



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: EA/14024/2016

THE IMMIGRATION ACTS

Heard at Field House  
On 10<sup>th</sup> July 2018

Decision and Reasons Promulgated  
On 12<sup>th</sup> July 2018

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

**BENJAMIN BRAKO**  
(ANONYMITY ORDER NOT MADE)

Appellant

and

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

Representation:

For the Appellant: Mrs S Sharma, of Counsel, instructed by Justice & Law Solicitors  
For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

*Introduction*

1. The appellant is a citizen of Ghana born in 1973. He applied for an EEA residence card on 8<sup>th</sup> April 2016, and this application was refused on 23<sup>rd</sup> November 2016. His appeal against the decision was dismissed by First-tier Tribunal Judge NMK Lawrence in a determination promulgated on the 29<sup>th</sup> March 2018.
2. Permission to appeal was granted by Judge of the First-tier Tribunal Hollingworth on 7<sup>th</sup> May 2018 on the basis that it was arguable that the First-tier judge had erred in law in failing to have dealt with Regulation 8(5) of the Immigration (EEA)

Regulations 2006. The grounds were not specifically limited to this matter alone however.

3. The matter came before me to determine whether the First-tier Tribunal had erred in law.

#### *Submissions – Error of Law*

4. It is firstly argued that the decision of the First-tier Tribunal was irrational for finding that a failure to provide evidence that the persons who stood in for the appellant and his claimed wife in their proxy marriage were their brothers. As the First-tier Tribunal found it was not a requirement that they be related it was irrational to have find that a failure to provide evidence of the brother relationships should have led the appeal to fail. The fact that false documents might be easily available in Ghana was also not a relevant consideration, and has failed to consider that an extract from the customary marriage certificate is normally considered sufficient proof of a proxy customary marriage under the Ghanaian PNDC Law 112. It was also not reasonable to require the appellant and his claimed wife to undertake DNA testing as this was expensive, costing about £1000.
5. Secondly it is argued that the First-tier Tribunal failed to consider the appeal under Regulation 8(5) of the Immigration (EEA) Regulations 2006 when this was raised in the appellant’s skeleton argument. There was evidence that the appellant and his partner had been cohabiting and had a child, and evidence from a church which showed that they were living together in a genuine and subsisting relationship.
6. Mr Bramble conceded that there had been an error of law by virtue of a failure to apply Regulation 8(5) of the 2006 EEA Regulations. He made no further submissions on the first ground of appeal.
7. I found that the First-tier Tribunal had erred in law for the reasons set out below, and set aside the decision in its entirety. Both parties were happy that the matter was retained in the Upper Tribunal for remaking, although ideally the appellant and sponsor would have liked a Twi interpreter (and one was not available in the Upper Tribunal) it was agreed that everyone was content to proceed immediately with remaking without such an interpreter so long as questioning in English was kept simple. Both representatives said that no complex questioning of the appellant and the sponsor would be needed. At the end of the hearing I indicated that the appeal would be allowed under the 2006 EEA Regulations, but that my full reasons and basis of decision would follow in writing.

#### *Conclusions – Error of Law*

8. The First-tier Tribunal found at paragraph 14 of the decision that the Ghanaian proxy marriage did not entitled the appellant and his partner to be seen as married as there was no evidence that the persons who had stood “in loco parentis” at the customary proxy ceremony were the appellant and his partner’s brothers. It was held by the First-tier Tribunal that such evidence, and particularly DNA evidence, was needed because the appellant and sponsor had claimed that these people were

in fact their brothers even though it is not a legal requirement that they were their brothers for the ceremony to be valid, see paragraph 15 of the decision. I find that this reasoning is irrational. As argued in the grounds of appeal DNA evidence is expensive, and further proving the relationships with the persons named on the certificate as supporting the statutory declaration would not logically add to the validity of the documentation surrounding the marriage. This was clearly a material error in relation to the main basis on which the appeal was advanced.

9. Further, as argued for by the appellant, the skeleton argument before the First-tier Tribunal did argue the appeal in the alternative under Regulation 8(5) of the 2006 EEA Regulations, as well as under Regulation 7(1) of the 2006 EEA Regulations, see paragraphs 27 to 29 of that document. There was evidence of cohabitation provided in the bundle, a letter from Christ Temple International going to the genuine nature of the appellant and sponsor's relationship, and documents regarding their daughter who was born in 2014. It was clearly a material error of law not to determine the appeal under Regulation 8(5) on the basis of the contended durable relationship between the appellant and sponsor.

#### *Evidence and Submissions - Remaking*

10. The sponsor confirmed in oral evidence her identity, and address and that she continued to work in the UK as a cleaner for MITIE in the same employment as set out in the documents at pages 137 to 138 of the appellant's bundle.
11. Mr Bramble's submissions were that I should make my own decision on the evidence in relation to Regulation 7(1) of the 2006 EEA Regulations. He accepted however that the appellant and sponsor met the requirements of Regulation 8(5) in the sense that he accepted that the evidence showed that they had a durable relationship particularly as they had a child together born in 2014 (verified by DNA evidence), and he also accepted that the sponsor was currently working in the UK. He reminded me that I should not go on to find that the appellant was entitled to a residence permit as no discretion had yet been exercised by the respondent under Regulation 17(4) of the 2006 EEA Regulation.
12. Mrs Sharma said that she relied upon the skeleton argument in the appellant's bundle. This document argues in great detail that the appellants can meet Regulation 7(1) of the 2006 EEA Regulations setting out the relevant Ghanaian law and dealing with the objections to the validity of the marriage raised by the respondent.

#### *Conclusions - Remaking*

13. The reasons for refusal letter accepts that the appellant and sponsor were married by proxy and have submitted a Ghanaian customary marriage certificate. The question that arises is whether the registration was done in accordance with the PNDC (Provisional National Defence Council) law 112 of the Customary Marriage Divorce (Registration) Law 1985 for this proxy marriage to be recognised as valid in Ghanaian law. It is now accepted for the respondent that in accordance with Awuku v SSHD [2017] EWCA Civ 178 that the only issue is whether the marriage

is valid in English law, which in turn is determined by whether the marriage has complied fully with the requirements of Ghanaian law and was recognised and properly executed in Ghana, see CB (Validity of marriage: proxy marriage) Brazil [2008] UKAIT 00080.

14. The respondent does not accept that the appellant and sponsor have shown that they are Ghanaian citizens or that their parents were Ghanaian citizens, and argues that this means that the customary proxy marriage would not be recognised in Ghana. Further it is not accepted the statutory declaration meets the requirements of PNDC Law 112 because there is no evidence of the claimed relationship of the proxies to the appellant and sponsor. The appellant and sponsor have said that they were represented by their brothers, Charles Oware and Thomas Obese Appiah but not produced evidence of being related as claimed. In addition, it is said that the statutory declaration does not state the current marital status of the parties at the time of marriage as it should have done. It is accepted that the Ghana High Commission has confirmed the registration but it is argued that this document does not deal with these discrepancies and so cannot make the marriage lawful.
15. I find that there is only a requirement that one party be a Ghanaian citizen for a customary proxy marriage to be valid in Ghanaian law, as is set out at page 3 of the UKBA document "Customary Marriage and Divorce/ Proxy Marriages contracted in Ghana dated 17<sup>th</sup> January 2012. I find that the appellant is a citizen of Ghana, his having produced his valid Ghanaian passport in support of the application, and therefore this requirement is met.
16. I do not find that a lack of evidence that Charles Oware and Thomas Obese Appiah, who stood in as proxies in the marriage ceremony, are biologically related to the appellant and sponsor as brothers is of any significance. There is no requirement in the Ghanaian marriage law that those standing in loco parentis at the proxy marriage ceremony be biologically related in any way at all, and so the absence of this evidence is of no relevance to the validity of the documentation. I note that the register of customary marriages correctly cites the marital status of the appellant and his partner. I am satisfied that PNDC Law 112 does not require that the statutory declaration to include the marital status of the appellant and sponsor: s.3(1) of this law simply says that the declaration must give the parties of the marriage, the place of residence of the parties at the time of marriage and confirm that the customary law conditions have been complied with. Further the Ghana High Commission has confirmed in a letter dated 9<sup>th</sup> May 2017 that the documents are all genuine, and that the marriage of the appellant and sponsor is legally valid in Ghana.
17. In these circumstances I am satisfied on the balance of probabilities that the appellant and sponsor are lawfully married, and that the marriage is genuine and subsisting. I am also satisfied that the sponsor is a qualified person working in the UK, and thus find that the appellant can meet the requirements of Regulation 7(1) of the 2006 EEA Regulations to be a family member, and is entitled to a residence card under Regulation 17(1) of the 2006 EEA Regulations.

18. In these circumstances it is not strictly necessary to determine the appeal under Regulation 8(5) of the 2006 EEA Regulations, but in light of the evidence before me, and the agreement of Mr Bramble for the respondent, I find that the appellant has also shown on the balance of probabilities that he is the durable partner of the sponsor.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. I set aside the decision of the First-tier Tribunal in its entirety.
3. I re-make the decision in the appeal by allowing it under the Immigration (EEA) Regulations 2006.

Signed: *Fiona Lindsley*  
Upper Tribunal Judge Lindsley

Date: 11<sup>th</sup> July 2018

**Fee Award**            Note: this is **not** part of the determination.

In the light of my decision to re-make the decision in the appeal by allowing it, I have considered whether to make a fee award. I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals. I have decided to make a whole fee award because the relevant documents showing that the marriage of the sponsor and appellant was lawful in English law were provided to the respondent with the application.

Signed: *Fiona Lindsley*  
Upper Tribunal Judge Lindsley

Date: 11<sup>th</sup> July 2018