Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/46006/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 6 June 2014	**On 30 June 2014**

Before

UPPER TRIBUNAL JUDGE PINKERTON

Between

JACOB BANNERMAN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Praisoody of Counsel
For the Respondent: Mr E Tufan

DETERMINATION AND REASONS

1. The appellant is a national of Ghana who applied for a Residence Card as confirmation of a right to reside in the United Kingdom. In support of that application he submitted a marriage certificate stating that he was

married to his EEA sponsor under Ghanaian customary law on 24 November 2012 by proxy.

2. The application was refused on the basis that the statutory declaration that had been provided and which accompanied the registration for marriage did not state the places of residence at the time of marriage of either the appellant or his EEA sponsor. The Secretary of State could not therefore be satisfied that the marriage was conducted in accordance with the Ghanaian Customary Marriage and Divorce (Registration) Law of 1985. For that reason the Home Office could not accept the registration of marriage or the statutory declaration submitted as being valid and lawfully issued and evidence of the relationship.

3. The appellant appealed that decision and requested that the appeal be dealt with "on the papers". The appeal came before a First-tier Tribunal Judge. In a determination promulgated on 6 February 2014 the judge found that she was not satisfied that there is sufficient evidence that the marriage complied with the relevant laws in Ghana and furthermore found that she could not be satisfied that the sponsor had capacity to enter into the marriage under the law of her country. The judge found also that she did not find that there is a relationship between the appellant and the sponsor, let alone a durable one. Thereafter the judge dismissed the appeal.

4. The appellant did not accept the dismissal of the appeal and applied for permission to appeal to the Upper Tribunal. Submissions were made that the judge erred in stating that if the marriage is not legally valid it is necessarily one of convenience; failed to provide adequate reasons for finding the marriage is not legally valid, and failed to provide reasons regarding the finding that the parties do not have a durable relationship.

5. The judge granting permission found it arguable that the First-tier Tribunal Judge erred in failing to adopt the approach to validity set out in **Kareem (Proxy marriages – EU Law) Nigeria [2014] UKUT 24 (IAC)** bearing in mind that a marriage certificate had been produced.

6. I see considerable force in the appellant's argument that the position is not as stated by the judge in paragraph 15 of the determination where there appears to be a finding that if the marriage is not a valid one in accordance with the law then it is a marriage of convenience to enable the appellant to apply for a residence card. The marriage may not be valid due to technicalities but that does not automatically mean that the parties to the purported marriage had knowledge of its invalidity or that the parties entered into the marriage purely for the appellant to gain in terms of his immigration status. An invalid marriage may be contracted by two individuals who are otherwise in a genuine and subsisting relationship.

7. In the current appeal the appellant has provided a marriage certificate and its provision prima facie establishes a marriage that is valid or, alternatively, a marriage considered by the appellant and the EEA national

to be one that is valid. Where I disagree with the appellant's representative is in stating that if the marriage is considered to be valid by the appellant and the EEA national that is crucial to the issue of whether the parties are in a durable relationship. A valid marriage certificate might be the starting point for evidencing a durable relationship but it cannot be any more than that and to prove durability good evidence would need to be provided of the quality and strength of their relationship.

8. As to that point the judge perfectly properly set out in paragraph 21 that there is no evidence in respect of the relationship between the appellant and the sponsor, who is a Lithuanian national, and who is said to be exercising treaty rights in the United Kingdom. There is a statement from the appellant that deals solely with the issues in the refusal of the application without referring in any way to the marriage itself. Although the judge refers to there being a statement from the appellant's wife I cannot find that document in the papers but in any event the judge reasoned that those statements are without any real purpose as they contain no useful information of fact. I can see no error by the judge therefore in coming to the conclusion that she could not find that there is a relationship, let alone a durable one, between the appellant and the sponsor.

9. My conclusion is therefore that even though the judge may have erred in referring to the marriage as being one of convenience automatically by reason of it not being a valid one, and even if the finding that the marriage is not valid is incorrect by reason of the matters set out in the grounds of appeal, this avails the appellant of nothing because of the case of **Kareem**.

10. It is perhaps unfortunate that the head note to **Kareem** appears to suggest that the (mere) production of a marriage certificate issued by a competent authority will usually be sufficient to show that a person who is the spouse of an EEA national who is a qualified person in the United Kingdom can derive rights of free movement and residence. The head note says also that in appeals where there is no such marriage certificate or where there is doubt that a marriage certificate has been issued by a competent authority, then the marital relationship may be proved by other evidence which will require the Tribunal to determine whether a marriage was contracted.

11. The argument advanced is that a suitable certificate has been produced and therefore the appeal should be allowed.

12. Although the Tribunal prepares the head note in cases that it reports and to that extent is more authoritative than a head note prepared by an academic commentator, it is not part of the decision and has to be understood with regard to the reasons set out in the determination itself.

13. It is clear from **Kareem** that the Regulations are there to ensure that (as in this appeal) the Lithuanian sponsor will not be discouraged from

exercising treaty rights in an EEA state of which she is not a national by reason of it being harder for her husband to join her here than in the country of which she is a national. It is not, however, intended to encourage or permit nationals of EEA states to go behind the marriage laws of their country of nationality by recognising marriages elsewhere in the EEA that would not be recognised in the EEA national's own country. If a marriage is not recognised under the EEA national's own law it is not a marriage for the purpose of the Regulations.

14. The decision in **Kareem** makes it plain that the claimant has to prove that the marriage would be recognised in the EEA national's own country. In such cases it is necessary to prove that the marriage would be recognised not only in the appellant's home country of Ghana but also that it would be recognised in Lithuania too. There has been no attempt to do that and therefore I find that whether or not the First-tier Tribunal Judge erred in the manner already described that error is not material. It has been established on the evidence before the First-tier Tribunal Judge that the appellant has not shown that he is entitled to reside in the United Kingdom as the husband of an EEA national exercising Treaty rights.

Decision

15. For these reasons the decision of the First-tier Judge is upheld and the appeal therefore remains dismissed under the 2006 Regulations.

16. No anonymity direction has previously been made, there was no application for one and I see no good reason to make such a direction.

Signed Date

Upper Tribunal Judge Pinkerton