



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

Appeal Number: EA/01275/2017

THE IMMIGRATION ACTS

**Heard at : Field House
On : 5 October 2018**

**Decision Promulgated
On : 10 October 2018**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

IBRAHIM MUSAH

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Sowerby, instructed by PLCS Solicitors

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a national of Ghana born on 19 June 1975, appealed against the respondent's decision to refuse to issue him with a permanent residence card under the Immigration (European Economic Area) Regulations 2006 ("the EEA Regulations") on the basis of a retained right of residence upon divorce from his EEA national spouse.

2. On 16 August 2011 the appellant was issued with an EEA residence card on the basis of his marriage to an EEA national, which was valid until 16 August

2016. He applied on 18 July 2016 for a permanent residence card on the basis of a retained right of residence on divorce. That application was made subsequent to his divorce on 24 August 2015 and to an immigration visit to his property on 9 March 2016. As a result of that visit and information provided by the appellant and by his neighbour, and due to the lack of evidence regarding his previous marriage, the respondent concluded that the appellant's marriage to the relevant EEA national was one of convenience. The appellant produced further evidence about his marriage and his former spouse's employment with his application on 18 July 2016 but the respondent did not consider the evidence to be reliable and accordingly refused the appellant's application on 22 January 2017.

3. The appellant appealed against that decision. His appeal was heard by First-tier Tribunal Judge Devittie on 6 April 2018. The judge heard evidence from the appellant and three witnesses including the neighbour who had provided information during the immigration visit. The judge was satisfied that the appellant's marriage was one of convenience and he dismissed the appeal.

4. The appellant sought permission to appeal that decision to the Upper Tribunal on various grounds but in particular on the ground that the judge had made no findings on the evidence of the witnesses who had attested to having known the appellant's wife and to the fact that she had lived with the appellant at his current address.

5. Permission was granted on that particular ground but the other grounds were not excluded.

6. At an error of law hearing, Mr Sowerby made submissions before me. He pointed out that the judge did not have sight of the record of the interview at the appellant's house. He submitted that, on that basis and given that the burden of proving a sham marriage lay upon the respondent, the absence of any findings on the evidence of the witnesses who had confirmed the appellant's wife's residence at his address was fatal to the determination of the appeal.

7. Mr Walker conceded that the judge had materially erred in law by failing to make any findings on the evidence of the witnesses.

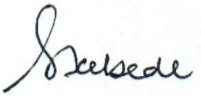
8. In the circumstances it was agreed that the most appropriate course was for the appeal to be remitted to the First-tier Tribunal to be heard afresh.

DECISION

9. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal, to be dealt with afresh, pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), before any judge aside from Judge Devittie.

Directions

The respondent is to produce to the First-tier Tribunal, and provide to the appellant, a copy of the transcript of the interview at the immigration visit conducted on 9 March 2016.

Signed 
Upper Tribunal Judge Kebede
2018

Dated: 5 October