



IAC-PE-AW-V1

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

Appeal Number: IA/22772/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 3 November 2014**

**Decision & Reasons
Promulgated
On 5 November 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVID TAYLOR

Between

**MR ATANGA ATAJUH TEMBENG
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: None

For the Respondent: Mr Peter Armstrong, Home Office Presenting Officer

DECISION AND REASONS

1. The Secretary of State is the appellant to this appeal but, for the sake of consistency, I refer to her as the respondent (as she was in the First-tier Tribunal) and to the original appellant as such.
2. The Secretary of State has appealed against the decision of First-tier Tribunal Judge Archer who, in a determination promulgated on 28 July 2014, allowed the appellant's appeal against the respondent's refusal to grant an EEA residence card to him under the Immigration (EEA) Regulations 2006. The basis of the claim is that the appellant is the spouse of a French citizen exercising treaty rights in the UK.
3. The First-tier Tribunal decision had been made on the papers at the request of the appellant. There had thus been no oral hearing. At the hearing before me, although due notice of the hearing had been given both to the appellant and his legal representatives, neither the appellant nor his representative attended and I therefore heard the appeal in their absence.
4. It is apparent from the First-tier Tribunal Judge's decision that it was claimed that the appellant and his sponsor were married by proxy in Cameroon on 19 October 2013. They claim to have lived together at the same address in the UK since 2012.
5. At paragraphs [13] and [14] of the determination, the First-tier Tribunal Judge quoted the headnote from the case of **Kareem [2014] UKUT 00024** and said this at [14]:

“In this case, the appellant has submitted marriage certificates (pages 22-23 of the appellant's bundle) and a registration certificate for the marriage issued by Tiko Council. There is no evidence that any of the documents are not genuine. There is no evidence that proxy marriages are not lawful in Cameroon. I find that the appellant has proved the issues covered at b-d above [*the headnote of Kareem*], in the absence of any further evidence from the respondent.” [*my underlining*]
6. The grounds submitted by the Secretary of State argue that the judge has misinterpreted **Kareem** by failing to take into account that **Kareem** requires the judge to be satisfied that French law - the country of nationality of the sponsor - recognises proxy marriages in Cameroon. The judge made no such enquiry and no such finding. In addition, the appellant had failed to provide any independent documentary evidence to establish that he is in a durable relationship with the sponsor and entitled to a residence card as an extended family member under Regulation 8.
7. The grounds seeking permission to appeal are correct. The judge made a clear error of law in not taking into account that there was no evidence that French law recognises a Cameroon proxy marriage. I was also for the appellant to show that proxy marriages are lawful in Cameroon and not as stated in [14] as above. The determination must therefore be set aside.

8. In remaking the decision, based on all the evidence that was before the First-tier Tribunal Judge, I must dismiss the original appellant's appeal for two reasons. Firstly, as stated above, **Kareem** requires evidence that the country of nationality of the EEA sponsor recognises a Cameroon proxy marriage. There is no such evidence. Secondly, there is and was no independent evidence (other than from the appellant and the sponsor themselves) as to their claim to be in a durable relationship. I note in particular that the Secretary of State had indicated in the refusal letter of 12 May 2014 that further evidence as to the durable relationship would be required. None was forthcoming.
9. On all the evidence the appellant's appeal against the refusal to grant him a residence card (whether as a spouse or as an extended family member) must be dismissed.

Notice of Decision

The decision of the First-tier Tribunal contained a material error of law and that decision is accordingly set aside in full. I remake the decision by dismissing the appellant's appeal on all grounds.

No anonymity direction has been sought and none is made.

The appeal having been dismissed, no fee award is made.

Deputy Upper Tribunal Judge David Taylor
4 November 2014