



IAC-AH-LEM-V1

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

Appeal Number: IA/18307/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 18<sup>th</sup> August 2015**

**Decision & Reasons Promulgated  
On 9<sup>th</sup> September 2015**

**Before**

**UPPER TRIBUNAL JUDGE RENTON  
UPPER TRIBUNAL JUDGE GRAY**

**Between**

**GEORGE OFORI  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr S Sharma, Counsel instructed by Justice and Law Solicitors

For the Respondent: Ms E Savage, Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. The Appellant is a male citizen of Ghana born on 9<sup>th</sup> June 1980. On 24<sup>th</sup> September 2013 he applied for a residence card as the spouse of Attaa Awusu Antwi a citizen of the Netherlands and therefore an EEA citizen exercising Treaty rights in the UK. That application was refused on 31<sup>st</sup> March 2014 for the reasons given in a Notice of Decision of that date. The Appellant appealed, and his appeal was decided by Judge of the First-tier

Tribunal Cheales (the Judge) without a hearing on 12<sup>th</sup> June 2014. The Judge decided to dismiss the appeal for the reasons given in her Decision dated 26<sup>th</sup> June 2014. The Appellant sought leave to appeal that decision, and on 2<sup>nd</sup> September 2014 such leave was granted.

### **Error of Law**

2. We must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside.
3. The Judge dismissed the appeal because she was not satisfied on the evidence before her that the Appellant and the Sponsor were lawfully and validly married for the purposes of Regulation 7 of the Immigration (European Economic Area) Regulations 2006. It was claimed by the Appellant that he and the Sponsor married by proxy in Ghana on 27<sup>th</sup> January 2013, and produced a marriage certificate to that effect. However the Judge found that insufficient evidence had been produced to show that the marriage had taken place in accordance with the provisions of the Ghanaian Customary Marriage and Divorce (Registration) Law 1985. In particular, the parties to the marriage were not represented at the ceremony in accordance with those provisions. The Judge then went on to consider Regulation 8(5) of the 2006 Regulations but decided that there was insufficient evidence that the Appellant and the Sponsor were in a durable relationship.
4. At the hearing, Ms Sharma made a submission that the Judge had erred in law in reaching this conclusion. However, she acknowledged that although there existed evidence which showed that the marriage between the Appellant and the Sponsor was valid according to Dutch law, that evidence had not been before the Judge.
5. In response, Ms Savage pointed out that any error of law by the Judge in assessing whether this marriage was valid according to Ghanaian law was immaterial because the Appellant had failed to prove to the Judge that the marriage was lawful according to Dutch law as required by the decision in **TA and Others (Kareem explained) Ghana [2014] UKUT 00316 (IAC)**.
6. We find no material error of law in the decision of the Judge for the reasons given by Ms Savage in her submission. Regardless of whether the Judge carried out the assessment of the validity of the marriage according to Ghanaian law, this appeal could not have succeeded before the Judge unless the Appellant had shown that the marriage was valid according to Dutch law. As conceded by Ms Sharma, this the Appellant failed to do.
7. The decision that the Appellant and the Sponsor were not in a durable relationship was not challenged in the grounds of application nor at the hearing before us.

### **Notice of Decision**

The making of the decision of the First-tier Tribunal did not involve the making of a material error on a point of law.

We do not set aside the decision of the First-tier Tribunal.

The appeal to the Upper Tribunal is dismissed.

**Anonymity**

The First-tier Tribunal made no order for anonymity and we find no reason to do so. .

Signed

Date

Upper Tribunal Judge Renton