



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

Appeal Number: IA/03996/2014

THE IMMIGRATION ACTS

Heard at Field House

On 10th June 2014

**Determination
Promulgated**

On 22nd July 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**MR KWAME ASARE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Mr S Whitwell (HOPO)

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Henderson promulgated on 24th March 2014, following a hearing “on the papers “ on 19th March 2014 whereby the judge allowed the appeal of Mr

Kwame Asare. The Respondent Secretary of State subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Ghana, who was born on 25th November 1975. He appealed against the Respondent's decision to refuse his application for a residence card on the basis of his marriage to an EEA national, such refusal being on the basis that the Appellant had undergone a proxy marriage with his EEA national spouse, and the marriage did not meet the requirements of the law of Ghana, and was not valid in Ghana, and therefore could not have been valid for UK immigration purposes either. The reason why it was not valid was because it had not been registered according to the Regulations.

The Appellant's Case

3. The Appellant's case is that he has a marriage certificate to show that his marriage was properly undertaken by way of proxy in Ghana and the authenticity of the document has not been challenged.

The Judge's Findings

4. The judge determined that it was no longer necessary to register a marriage in Ghana for it to be valid. Given that the Ghanaian authorities had issued a marriage certificate, they had obviously been satisfied about the authenticity of the marriage.
5. This was especially so given that the marriage certificate had not been challenged, "and I am satisfied, on the basis of that document, that the couple validly married in Ghana and that they therefore have a marriage that is valid for the purposes of UK immigration law" (paragraph 11).

Grounds of Application

6. The grounds of application state that the judge failed to have regard to the Tribunal judgment in **Kareem (Proxy marriages - EU Law) Nigeria [2014] UKUT 24**, because this important case considers whether marriages by proxy are such that they are recognised in the EEA state of the EEA national involved, before the marriage can be said to be valid for the purposes of UK immigration law.

Submissions

7. At the hearing before me, the Appellant was not in attendance. Nor, was any explanation given for his non-attendance. Nor indeed, was anyone there on his behalf to represent his case.
8. On behalf of the Respondent, Mr Whitwell, relied upon the grounds of application. He submitted that a reliance upon paragraphs 11, 16 and 18

of **Kareem** were decisive in the conduct of this appeal. He pointed to the grant of permission on 30th April 2014 by the Tribunal to the effect that a failure to place sufficient regard to the legal authorities cited in the refusal letter was an error of law.

Error of Law

9. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside this decision and remake the decision (see Section 12(2) of TCEA 2007). There are two reasons for this.
10. First, the determination was promulgated on 24th March 2014. The judge was in a position to know about the Upper Tribunal decision in **Kareem [2014] UKUT 24**. The case of **Kareem** establishes (at paragraph 16) that the starting point with respect to proxy marriages is that the rights of free movement and residence stem directly from the concept of union citizenship.
11. A person is a union citizen if that person is a national of a member state. This is because nationality remains within the competence of individual member states. This being so, the law that applies will be the law of the member state of nationality, and not the host member state, and certainly not the law of Ghana, as is the case in this instant appeal.
12. Given that this is the case, the Appellant had to refer to the relevant foreign law, which in this case would be the law in France, this being the nationality of the EEA citizen. The Tribunal made it clear (at paragraph 14) that “a lack of evidence of relevant foreign law will normally mean that the party with the burden of proving it will fail”. There was no evidence of the “relevant foreign law” before the judge. The only evidence was that of the law in Ghana. That is not the relevant criterion.
13. It was for the Appellant to show that the rights of free movement of the EEA national spouse were impeded by a rejection of his application in the UK. Those rights of the EEA national could only be impeded if the EEA national was allowed to marry in the manner suggested by the Appellant. There was no evidence to this effect.
14. Second, it is clear from Article 146 of the French Civil Code that France does not in fact allow for proxy marriages for the purposes of French law of marriage. Therefore, the Appellant was bound to have failed in any event. Accordingly, a failure to refer to the case of **Kareem** plainly amounted to an error of law.

Remaking the Decision

15. I have remade the decision on the basis of what I have set out above. This appeal is dismissed for two reasons. First, the Appellant has not attended this hearing and has not provided evidence of the relevant foreign law, such law being the law of France. That being so this “will normally mean

that the party with the burden of proving it will fail” (see paragraph 14 of **Kareem**).

16. Second, and in any event, Article 146 of the French Civil Code does not allow for proxy marriages for the purposes of the French law of marriage.

Decision

17. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is dismissed.

18. No anonymity order is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

21st July 2014