



IAC-AH--V1

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

Appeal Number: IA/17045/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons  
Promulgated**

**On 4<sup>th</sup> November 2014**

**14<sup>th</sup> November 2014**

**Before  
THE HONOURABLE MRS JUSTICE ANDREWS DBE  
DEPUTY JUDGE OF THE FIRST-TIER TRIBUNAL MS GA BLACK**

**Between**

**MR MAXWELL SONU  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr P Nath ( Senior Home Office Presenting Officer)

For the Respondent: Mr T Beyebenwo (Legal representative)

**DECISION AND REASONS**

1. This is an appeal against a decision made by the First-tier Tribunal (Judge Wilsher) determined on the papers and promulgated on 4<sup>th</sup> July 2014. The appellant in this matter is the Secretary of State for the Home Department. For ease of reference we shall refer to the appellant as “the Secretary of State” and to Mr Sonu as “the claimant”.

## **Background**

2. The claimant was born on 15<sup>th</sup> February 1983 and is a citizen of Ghana.
3. The Secretary of State refused his application for a residence card under the Immigration (EEA) Regulations 2006 by reference to Regulations 7 and 8. The reasons given for the refusal were that the claimant failed to provide evidence to show that his proxy marriage in Ghana to a French national was lawful according to Ghanaian law (as the parties needed to show that they were of Ghanaian descent); that the statutory declaration was defective; and that the guidelines in **Kareem (Proxy marriages- EU law)[2014] UKUT 00024 (IAC)** were not met. There was also said to be insufficient evidence of cohabitation to show, in the alternative, that the parties were in a durable relationship.
4. In a determination made in the context of those reasons for refusal the Tribunal observed that no issue was taken by the Secretary of State with regard to the failure to comply with French law showing legal recognition of the marriage in France: paragraph 2.
5. The Tribunal found that the evidence established that the proxy marriage was lawfully conducted and registered. It further found that there was some evidence of cohabitation and that the spouse was pregnant: paragraph 6. In conclusion the Tribunal dealt with **Kareem** on the basis that the Secretary of State had considered the application under English law and her failure to refer to the relevant EU law in the decision letter amounted to a concession that the spouse was domiciled in the UK: Paragraph 7.

## **Grounds for permission**

6. The First-tier decision was sent to the wrong address. The Secretary of State submitted that the application should be treated as in time or that time should be extended under Rule 24(4)(Asylum & Immigration Tribunal (Procedure) Rules 2005.
7. The Secretary of State appealed on the grounds that, following **Kareem**, the starting point was to consider the validity of the marriage under the law of France, the relevant EU State. The Tribunal was wrong to infer from the refusal letter that the Secretary of State had conceded that the spouse's domicile was now in the UK, especially without further hearing from the Secretary of State on these issues.
8. It was also submitted that the Tribunal was wrong to place reliance on two unreported decisions without following the Practice direction - Citation of unreported Determinations (no. 11 of February 2010).
9. The claimant submitted a Rule 24 response opposing the application. He submitted that the Tribunal conducted itself appropriately and interpreted the case of **Kareem** correctly. The claimant also submitted that the application was out of time and should be struck out on that ground alone.

## **Permission**

10. Permission to appeal was granted by FTJ Hollingsworth on 17<sup>th</sup> September 2014 on grounds that the Tribunal failed to consider the position under EU law and arguably erred by inferring that this issue had been conceded by the Secretary of State.
11. Nothing was said in the decision granting permission to appeal about the extension of time sought by the Secretary of State. That meant that we had to consider for ourselves whether the appeal was out of time and if so, whether an extension should be granted.

## **The hearing**

12. We shortly resolved the issue of timeliness having calculated the relevant days and concluding that in any event the application was in fact in time, and was rightly treated as in time by the Judge granting permission.

## **Submissions**

13. Mr Nath argued that the substantive issue was a discrete point; the Tribunal failed to consider the legal recognition of the marriage in French law, following **Kareem** as specified in the headnote at (g). The bundle for the hearing, amounting to 153 pages, was not served on the Secretary of State. The Secretary of State had at no time indicated any concession as inferred by the Tribunal.
14. Moreover, the claimant relied on two unreported cases, **Kumi** and **Amoako**. The Tribunal had not adhered to the relevant practice direction. It should have drawn those cases to the attention of the parties and invited submissions from their representatives before reaching any decision based upon them.
15. Mr Beyebenwo submitted that the Tribunal correctly followed **Kareem** with reference to the headnote at (d). He contended that on the true interpretation of **Kareem**, and in particular paragraph 68, it was only necessary to go on to consider the law of the relevant EU state in the event that the marriage was not considered to be lawful. So far as the unreported cases were concerned, Mr Beyebenwo submitted that they indicated that under Ghanaian law a Ghanaian customary marriage may be recognized even if one of the parties to it is not Ghanaian. However the Tribunal did not rely upon either of those authorities in order to reach its decision. Thus any failure to follow the Practice Direction, whilst regrettable, was not material to the determination. The Tribunal addressed the concerns expressed by the Secretary of State and its conclusion that the marriage was valid under Ghanaian law was one that was open to it on the evidence.

## **Discussion and conclusions**

16. We find that the Tribunal erred in a material respect in failing to follow the guidelines in **Kareem** which was before the Tribunal and which has been clarified in **TA & Others [2014] UKT 00316**. The Tribunal was not entitled to infer that the Secretary of State had made a concession as to the sponsor's nationality or domicile. No such concession had been made and no such inference could be drawn from the refusal letter.
17. There was no evidence before the Tribunal to show that the proxy marriage was legally recognised in accordance with French law, which had to be the starting point in this case, as in all such cases, even if the marriage satisfied all the requirements for validity under Ghanaian law. We further find that the Tribunal failed to follow the terms of the Practice Direction no 11 in taking into account two unreported cases without forewarning the parties. We cannot be satisfied that this error was immaterial or that the Tribunal placed no reliance upon cases that it expressly cited in the determination.
18. We are satisfied that the Tribunal should have gone on to consider, in the alternative, the application of Regulation 8(5) as to the durability of the relationship. It made some positive comments at paragraph 7 but did not give any proper consideration to the evidence or issue. We have also taken into account that the Secretary of State did not have the opportunity to consider the 153 page bundle of documents submitted for the hearing.
19. We propose to set aside the decision under Regulation 7 and to substitute a decision to dismiss the appeal thereunder. We issue directions for written submissions to be made on the applicability of Regulation 8(5). Thereafter we will remake the decision under Regulation 8(5) without further hearing.

### **Notice of Decision**

**There is an error of law in the decision.**

**We substitute a decision that the appeal is dismissed under Regulation 7.**

**We direct that within 14 days of receipt of this decision the claimant do serve on the Secretary of State the 153 page bundle of documentary evidence and evidence relied on relevant to Regulation 8(5) in a written submission. Also to be served on the Upper Tribunal.**

**The Secretary of State shall within 14 days thereafter prepare and serve written submissions on the Claimant and the Upper Tribunal.**

**The matter is then to be put before the Tribunal for consideration of the evidence under Regulation 8(5) on the papers.**

No anonymity direction is made.

Signed

Date 13.11.2014

Judge GA Black  
Deputy Judge of the Upper Tribunal