Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/50144/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 28 May 2014	**On 15 July 2014**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

NANCY KAREN DADZIE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms R Spio-Aidoo, R Spio & Co
For the Respondent: Mr G Saunders, a Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Nancy Karen Dadzie, was born on 10 January 1987 and is a female citizen of Ghana. The appellant had made an application for a residence card as a confirmation of a right to reside in the United Kingdom as the family member of an EEA national exercising treaty rights in this country (her husband, Samuel Bimpong Aba-Ofori, a citizen of the Netherlands). That application was refused by a decision of the

respondent which was dated 14 November 2013. The appellant appealed to the First-tier Tribunal (Judge Andrew) which, in a determination promulgated on 11 February 2014, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The grounds of appeal raise one issue. In her determination at [8], Judge Andrew, considering the appeal on the papers and without a hearing, had regard to the recently promulgated decision of the Upper Tribunal in *Kareem (proxy marriages – EU law)* [2014] UKUT 24 (IAC).

3. Judge Andrew went on at [10] to find that "I have no evidence before me to show the parties' claimed proxy marriage would be recognised under Netherlands law (that is the country of the EEA national sponsor's nationality)." She found that the appellant "cannot cross the first hurdle in this appeal."

4. The appellant complains that this was not an issue raised in the refusal notice of the respondent and she submits that the judge should not have gone ahead and determined the appeal without giving her an opportunity to produce evidence (which the grounds of appeal assert exists in the form of a Dutch civil law code) that the proxy marriage was recognised in the Netherlands as a valid marriage.

5. Mr Saunders, for the respondent, drew my attention to the fact that the appellant had submitted that the appeal should be allowed outright. Judge Andrew had, quite properly, followed the decision in *Kareem* and would only have been able to have allowed the appeal if she found the respondent's decision had not been in accordance with the law.

6. I agree with Mr Saunders. *Kareem* was promulgated before the "paper" hearing before Judge Andrew but following the immigration decision. It was promulgated before the appellant's solicitor submitted written submissions to the First-tier Tribunal. The appellant and her representative should have been aware of the need to adduce evidence to show that the proxy marriage would be recognised under the law of the Netherlands. It is not for the Tribunal to adjourn or delay decisions simply in order to bring the established law to the attention of professional advisers. The burden of proof in the appeal was on the appellant and it was clearly open to the judge to find the appellant had failed to discharge that burden by not adducing the necessary evidence she refers to at [10]. I find that there was no procedural unfairness in this instance.

7. As I have noted above, there were no other grounds of appeal nor did Ms Aidoo advance any other argument at the Upper Tribunal hearing. There was no challenge to the judge's determination of the appeal on Article 8 ECHR grounds. However, in granting permission, Judge White had written:

> There was an arguable error of law in that the judge appears to have regarded the respondent's evidential requirement of a relationship to be of a period of at least two years in order for it to be regarded as 'durable' as a requirement under the EEA Regulations themselves (paragraph 12).

8. The Rule 24 letter from the respondent acknowledges that "the two year consideration is a rule of thumb not a requirement of the Regulations."

9. It is clear that the appellant pursues this application on the basis of her claimed marriage to the sponsor. On that basis, the appeal against the refusal cannot succeed for the reasons given by the First-tier Tribunal Judge. I do not find that it is clear that the judge regarded the two year period as a formal requirement but, in any event, the judge was entitled to observe that the relationship was of short duration only and that she did not find that evidence had been adduced to show that the relationship was durable.

10. I find, therefore, that the appeal should be dismissed. There is, of course, nothing to prevent the appellant making a further application supported with the necessary evidence which was found to be lacking on this occasion. However, that is a matter for her and her advisers.

DECISION

11. This appeal is dismissed.

Signed Date 20 June 2014

Upper Tribunal Judge Clive Lane