



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/00682/2014

THE IMMIGRATION ACTS

Heard at Field House  
On 17 September 2014

Determination Promulgated  
On 2 October 2014

Before

UPPER TRIBUNAL JUDGE KING TD

Between

DANIEL BRENYA NARTEY

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Unigwe, Counsel, instructed by Edward Marshall Solicitors  
For the Respondent: Mr P Duffy, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Ghana said to have entered into a relationship with one Glema Puzynuba, a Lithuanian national. It is the contention of the appellant that on 16 November 2012, whilst both were in the UK, the couple married under the

Ghanaian customary marriage law. On 7 May 2013 the appellant applied for a residence card on the basis of this marriage.

2. A number of documents were supplied to the respondent and indeed are relied upon in the course of the appeal. The first document is a statutory declaration dated 23 November 2012 made before a notary public, Effiba Amiher. The second is a letter from second deputy judicial secretary of the judicial service in Accra attesting to the stamp and seal of Effiba Amihere, which appears on the statutory declaration. The third document is from the Legal and Counsellor Bureau Ministry of Foreign Affairs And Regional Immigration dated 11 December 2012 recognising the signature of the second deputy judicial secretary. The next document is indeed the full register of the customary marriage stating that that took place on 16 November 2012 at Accra.
3. The final document being a confirmation of the customary marriage signed by the High Commissioner for Counsellor Affairs dated 13 March 2013.
4. In the reasons for refusal, the Secretary of State took issue with a number of matters arising from the documentation and it was the understanding of the Secretary of State at the time of the refusal that it was not a valid customary marriage because the requirement for the same was that both parties to it were Ghanaian citizens. There were, however, other matters raised of concern in terms of the documents themselves.
5. The appeal came for hearing before First-tier Tribunal Judge Gibbs on 9 June 2014. The Judge heard from the appellant and indeed from Miss Puzynuea. They first went out together in November 2008, the proposal of marriage made in 2010. They have cohabited since 2012.
6. The first issue raised was that highlighted in the reasons for refusal, namely that it was not a customary marriage because both parties were not Ghanaian citizens. Reliance was placed upon **NA (Customary marriage and divorce, evidence) Ghana [2009] UKAIT 00009**. Seemingly, however, the expert who prepared a report in that case modified her opinion in a subsequent case of **Amoako** (IA/23315/2012), an unreported case. Seemingly in the revised opinion only one of the parties need to be a Ghanaian citizen. The Judge acted upon that unreported case and resolved that matter in favour of the appellants.
7. The second substantial challenge was, however, that of the position set out in **Kareem [2004] UKUT 0024 (IAC)**. That case purported to indicate that it was fundamental to the issue of a residence card that the marriage was recognised in the country of the EEA citizen namely, Lithuania. There was no evidence on that matter. The Judge, however, did not find that **Kareem** said that in terms and did not find that that was a requirement as set out in the case.

8. The Judge considered that as no challenge had been made to the marriage certificate regarding the issuing authority that there was indeed a valid marriage and accordingly allowed the appeal.
9. The respondent raised a number of matters challenging that decision. Permission was granted. Thus it was that the matter comes before me in pursuance of that grant.
10. Having heard Mr Unigwe on behalf of the claimant and Mr Duffy on behalf of the Secretary of State for the Home Department, I have little doubt that this is a decision which must be set aside for error of law.
11. It is clear, as I so find from the decision of **Kareem** an indeed reinforced by a decision of the Tribunal in **EA and Others (Kareem explained) Ghana [2014] UKUT 00316 (IAC)**, that it is a fundamental requirement that the marriage be recognised by the EEA national's state. At the time of the hearing no such recognition was in evidence and I find that the Judge was in error in failing to act upon **Kareem**.
12. Mr Unigwe submits that the Judge's approach to **Kareem**, as set out in that determination, was perfectly correct. It was not a very clear decision and the Judge was therefore entitled to act as he did in respect of it. I disagree that it was unclear but in any event the legal principle has now been clarified by the Tribunal. Applying the long established principles of jurisprudence, I find that the Judge was incorrect in not applying that principle – a principle which at the very least has been clarified and is to be followed by the Judges of the Upper Tribunal unless good reason for departing have been found.
13. I find also that the Judge's approach to the documentation is fundamentally flawed. Contrary to the contention of the Judge, it is clear from the reasons for refusal that a substantive challenge has been made to those documents.
14. What is surprising is the proposition, that was advanced before the First-tier Tribunal and before me, to the effect that the statutory declaration was not required in order for the marriage to be a valid one. That has some significance given the challenges which are made by the Secretary of State in the reasons for refusal towards that statutory declaration. Mr Unigwe submits that because the statutory declaration was not required as a matter of law it is immaterial that there be criticisms of it.
15. That seems to me to be a rather naïve proposition to take. If that statutory declaration was not required it calls into question as to why it was submitted, not only by itself but in company with a number of other documents attesting to the witnesses to that statutory declaration and beyond. If all that was required was the registration of their marriage, then it was surprising that so many other documents were enclosed, particularly if they were not strictly required. One possible interpretation that could reasonably flow from that was that they were there to create the appearance of legality to what was otherwise a questionable marriage.

16. It is clearly a requirement for a customary marriage that it be conducted in accordance with the customary procedures but there would seem to be little evidence as to what procedures were in fact conducted at the time. It is not clear, particularly from the statutory declaration, as to who was present.
17. The two declarants to the statutory declaration are a Paul Badoonati and Osei Owusu. They claim to be the father and representative of the appellant and of the sponsor and her family. Thereafter follows the form of register of customary marriage which purportedly bears the signature of the appellant and of his spouse. It is not entirely clear how they came to be affixed to the document if they were in the United Kingdom. The witnesses to the document are John Mensah and a Joyce (surname indecipherable). It is not clear how that document came to arise.
18. I do not find that the Judge was correct in saying that no challenge had been made to the marriage certificate, it is clear that a substantial challenge was made to the documentation as a whole.
19. Mr Unigwe seeks to persuade me that even were **Kareem** to have been followed that error is no longer a material one in the light of new evidence that is presented before the Tribunal, namely an endorsement from the Embassy of Lithuania in the United Kingdom dated 29 August 2014 confirming that the appellant's marriage certificate is recognised by the Lithuanian authorities. It is stated that the appellant's marriage certificate is endorsed by the Embassy of Lithuania in the UK.
20. However the document that is enclosed purporting to be the same is nothing of the kind. No official stamp has been placed upon the marriage certificate at all, rather upon the statement from Samuel Boakye-Yiadom, the second deputy judicial secretary, certifying that the signature of Effida Amihere on the statutory declaration is what it purports to be.
21. Mr Unigwe submitted that the marriage certificate could not be obtained because the original was with the Home Office. For my part I can see no difficulty why a duplicate could not have been obtained and/or a certified copy of the same. Given the contention that a statutory declaration was not strictly required for the purposes of the marriage, it makes very little sense for that document or one linked to it to have been stamped. It is said that the statutory declaration was also bound up with the statement from the second deputy judicial secretary but if that were the case it is surprising that both documents were not so stamped. I place very little weight upon that document as evidencing any agreement by the Lithuanian government that the marriage was to be recognised by them as valid.
22. I indicated that, given the errors of law, the matter should be remitted to the First-tier Tribunal as the primary finders of fact. I bear in mind paragraph 7 of the Senior President's Practice Direction. Mr Unigwe invited me to retain all the findings of the First-tier Tribunal Judge except for that in relation to **Kareem**.

23. I declined to do so. It seems to me that the interests of justice require this there be a de novo hearing on all issues so that clear findings can be made.
24. As I have indicated, I do not agree with the proposition that irrelevant documents need not be carefully explained. It is fundamental to the process as set out in **Kareem** that there be consideration of the documentation that is presented and the concerns that have been expressed in the reasons for refusal clearly do need to be addressed.
24. I would expect there to be some evidence from those present at the marriage celebration setting out what is the cultural or customary course that is taken. It is far from clear as to whether or not either parent or the sponsor was present and, if not, on what basis Mr Ocosei Owusu was appointed. Given that there was no requirement for the statutory declaration there will need to be some explanation as to why therefore so many unnecessary documents were submitted. The concerns of the Secretary of State in the refusal letter fall to be addressed.
25. It seems to me also that clear evidence from the Lithuanian authorities is perfectly possible and reasonably to be expected, namely that having regard to the marriage certificate that marriage is recognised by Lithuania as being legal in all respects.
26. Apart from noting the date of the hearing to be at Hatton Cross on 11 March 2015 no other directions are given. It will be open to the First-tier Tribunal to give such directions and the progress of this matter as may be appropriate.

Signed

Date

Upper Tribunal Judge King TD