



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000666
First-tier Tribunal No: EA/13840/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 3rd of May 2024

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ANGELA AHENFIE

Respondent

Rule 34 Decision at Field House on 2 May 2024

DECISION AND REASONS

Introduction

1. This is an appeal by the Secretary of State against the decision of Judge of the First-tier Tribunal Buckwell ('the Judge'), sent to the parties on 29 December 2023, allowing Ms Ahenfie's appeal for settlement under the EUSS.

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2. Ms Ahenfie relied upon her proxy marriage to Mr Kwame Gyasi-Boateng, a Dutch national, who at the time of the marriage in September 2020 was exercising EEA Treaty rights in this country.
3. The Secretary of State refused the EUSS settlement application by a decision dated 23 July 2021, observing:

‘You have provided a proxy marriage certificate dated 12 September 2020 as evidence that you are the spouse of an EEA citizen. However, to qualify as a family member of a relevant EEA citizen the relationship must exist by the ‘specified date’ which means (as defined in Annex 1 to Appendix EU and where the applicant is not a family member of a qualifying British citizen to whom a different date applies) 11pm Greenwich Mean Time (GMT) on 31 December 2020. As your marriage was registered in Ghana on 24 March 2021, which is dated after the 31 December 2020 you do not meet the requirements of being the spouse of an EEA citizen by the specified date.’

4. The Judge found:

‘14. I find that the correct following of the proxy marriage requirements means that a valid customary marriage took place and was valid from 12 September 2020. Therefore, the marriage is found to have taken place before 31 December 2020.’

5. Judge of the First-tier Tribunal Lester granted the Secretary of State permission to appeal by a decision dated 23 February 2024.
6. The error of law hearing is listed at Field House on 7 May 2023.

Rule 34 Decision

7. The parties have filed an agreed draft consent order with the Upper Tribunal. Its contents detail:

‘Pursuant to Rule 39(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008, the parties consent to the disposal of the above appeal on the following basis:

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1. Upon the parties having had due regard for the several directions issued by Upper Tribunal Judge O'Callaghan, and having agreed the following:-

a) The decision of the First Tier be set aside,

b) The Upper Tribunal remakes the decision of the First Tier and dismisses the appellant's appeal, under its powers stemming from s.12(2) of the Tribunals, Courts and Enforcement Act 2007.

2. By consent, the parties agree the Upper Tribunal be minded to find in the Secretary of State's favour as outlined at 1) b), and as a result, the hearing which would otherwise have been scheduled, be vacated.

Dated: 30th of April 2024'

8. The document is signed by Mr Diwnyez, Senior Presenting Officer, on behalf of the Secretary of State, and Mr Bosompem, Solicitor, Wisemart Solicitors, on behalf of Ms Afenhie.
9. In considering whether to proceed under rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I am mindful as to the circumstances when an oral hearing is to be held in order to comply with the common law duty of fairness and as to when a decision may appropriately be made consequent to a paper consideration: *Osborn v. The Parole Board* [2013] UKSC 61; [2014] AC 1115 and *JCWI v. President of the Upper Tribunal (Immigration and Asylum Chamber)* [2020] EWHC 3103 (Admin), at [6.1 - 6.14].
10. In the circumstances, and being mindful of the identified position of the parties, the expense to the parties of attending an oral hearing and the overriding objective that the Tribunal deal with cases fairly and justly, I am satisfied having read the agreed draft consent order that it is just and appropriate to proceed under rule 34 of the 2008 Rules.
11. I set aside the decision of the First-tier Tribunal in its entirety. There was a failure by the Judge to provide lawful reasons for accepting that the undertaking of the proxy marriage alone prior to 11pm on 31 December 2020, and not its registration after this date, was sufficient to meet relevant EUSS requirements.

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12. Observing that Ms Ahenfie no longer wishes to pursue her appeal, I remake the decision and dismiss her appeal.

Notice of Decision

13. The decision of the First-tier Tribunal sent to the parties on 29 December 2023 is set aside for material error of law.
14. The decision is remade and Ms Ahenfie's appeal is dismissed.
15. No anonymity order is made.

D O'Callaghan
Judge of the Upper Tribunal
Immigration and Asylum Chamber

2 May 2024