



**Upper Tribunal  
(Immigration and Asylum Chamber)  
EA/06016/2017**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 11 October 2018**

**Determination Promulgated  
On 07 November 2018**

**Before**

**UPPER TRIBUNAL JUDGE KEKIĆ**

**Between**

**ERNEST OSEI FORDJOUR  
(ANONYMITY ORDER NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr A Ranjha, of Ranjha Law Chambers

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant is a Ghanaian national born on 12 February 1980. He challenges the determination of First-tier Tribunal Judge Barrowclough, promulgated on 3 July 2018, dismissing his appeal against the respondent's refusal to issue him with a residence card as the former spouse of an EEA national. The respondent refused the application because he was of the view that the marriage was one of convenience. He had regard to the fact that enquiries into the EEA sponsor's identity revealed that her details had been linked to an organised crime network which was identified by the DWP, HMRC and the Home Office in a joint investigation and which facilitated the entry of French nationals to participate in bogus proxy or customary

marriages with non EU nationals. The appellant's former spouse had been identified as being complicit in the participation of bogus marriages and for this reason the application was refused and the appellant's previously issued residence card had been revoked and an earlier appeal dismissed (EA/09844/2016).

2. The complaint made by the appellant is that the allegations made by the respondent were not supported by any documentary evidence and that the judge unfairly allowed an electronic version of a statement from a DWP investigator to be admitted into evidence. The contents of that statement itself were criticized and it was argued that as the investigator had not been present at the hearing, his evidence was not tested and could not be given weight. The appellant also maintains that he, his brother and a friend gave oral evidence and due weight was not given to their testimony. It is also argued for the appellant that he was misadvised by his previous representatives with respect to an appeal against the revocation of his residence card in 2016. It is maintained that there was adequate evidence to show that the appellant and his spouse had cohabited and that the marriage was genuine.
3. Permission to appeal against the determination of the First-tier Tribunal was granted by Judge Shimmin on 30 July 2018. The matter then came before me on 11 October 2018 when I heard oral submissions from the parties. A full note of the submissions is set out in my Record of Proceedings.
4. I have considered all the evidence before me and have had regard to the submissions made.
5. I do not find there was procedural unfairness in the admittance of the statement of the DWP investigator, Mr Gibson, because Mr Ranjha had seen it and did not object to its admittance at the First-tier Tribunal hearing although he had complained that a hard copy had not been provided (at paragraph 4 of the determination). There is no statement of truth from Mr Ranjha and no copy of his contemporaneous notes from the hearing. I do not, therefore, accept the submission that the judge's observation misrepresented the position and that Mr Ranjha had, in fact, objected to its admissibility. Moreover, I note that the contents of the statement were already known to the appellant as they were the reason why his residence card was had been revoked in 2016, that they were considered by the judge at that time on appeal, that he was not, therefore, placed at any disadvantage by its admission and that there had been no adjournment request by Mr Ranjha to take further instructions or obtain evidence in rebuttal. I find there is no merit in the argument that the statement from the DWP was unreliable because it was not prepared contemporaneously. It is not suggested that the contents contradicted the factors relied on by the respondent in 2016. I

accept that it would have been far better practice for the respondent to have submitted a hard copy of the evidence for the parties but given that similar evidence had been previously made available to the appellant (see paragraph 17 of the previous determination of Judge Kempton) and the lack of objection raised as to its admittance in electronic form at the hearing, I do not find the judge erred in permitting the respondent to place reliance upon it.

6. The second complaint of the judge's decision is that insufficient weight was given to the appellant's evidence and that of his witnesses (his brother and friend). It is argued that no reasons were given for the adverse findings made. Contrary to the criticisms made, the judge viewed the evidence of the appellant and his witnesses in the context of the evidence as a whole. Part of that evidence was what had transpired at the last appeal hearing in 2016. The judge noted that neither the appellant nor his spouse had attended but witness statements had been provided. These, however, contradicted each other as to whether the relationship was ongoing. He took account of the appellant's explanation that his solicitors had told him he did not need to do anything with respect to that appeal, that they had then forged witness statements and documents and presented a fabricated case which was dismissed by the Tribunal. He noted that the appellant then further claimed that when he notified the representatives that he was going to complaint about them, they offered to make another application for him free of charge to atone for their errors. The appellant agreed to this and did not make any formal complaint. The judge was entitled to wholly reject this explanation. As he pointed out, it was wholly lacking in credibility that a solicitors' firm would go to all the trouble of fabricating evidence for a case without the appellant's knowledge and for no apparent reason, and if they had, that he would then agree to them continuing to represent him in a further application. It is simply not credible that he would have trusted them to act for him after they allegedly conducted themselves in such a fraudulent and unprofessional way. Further, it is of note that the decision on that appeal was never challenged. It was submitted by Mr Ranjha that the appellant was vulnerable and was taken advantage of but no reason is put forward for why he should be treated as vulnerable. Moreover, as the judge found, the appellant's claim to have known nothing about his former spouse's incrimination in the scam until July 2017, was shown to have been untruthful as the same reasons had been given for the revocation of his residence card in 2016. The judge was, therefore, entitled to find that the appellant was a dishonest and unreliable witness. Given that there was no personal documentary evidence in support of the claim other than evidence of payslips and such like, and that part of that evidence post dated the separation/divorce, the judge was entitled to treat the oral evidence of the appellant's brother and friend with caution and to find that although the appellant and his spouse may have shared the same postal address for a time, their marriage was one of convenience.

7. Mr Ranjha also added fresh grounds during his submissions. Whilst he sought to pass them off as being part of the criticism that the judge had inadequately considered the evidence, they are not referred to at all in the lengthy and, it has to be said, disjointed grounds and no application to amend the grounds was made. I have, nevertheless, dealt with them. The complaint that the judge misdirected himself in terms of Sadovska [2017] UKSC 54 does not advance the claim as even if the judge should not have assessed the evidence with a view to deciding if the relationship was durable, his findings clearly show that he found the marriage was one of convenience. The claim that the appellant's previous appeal may have succeeded had his representatives not made errors has no merit either as the judge did not accept that the previous representatives had misadvised the appellant and prepared forged evidence as he claimed. In any event, as Mr Melvin pointed out, the appellant had failed to make any formal complaint about his representatives which further undermines his claim.
8. The submission that the production of the earlier determination by the appellant was indicative of his integrity is not made out. The fact that the appellant's residence card was revoked in 2016 and that his appeal was dismissed was a matter already known to the parties.
9. Finally, the issue of the weight to be accorded to the evidence is a matter for the judge. Reasons have been given for his conclusions and they are sustainable. No material errors of law have been identified.

### **Decision**

10. The First-tier Tribunal did not make errors of law. The decision to dismiss the appeal stands.

### **Anonymity**

11. I was not asked to make an anonymity order and see no reason to do so.

Signed



Upper Tribunal Judge

Date: 22 October 2018

