



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

Appeal Number: IA/01518/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 5 June 2013**

**Determination Sent  
On 10 June 2013**

**Before  
UPPER TRIBUNAL JUDGE JORDAN**

**Between**

**Joseph Thompson**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms J. Heybroek, Counsel instructed by Geeta Patel & Co.,  
Solicitors

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

**DETERMINATION AND REASONS**

1. The appellant is a citizen of Ghana born on 5 August 1959 who appeals against the determination of First-tier Tribunal Judge Elson MBE promulgated on 11 April 2013 dismissing his appeal against the decision of the Secretary of State made on 3 January 2013 to refuse him with a residence card as confirmation of a right of residence under European Community law as the family member of a Union citizen exercising Treaty rights in the United Kingdom.
2. The refusal was made on the basis that the respondent did not accept the appellant had entered into a valid marriage with Ms Acheampong, an Italian citizen of Ghanaian extraction.

3. The objections taken to the validity of the marriage originally relied upon the fact that it was not registered under Ghanaian law, relying on a provision that a marriage celebrated on 14 August 2010 had to be registered within three months of the date of the marriage and this was not registered until February 2012. It goes without saying that if the Ghanaian authorities were prepared to register the marriage in February 2012, Ghanaian law did not contain the restriction relied upon by the respondent. Indeed, I was referred to the relevant provisions and they had indeed been amended. Further, the appellant produced evidence from an attorney which was not challenged, nor was it suggested that it was inaccurate, that the limitation did not apply. Accordingly, this objection fell away.
4. In addition, the respondent relied upon a number of discrepancies which is said emerged from the interviews conducted separately with the appellant and Ms Acheampong. The interview consisted of 68 pages of text and about 110 questions. In the course of argument at the hearing I considered the first 30 of those questions and drew attention to the parties such inferences as I felt were capable of being drawn from the answers provided. There is a recording of what was said at the hearing to which reference may be made. The first five questions set the scene, and the answers were consistent but nothing turns on the answers. The next set of questions deal with the journey made by the couple to their interview in Liverpool. There can be no doubt that the answers meticulously given by the parties demonstrate that they travelled together. This may be only a small fragment of the evidence but if it is to be alleged that this is a sham marriage, it plainly establishes that they travelled from the same point. It may not establish they are living together but if they were not, they either share a home or a departure point so close together that the journeys are identical.
5. The couple next provided answers about when they first met. This occurred on 31 December 2009 at a party at a friend's house that they were both able to identify. They both gave addresses at which they were living at the time and identified the different places where their spouse was then living. They provided an entirely consistent account of who approached whom, what was said, who gave the phone number, who did not, culminating in the appellant calling Ms Acheampong two days later.
6. The next part of the interview spoke of Ms Acheampong travelling to Italy between January and April 2010. At first, the appellant was not able to state the date when Ms Acheampong left the United Kingdom [22] and then later in the interview he correctly recalls that it was in January 2010 [29]. It is true that there is a discrepancy in their evidence. The appellant said that they only spoke on the phone before she went to Italy, whereas Ms Acheampong says they met in her home

in January 2010. The appellant puts the first visit to her home at some point after her return in April 2010.

7. The interview goes on to deal with two visits the appellant made to Italy in January 2010 and in July 2012 of which both gave consistent evidence. Both speak of a proxy marriage in Ghana. Both referred to their beginning to live together only after the marriage. Both specify that date as being 4 September 2010. Although the appellant originally only referred to 2 trips to Italy, he later spoke of Ms Acheampong's visit to Ghana in circumstances where no adverse credibility finding can properly be made of not referring to it earlier. Both are able to speak of the date when Ms Acheampong left for Ghana and the day on which she returned. There is some confusion as to the process by which her visa to travel to Ghana was obtained. She said that the visa was issued by the Italian authorities but this cannot be correct (it is the Ghanaian authorities who issue visas to permit entry to Ghana) although it was, of course, put into her Italian passport. On the other hand, although he did not go to the Ghanaian embassy, the appellant understood that Ms Acheampong obtained it from the Ghanaian embassy, as one would expect, although he identifies it as the embassy in Britain. (There is no dispute that a visa was obtained and put into Ms Acheampong's Italian passport.)
8. The couple then provided entirely consistent evidence as to their current address, the day when the tenancy commenced, who lives there, who was the letting agency.
9. Evidence was provided by each as to the dates when each of them entered the United Kingdom. It is telling that the appellant stated he came in 2008 on a visit visa and then immediately conceded that he entered clandestinely. In answer to question 35, he said

"I came in 2008 on a visit visa, no I entered clandestine."
10. If this was a lie, he quickly recovered from it and in the same breath.
11. By this stage the couple had only answered approximately one third of the questions that were asked of them. Throughout the remainder of the interview the answers that each provided were almost entirely consistent with the other. It is true, as one might expect, there were some inconsistencies. For example, the appellant, who did not attend the proxy marriage in Ghana, understood from his mother that his father was unwell and did not attend whereas Ms Acheampong stated that he was well enough to do so.
12. The answers that were provided result in the almost inevitable inference that the couple have known each other since about January 2010 and are now living with each other. The alternative scenario is that the couple are strangers to each other who have devised an

account of what they have been doing over the last 5 years which they have managed to learn with such accuracy that they can provide a consistent account with only minor inaccuracies. It must be noted that neither the appellant nor Ms Acheampong knew the questions they were to be asked.

13. I turn to the Judge's reasons for dismissing the appeal. In paragraph 70 of her determination, it is said that in the appellant produced no evidence that Ms Acheampong was divorced from her first husband. The divorce had taken place in Italy. Her second marriage had taken place in Italy. She did indeed produce satisfactory evidence in relation to the dissolution of her second marriage. In my judgment, that was all that was necessary. It was for the Italian authorities to satisfy themselves that the first marriage had been terminated sufficiently for Ms Acheampong to marry again in Italy. The fact of re-marriage is itself evidence of a prior divorce. She had never been asked to produce the original divorce certificate for the first marriage which was celebrated in Ghana (but she has now produced evidence of the divorce being registered in Ghana) and indeed this matter had not been raised by the respondent. It is apparent from paragraph 70 that the Judge relied upon the fact that, in the customary marriage which is the subject of this appeal, Ms Acheampong is described in the marriage certificate as single rather than as divorced.
14. It appears that this was a principal reason used by the Judge for rejecting the appellant's claim that any marriage took place at all, although whether the mis-description of a party's status in a marriage certificate invalidates the marriage or establishes that the certificate is a forgery is left open. In relying upon this point to the exclusion of all the other evidence, I am satisfied that the Judge materially erred. There was ample evidence that a marriage took place which the Judge does not put into the balance in reaching a conclusion. First, there is a document under seal from the Second Deputy Judicial Secretary of the Judicial Service of the Republic of Ghana in which he certifies that a certain Alexander Kofi Baah is a notary public of Ghana and that the stamp signature and seal on a statutory declaration which he has notarised are indeed those of Mr Baah.
15. The document referred to is a statutory declaration from two people who appeared before him and declared that they were the fathers of the appellant and Ms Acheampong and that they attended a marriage on 14 August 2010. The names of the mothers of the married couple are provided which, as it happens, are consistent with the names provided in the answers both gave an interview.
16. The statutory declaration is supported by marriage certificate duly stamped in relation to which no objection has been made as to its form or content.

17. On the material before her, it was not open to the Judge to find that the document from the Judicial Service was a forgery unless and until, at least, the allegation was put to the appellant or Ms Acheampong and there were reasons to support that finding. If that document is correct then it establishes on balance of probabilities that two people attended before a genuine notary public in Ghana and attested to him about the celebration of a customary marriage. Whilst, of course, it is possible for the appellant or Ms Acheampong to have employed actors to impersonate their respective fathers or to engage their fathers in a scam and to appear before the Notary in the creation of this document, it does not strike me as a permissible finding to make unless there are cogent adverse credibility findings which support it. If the Judicial Service document is valid than the statutory declaration evidences two people attending a Notary's office. It is not just a document that it a falsity; it is an event.
18. Hence, whilst the Judge relies upon the description in the marriage certificate that Ms Acheampong is single (in fact, the word used is 'spinster'), the Judge makes no reference to any of the other material which evidences a ceremony of marriage taking place in Ghana. It was open to the Judge to comment upon the fact that Ms Acheampong described herself as a spinster in the marriage certificate and that there were no photographs of the wedding ceremony but this could only be done in the context of evaluating the evidence as a whole and, indeed, in light of the challenges that were made by the respondent.
19. In paragraph 71 of the determination, the Judge relies upon the fact that the appellant did not initially tell the truth as to how he gained entry to the United Kingdom, first claiming that he entered with a visa and later claiming to have entered illegally but, as I have pointed out above this was done in the same sentence. The Judge then questioned why the appellant needed to use an agent to come to the United Kingdom when he could have done so by simply purchasing a ticket. The reason is surely that he used an agent in order to affect his illegal entry - which he admitted. The circumstances in which the appellant entered the United Kingdom do not go to his credit and I do not in any way suggest that what he did was lawful or morally acceptable but his past immigration history has no direct bearing on whether he is married to a woman with whom, on the evidence, he is currently living.
20. In dealing with the interview, the Judge placed little weight on its contents. She said:  
"I have taken into account the discrepancies in the answers given by the appellant and Ms Acheampong and the fact that a number of their responses appear to have been rehearsed as being adverse to their credibility."
21. For the reasons that I stated, it is perfectly proper to take into account the discrepancies in an interview but in this appeal it was *only* the discrepancies that had been relied on, not the bulk of the material from which positive credibility findings might be drawn and, indeed,

have to be drawn. Nor, in my judgment, is it fair to say, without identifying them, that a number of responses appear to have been rehearsed. If the purpose of an interview is to form a judgment about the overall truth of the account, it is of little assistance if only the discrepancies are taken into account ("I have therefore taken into account the discrepancies") whilst the consistencies are rejected as being rehearsed. Can it really be suggested that the detailed and consistent evidence about the journey to Liverpool was as a result of a well-rehearsed but fabricated journey? If not, does this not assist the decision-maker in reaching the conclusion (along with the other evidence) that the couple are currently living together? If they are, how long has this been happening? If it has been happening since at least 2010, does this not assist in shedding light on whether they entered a valid marriage in Ghana?

22. I entirely agree with the Judge that Ms Acheampong secured payment of council tax at a reduced rate as a sole occupant and that this is adverse to her credibility but it is only adverse to her credibility if she and the appellant are living together. Whilst the Judge takes full account of the lie, she fails to take into account what the lie establishes, namely, that the parties are living together (which she later rejects). That is just as much a material piece of evidence as the lie. Once again, I do not in any way approve of the misconduct of Ms Acheampong but a sense of moral revulsion about misconduct should not act as a bar to sustainable fact-finding.
23. For these reasons, I do not regard the Judge's wholesale rejection of the entirety of the appellant's account (which must include their claim to have been living together for some years) as being sustainable.
24. There was one essential element in this appeal and that related to whether a ceremony of marriage took place in Ghana. The objections to the legality of the marriage by reason of non-compliance with the formal requirements for a proxy marriage have now fallen away. The reasons for rejecting the occurrence of that event found in the determination are not sustainable. I am satisfied on the basis of the consistent answers given in interview that the couple have known each other since at least the beginning of 2010 and commenced living with each other from 4 September 2010. That event immediately followed Ms Acheampong's departure from the United Kingdom on 4 August 2010 on a flight to Ghana which she left on 1 September 2010 arriving in United Kingdom on 2 September 2010. The couple have been living together since. They travelled to Liverpool together for their interview, both attended the hearing in the First-tier Tribunal and both attended the hearing before me. I am satisfied that no lawful objection can be taken to the material from the Judicial Service in Ghana to the effect that the statutory declaration was properly notarised. This evidences the fact that appellant and Ms Acheampong's fathers attended before a notary public to make a statutory declaration in relation to a marriage

ceremony which took place on 14 August 2010. There is no adequate material before me upon which I can dismiss this material or the extract from the register evidencing a marriage between the appellant and Ms Acheampong on 14 August 2010. In particular, I am not prepared to find that the description of Ms Acheampong in the certificate as a spinster or the absence of photographs establishes that the certificate is a forgery or that no weight should be attached to it or that a ceremony of marriage did not take place.

25. Mr Walker agreed that the Judge's approach to her findings of fact was flawed and that the evidence suggests a valid marriage took place.

## DECISION

The Judge made an error on a point of law and I re-make the decision in the following terms:

The appeal is allowed under the Immigration (European Economic Area) Regulations 2006 (2006 No 1003), the appellant being entitled to receive such documentation as evidences his being married to a Union citizen exercising Treaty rights.

ANDREW JORDAN  
JUDGE OF THE UPPER TRIBUNAL  
5 June 2013