



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/31593/2013

THE IMMIGRATION ACTS

Heard at Field House
On 28th August 2014

Determination Promulgated
On 4th September 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE COATES

Between

ESTHER QUAKOO
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Adama-Adams instructed by BWF Solicitors
For the Respondent: Mr G Jack, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a citizen of Ghana born on 23rd November 1989. By an application dated 19th December 2012 she applied for a residence card as the family member of an EEA national exercising treaty rights under Regulation 17 Immigration (European Economic Area) Regulations 2006. The Appellant claimed to be the spouse and family member of Mr Kwaku Tabi, a Finnish national. It is the Appellant's case that

she and Mr Tabi were married by proxy under the Ghanaian customary marriage law on 3rd September 2011. The application was refused by the Respondent on 8th July 2013 because the Respondent was not satisfied that the Appellant was the family member of an EEA national exercising treaty rights. An appeal against that decision was allowed under the 2006 Regulations by Judge of the First-tier Tribunal Miles on 18th June 2014.

2. The Appellant's Notice of Appeal in form IAF1-1 requested an oral hearing and indicated that the Appellant and her EEA Sponsor would give evidence. A Twi interpreter was also requested. However, the First-tier Judge's determination records that although the Appellant and her claimed family member attended the hearing, neither gave evidence and the hearing proceeded on the basis of submissions only.
3. The First-tier Judge concluded that the Appellant had proved on the balance of probabilities that the ceremony conducted between the respective families in Ghana in September 2011 included the essential components of a customary marriage as identified in McCabe v McCabe [1994] 1FCR 257, from which it must follow that the customary marriage was carried out in accordance with the requirements of Ghanaian law and therefore should be recognised as a valid marriage in the United Kingdom.
4. The Respondent's representative submitted an application for permission to appeal in which it was confirmed that the sole issue for determination was the validity of the Ghanaian customary marriage. The grounds argued that the First-tier Judge had not properly applied the guidance given by the Upper Tribunal in Kareem (Proxy marriages – EU law) Nigeria [2014] UKUT 24. The Appellant had adduced no evidence on the issue of Finland's recognition of Ghanaian customary marriage and the failure of the First-tier Judge to make a finding on that issue amounted to a material misdirection in law.
5. Permission to appeal was granted in the First-tier Tribunal on 6th July 2014 on the basis that the First-tier Judge had arguably erred in law by not engaging with the fact that the Appellant had not proved that her proxy marriage was valid in Finland.
6. Thus the matter came before me in the Upper Tribunal on 28th August 2014. The Appellant was present. Representation was as mentioned above.
7. After the usual introductory remarks, Mr Adama-Adams conceded, with commendable candour, that he could not realistically argue that the First-tier Judge had correctly applied the guidance given in Kareem as recently clarified by the Upper Tribunal in TA and Others (Kareem explained) Ghana [2014] UKUT 00316 (IAC). I was helpfully provided a copy of this decision by Mr Jack and I have noted in particular paragraphs 11 and 20. The Upper Tribunal found as follows:

“It is difficult to see how the Upper Tribunal in Kareem could have been any clearer in its conclusion that when consideration is being given to whether an applicant has undertaken a valid marriage for the purposes of the 2006 Regulations, such consideration has to be assessed by reference to the laws of the legal system of the nationality of the relevant Union citizen (in this case Finland)”.

8. Mr Adama-Adams attempted to persuade me to consider the issue of durability but, as Mr Jack rightly pointed out, the Appellant's original grounds did not mention Regulation 8 and there has been no cross-appeal.
9. I am satisfied that there was no evidence before the First-tier Judge to show that the Appellant's Ghanaian customary marriage would be recognised as valid in accordance with the laws of Finland. Therefore, I am satisfied that the First-tier Judge materially erred in law as argued by the Respondent's representative in the Grounds of Appeal.
10. The Appellant has still failed to adduce any evidence to show that her marriage would be recognised as valid according to the laws of Finland. Directions given in the Upper Tribunal clearly stated that the parties shall prepare for the forthcoming hearing (in the Upper Tribunal) on the basis that, if the Upper Tribunal decided to set aside the determination of the First-tier Tribunal, any further evidence, including supplementary oral evidence, that the Upper Tribunal may need to consider if it decides to re-make the decision, can be so considered at that hearing. No such evidence has been tendered.

DECISION

The making of the decision by the First-tier Tribunal involved the making of a material error on a point of law. I set aside that decision and make a fresh decision to dismiss the appeal.

No anonymity direction is made.

Signed

Date 1st September 2014

Deputy Upper Tribunal Judge Coates

TO THE RESPONDENT **FEE AWARD**

Having dismissed the appeal there can be no fee award.

Signed

Date 1st September 2014

Judge Coates

Designated Judge of the First-tier Tribunal