IAC-FH-NL-V3

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/53825/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 19 November 2014	**On 31 December 2014**
Prepared 19 November 2014	

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

MS MARGARET WOBIL

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr S Karim, Counsel instructed by Mensons & Associates
For the Respondent: Ms S Vidyadharan, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Ghana, date of birth 16 April 1965, appealed against the Respondent's decision to refuse a residence card as confirmation of a right of residence as the family member of an EEA national on 5 December 2013.

2. No decision was made to make removal directions. The reasons contained within the Notice of Immigration Decision indicated that if the Appellant did not voluntarily remove then in due course steps would be taken to

enforce removal which would require a further decision with associated appeal rights to be notified separately.

3. The grounds of appeal, dated 11 December 2013, identified three issues: Was there a proxy marriage between the Appellant and EEA national and was that proxy marriage valid? Secondly, did the Appellant satisfy the durable relationship requirement to be an extended family member under Regulation 8 of the Immigration (European Economic Area) Regulations 2006 (the 2006 Regulations)? Was the Respondent's decision in breach of Article 8 ECHR rights?

4. The appeal against that decision came before First-tier Tribunal Judge Thanki (the judge) who on 8 September 2014 dismissed the appeal under the 2006 EEA Regulations.

5. The judge did not hear any submissions made on Article 8 ECHR, noted that no paid application had been made to the Respondent and no submissions were made from the Appellant's Counsel at the hearing before the judge to assert that Article 8 should be considered.

6. No submissions were made under Appendix FM of the Immigration Rules.

7. Permission to appeal was granted by First-tier Tribunal Judge C Andrew on 17 October 2014. The grounds seeking permission had argued that there was sufficient evidence to conclude that there was a genuine proxy marriage carried out in Ghana: secondly, under the law of the EEA national (Belgium) there was a valid marriage but if there was not then the evidence showed a durable relationship. Further, it was accepted that whilst there were no Article 8 submissions to the judge, a general ground of appeal had been relied upon in the original grounds to the First-tier Tribunal.

8. On 17 November 2014 Mr Karim sought to sidestep the effects of the cases of **Kareem (Proxy marriages – EU law) Nigeria** [2014] UKUT 24 (IAC) and **TA & Others (Kareem explained) Ghana** [2014] UKUT 00316 (IAC) and argue that the UK should apply its domestic law, not be concerned about what if any other EEA state recognised such a marriage to be and that **Kareem** and **TA** are wrongly decided.

9. Having considered the factual circumstances it is plain that the judge did not accept that there was a valid customary marriage by proxy. Further the judge rejected an opinion provided by a Belgian lawyer concerning the validity of the marriage in Ghana as well as the validity of a marriage being recognised in Belgium.

10. The judge properly gave reasons with reference to the report, its format and the lack of qualification of the writer as an expert or experience in the field of overseas marriages or indeed specialising in such matters as proxy marriages. It was extremely difficult to see on what basis the expert could

factually sustain the opinion he held or to what extent the opinion he held was that consistent with the view of other lawyers on such marriages under Belgian law.

11. It is clear that in **Kareem** the Tribunal did not seek to set the parameters upon the evidence or the sources to deal with the recognition of marriage under the laws of an EEA country and/or the country where the marriage took place.

12. The judge was therefore perfectly entitled, for the reasons given, to give little weight, as he did, to the lawyer's report. He was entitled to take the view that the evidence had not shown there was a valid marriage to a Belgian national.

13. I find that **Kareem** and **TA** are good law. The evidence did not establish on a balance of probabilities that there was a valid marriage. Accordingly, the evidence did not show the Appellant was the spouse of the Belgian national Sponsor.

14. It is clear the judge went on to consider whether there was a durable relationship under Regulation 8(5) of the 2006 regulations. Contrary to the submissions, the judge was not defining a durable relationship by reference to a length of two years and that anything short of two years could not be a durable relationship. Rather, the judge was addressing the evidence that was provided and, at paragraph 46 of the determination (D & R), the judge listed a number of factual differences. I went through paragraph 46 with Mr Karim who confirmed the factual matters recited by the judge therein and particularly in relation to asserted differences. In the circumstances, the judge was aware of differences in the evidence, between the Appellant and Sponsor and the limited nature of external evidence to show that relationship. In part much of the evidence could at best be ambiguous to establish co-habitation or co-living as opposed to identifying the potential source of the Appellant's residence.

15. I concluded that if the Appellant failed over the genuineness of the relationship and its durability it was extremely hard to see how an Article 8 claim based on family life or the role the Appellant and Sponsor play in each other's private lives could be sustainable. Although Mr Karim did not concede the point, it seemed to me that if the claim failed in relation to the marriage or the durable relationship then that was effectively the end of the Article 8 claim. In addition, there simply was not evidence in the papers either before the judge or shown to me to show the impact on private life issues or matters which might represent the core values that form part of protected private life rights.

16. In the circumstances other than the fact that the Appellant has been in the United Kingdom for a relatively short period of time, it is extremely difficult to see even the vestiges of evidence to establish any particular exercise of private life rights or any effects of interference in such private life.

17. Accordingly I did not see there was any proper basis for the first two questions raised in **Razgar** [2004] UKHL 27 being answered in the affirmative. I have considered the case of **JM (Liberia)** [2006] EWCA 1429 which I raised with the parties. I concluded that where no removal directions are set, the Appellant is not under any threat of immediate removal and that the Respondent has indicated a fresh or further decision will be made to which an appeal may be made. This was not a case where Article 8 needed to be considered even though it was raised in the most general sense in the original grounds of appeal to the First-tier Tribunal.

18. The appeal under the 2006 EEA Regulations is dismissed.
The appeal under the Immigration Rules is dismissed.
The appeal based on Article 8 ECHR grounds is dismissed.

Anonymity Order
No anonymity order was made and none appears to be necessary.

Signed Date 30 December 2014

Deputy Upper Tribunal Judge Davey

TO THE RESPONDENT
FEE AWARD

The appeal has failed therefore no fee award is appropriate.

Signed Date 30 December 2014

Deputy Upper Tribunal Judge Davey