



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

Appeal Number: EA/06006/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 1st November 2018**

**Decision & Reasons
Promulgated
On 13th November 2018**

Before

UPPER TRIBUNAL JUDGE KING TD

Between

**MR PIOUS NANA NORNOO
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K Siaw, Solicitor, R.Spio &co Solicitors

For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Ghana said to have been born on 6th May 1976.
2. On 7th January 2017 he applied for a residence card further to the European Economic Area Regulations 2006. That application was refused on 19th June 2017.
3. The nature of the refusal is of some importance in this matter. In a previous application for a residence card dated 5th April 2013, the

appellant applied as the spouse of Ms Conceicao. This was refused on 30th November 2013 on the basis that the Ghanaian proxy marriage was not accepted and that there was insufficient evidence of the appellant being in a genuine and subsisting relationship with her.

4. In the current application, which was the subject of the decision, the appellant submitted the same documents as he had done so in 2013. He had not provided any further evidence to establish that his relationship was genuine or subsisting. There was no further evidence that the sponsor was exercising treaty rights at the point of divorce.
5. The appellant sought to appeal against that decision which appeal came before First-tier Tribunal Judge Geraint Jones for hearing on 13th June 2018.
6. What the Judge noted was that no evidence had been submitted on the relevant issues, notwithstanding the comments made by the respondent in the decision. The appellant had the year since the decision in which he could have obtained the necessary evidence as to the relationship and to the exercise of treaty rights. There was not even a witness statement.
7. The appellant claimed that he had married Ms Conceicao in the Registry Office at Stratford, also he could not remember the date and produced no evidence to support that contention. He did not know where his former wife resides, indeed from which African country she originated from. He said that he lived with her in Tottenham at an address that he was unable to specify. Thereafter therein 2014 they moved to a different address where they lived together for a year.
8. It was the conclusion of the Judge that the appellant had come nowhere near satisfying the conditions for the issue of the residence card. There was no reliable detailed information about the appellant's wife's employment or income, indeed that the evidence was vague and uncertain.
9. The appellant complains that he was not given a fair hearing because he was indeed very unwell at the hearing. No formal application for an adjournment had been made. It is his contention that it would have been apparent to the Judge that he was unwell and the Judge should not have continued with the hearing. The brief grounds of appeal seem to also be based on the contention that certain of the matters noted by the Judge, particularly the marriage at the Stratford Registry Office was not said by the appellant and therefore had been misrecorded. Alternatively that the appellant had been so confused and befuddled by being unwell that he may have given inaccurate answers.
10. The appellant sought to appeal against that decision and leave to appeal to the Upper Tribunal was granted on the basis it was arguable, in the light of the description given by the appellant of his condition at the hearing, that such might have affected the appellant's ability to give evidence.

11. The appellant attended the hearing before me and was represented. He said that he had for six years suffered from a bad leg and had brought to court medical evidence relating to that, but it had subsequently become mislaid. He had an appointment in October for that matter to be looked at.
12. He said that he had not obtained a doctor's certificate in relation to his illness. He had seen a doctor by an appointment a week later but that was again in relation mainly to his leg which had been infected. He said that was on 24th April. That document to had seemingly been mislaid from the time that he came into the court building until the hearing.
13. The fundamental concern of the respondent was the lack of any documentation to support the application that was made. The appellant had a year from the decision until the hearing to obtain the requisite evidence or to submit a witness statement, nothing was forthcoming.
14. I find that it was entirely open to the Judge to conclude on the lack of evidence the appellant failed to make out his claim.
15. In terms of the illness no details have been given as to what that might have been. Certainly no indication was given to the Judge by the appellant that he was unwell. It remains unclear from the way in which matters were presented on behalf of the appellant before me, whether there was a suggestion that the Judge had misrecorded the evidence given or whether the appellant was so confused that he may have given the incorrect evidence in any event. The omissions in recollection are significant, surprising indeed. Even if the appellant were feeling unwell that he would not have had the basic details that were requested of him.
16. This essentially is a matter of fairness as to whether or not the appellant had been given the opportunity for a fair hearing. I am satisfied that he had been. It was his lack of preparation and the lack of documentation which were such that the Judge properly recorded the dismissal of his appeal. I do not find that the illness of the appellant, even if it arose, was of such nature or magnitude as to have confused his evidence.
17. I do not find any error of law. Accordingly the appeal to the Upper Tribunal is dismissed. The decision of the First-tier Tribunal Judge shall stand. It is of course always open to the appellant to make a new application with the relevant evidence.

No anonymity direction is made.



Signed

Date 7th Nov 2018

Upper Tribunal Judge King TD