



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

Appeal Number: IA 40355 2013

THE IMMIGRATION ACTS

Heard at Field House

On 17 April 2014

Determination

Promulgated

On 24 June 2014

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SAMUEL FRIMPONG FEI

Respondent

Representation:

For the Appellant: Mr P Duffy, Home Office Presenting Officer

For the Respondent: Mr M Aslam, of Counsel instructed by Makanda Bart & Co.

DETERMINATION AND REASONS

1. This is an appeal by the Secretary of State against the decision of the First-tier Tribunal allowing the appeal of a citizen of Ghana against the decision of the Secretary of State refusing him a certificate of residence as the husband of an EEA national. In simple terms the respondent, herein after "the claimant", relied on his proxy marriage to a woman who is a Dutch citizen who, like the claimant, is of Ghanaian origin. Evidence was produced that there had been a proxy marriage in Ghana in February 2012.
2. First-tier Tribunal Judge Russell applied himself very carefully to the law about proxy marriages as he understood it and concluded, probably rightly, that proxy marriages are recognised in Ghana and that previously under English law marriages by EEA nationals by proxy had been thought to satisfy the Rules. It is a great pity that nobody bothered to tell the judge about the decision of this Tribunal in **Kareem (proxy marriages: EU law) [2014] UKUT 00024 (IAC)**. It is always easy to be critical after the event and I suspect we have all been caught but the hearing was on

26 February 2014 and the determination in **Kareem** was promulgated more than a month before on 16 January 2014. It is particularly disappointing to see that before the First-tier Tribunal both parties were represented by Counsel who ought to have known about **Kareem** and to have drawn it to the attention of the judge.

3. The decision **Kareem** is intended to deal with precisely the situation here. It was a decision of what might be thought a particularly experienced division of this Tribunal. It was presided over by the Vice-President, Mr Ockelton. He sat with Upper Tribunal Judge McKee who has decided other important cases on proxy marriages and EU law and with Deputy Upper Tribunal Judge McCarthy who, if I may say so, is especially respected for his understanding of EU law.
4. Mr Aslam submitted that the decision is equivocal but I do not agree. I find that the decision is extremely clear. It is that before an EEA national's partner can be admitted to the United Kingdom as a husband under the Immigration (European Economic Area) Regulations 2006, his relationship with his wife must be recognised as a marriage in the EEA national's own state.
5. This may be a departure from what the law was thought to be but it is explained in **Kareem**. The essential point is that the Directive 2004/38/EC is intended to ensure the free movement of EEA nationals. Thus an EEA national who moves to another EEA state can be joined by her husband provided that her husband is recognised as such in her home state. It is not intended to be a mechanism for EEA nationals disgruntled by the marriage laws of their own country to subvert them by removing to another EEA state.
6. Mr Aslam argued that if **Kareem** is not ambiguous then it is wrong. He is entitled to say that and I record his submission in case he wants to take matters further but I do not agree with him. The decision in **Kareem** makes it plain that earlier jurisprudence had not tested the assumption that all that was necessary was to consider whether the marriage was recognised in the country in which the application for a residence permit was made and **Kareem** explains why, in the judgment of the Tribunal, that was not the relevant test.
7. It follows that I am against Mr Aslam's submissions both as to the understanding of **Kareem** and its correctness.
8. I intend to follow **Kareem** which is the published decision of the Tribunal and I rule that the First-tier Tribunal Judge applied the wrong test. Further, if he had applied the right test, he would have dismissed the appeal insofar as it related to the claimant being married for the purpose of the regulations. There was no evidence that the proxy marriage on which the claimant relied was recognised in the Netherlands.
9. Matters do not end there.
10. It is plain from the refusal letter that the Secretary of State asked herself if the claimant was not married if she was in a durable relationship under Regulation 8(1). The Secretary of State concluded that the claimant was

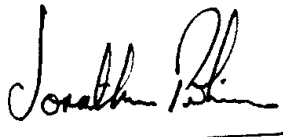
not but this decision was not based on any dishonesty or proved deficiency by the parties to the purported marriage. Rather the evidence was just not good enough to support a different conclusion.

11. The First-tier Tribunal Judge did not expressly decide if there was a “durable relationship” because he allowed the appeal for other reasons. It is quite clear that he did accept that the relationship was a durable relationship although he styled it as marriage. It is plain that the First-tier Tribunal Judge accepted the evidence that was put before him. Amongst that evidence were clear assertions from the claimant and the sponsor that they had lived together in the United Kingdom since August 2011 and this is confirmed by the person who provided them with accommodation.
12. Given the rest of the evidence in the case that is sufficient in my judgment to establish a durable relationship.
13. It follows therefore that although I set aside the decision of the First-tier Tribunal allowing the appeal on the basis that the claimant had established a marriage I substitute a decision allowing the appeal to the extent that the appellant has established that he has a durable relationship with his EEA national partner.
14. The Secretary of State must now decide what leave should be given to the claimant.

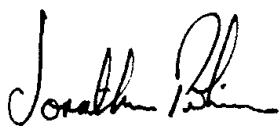
Decision

The First-tier Tribunal erred in law. The decision of the First-tier Tribunal is set aside and I substitute a decision allowing the appeal to the extent that the claimant has established that he is in a durable relationship with an EEA national.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



Dated 23 June 2014



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