tribunal Judge Tiffen promulgated on 8th January 2015 whereby the judge dismissed the Appellant's appeal against the decision of the Respondent dated 9th January 2014. The decision by the Respondent was to refuse the Appellant

a residence card as confirmation of a right to reside in the UK as the spouse of an EEA qualified person under the 2006 Immigration (EEA) Regulations an the 2013 EEA Regulations.

3. By decision made on the 25th February 2015 leave to appeal to the Upper Tribunal was granted. Thus the appeal appears before me to determine in the first instance whether or not there is an error of law in the original determination.

4. The case relates to the relationship of the appellant and a Mrs Florence Ofori. It is claimed that Mrs Ofori and the appellant married in a ceremony conducted by proxy on the 8th December 2012. The marriage was being performed in Ghana with the parties being represented by family members. Mrs Ofori is a Belgian national, who it is accepted, was and is exercising treaty rights in the UK as an EEA citizen.

5. Issues arose in the case as to whether the marriage was valid in law. The cases of **Kareem (EEA proxy marriages) [2014] UKUT 00024** and **TA & Another (Kareem explained) [2014] UKUT 00316** have established that not only must the marriage be lawful according to the law of the place of celebration of marriage but must also be lawful according to the law of the EEA country of nationality of the qualified person.

6. It appears that evidence was adduced that the Belgian authorities would recognise this marriage as lawful. The issue before the First-tier Judge was whether the marriage was lawful according to the law of Ghana.

7. In paragraph 6 of the decision the judge has ruled that the Tribunal has to deal with this appeal on the basis of the evidence at the date of decision.

8. By Regulation 25 and Schedule 1 of the 2006 Immigration (EEA) Regulations 2006 an appeal under the Regulations is to be treated in the same way as an immigration appeal under the 2002 Act.

9. Section 85 and 85A of the 2002 Act stipulates that in respect of entry clearance and refusal of a certificate of entitlement the relevant date for considering the evidence is the date of the decision, in which only the facts pertaining to the date of the decision can be considered. In respect of all other decisions Section 85(4) specifically provides that the Tribunal can consider evidence of matters arising after the date of the decision save for the types of decision set out in Section 85A. The decision to refuse an EEA residence card is not limited to considering the facts at the date of the decision. To that extent there is an error of law in the approach that the judge has taken to the case.

10. Further the judge in paragraph 10 has stated that because there was only one issue in the case she stopped the appellant and the witnesses from giving evidence in the case. The judge has identified the issue as being whether the marriage was legally valid according to Ghanaian law.

11. The judge has however gone on otherwise to deal with a secondary issue as to whether there was a durable relationship between the appellant and Mrs Ofori. In order to assess the nature and extent of the relationship between the appellant and Mrs Ofori the oral evidence of the appellant and Mrs Ofori would have been of importance to answer any issues raised by the respondent. However without hearing the evidence and because the judge has stopped the evidence being given, the judge has decided whether there is a durable relationship on the basis of the matters raised by the respondent. The appellant's and his witnesses' evidence would have been material in deciding that issue. The failure to hear the witnesses and stopping them giving evidence was again an error.

12. As a final issue it is argued that the judge in the approach to the lawfulness of the Ghanaian proxy marriage has decided that as the marriage was not between two Ghanaian nationals the marriage is not lawful according to the place of celebration. There was a report from Professor Woodman before the judge. The judge indicates that Professor Woodman relies upon case law that pre-dates the cases of **CB (validity of proxy marriages) Brazil [2008] UKAIT 00080** and the case **NA (Customary Marriage and Divorce) Ghana [2009] UKAIT 00009**. The judge was provided with a copy of an unreported case of Amoako. That decision refers to the current understanding of the legal position in Ghana, whereby proxy marriages may involve persons, where one is not a Ghanaian national. Similarly there is reference in Amoako to a document in the possession of the respondent titled "Customary Marriage and Divorce / Proxy Marriages contracted in Ghana" dated 17th January 2012. It is unclear whether that document was produced before Judge Tiffen. That document however seems to confirm that non-Ghanaian nationals can enter into a legal marriage by proxy celebrated in Ghana. The document was a policy statement by the SSHD

13. The failure of the judge to deal with the issues raised in respect of the proxy marriage and the other issues raised leads me to conclude that there are errors in the approach of the judge and the decision cannot stand. The decision has to be set aside.

14. I have considered how best to deal with this appeal and the appropriate course is for the appeal to be heard afresh and for fresh findings of fact to be made.

15. There are material errors of law in the original decision. I set aside the decision to dismiss this matter on all grounds. I direct that the appeal be heard afresh in the First-tier Tribunal.

Signed Date

Deputy Upper Tribunal Judge McClure