



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/49134/2014

THE IMMIGRATION ACTS

Heard at Field House  
On 26 November 2015

Decision & Reasons Promulgated  
On 8 December 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE APLEYARD

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MRS BARBARA TUFFOUR  
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr S Kandola, Home Office Presenting Officer  
For the Respondent: Ms E Lagunju, Counsel

DECISION AND REASONS

1. This is a respondent's appeal but I shall henceforth refer to the parties in the original terms detailed in the decision of Judge of the First-tier Tribunal Dickson following a consideration by him on papers of this appeal in a decision promulgated on 24 February 2015.
2. The appellant is a citizen of Ghana who on 10 September 2014 applied through her representatives for a residence card under Regulation 17 of the Immigration

(European Economic Area) Regulations 2006. The respondent refused her application in a decision dated 22 November 2014.

3. Following consideration of her appeal on papers Judge Dickson allowed her appeal.
4. The respondent sought permission to appeal which was granted by Upper Tribunal Judge Gleeson on 24 June 2015. Her reasons for so doing were:-

- “1. The Secretary of State seeks permission to appeal against the decision of First-tier Tribunal Judge Dickson, who allowed the appellant’s appeal against her decision to refuse her an EEA residence card as the spouse of a French citizen said to be exercising Treaty rights in the United Kingdom, pursuant to Regulation 17 of the Immigration (European Economic Area) Regulations 2006 (as amended).
2. The appellant had also appealed under Article 8 ECHR, arguing that the interference with her family and private life rights was unlawful; the First-tier Tribunal Judge did not consider it necessary to make a decision on Article 8 since the EEA Regulations appeal was allowed outright.
3. The application was based on a proxy marriage in Ghana between the appellant and her French spouse. The respondent did not accept that the proxy marriage had been properly registered according to the Ghanaian Customary Marriage and Divorce (Registration) Law 1985 or under Article 146-1 of the French Civil code, which provides that even where a French citizen contracts a marriage in a foreign country, physical presence is required for it to be valid. The respondent also did not accept that the marriage was a genuine one.
4. The appellant asked for the appeal to be considered on the papers and provided further extracts from the Code Civil. First-tier Tribunal Judge Dickson accepted, having regard to Article 170 of the French Code Civil, that the marriage was validly contracted and that therefore the appellant was a family member of an EEA citizen. He allowed the appeal, noting that it was necessary to make any decision in relation to the asserted breach of Article 8 ECHR.
5. The Secretary of State applied to the First-tier Tribunal for permission to appeal to the Upper Tribunal. First-tier Judge Osborne refused the first application, because she considered that the decision made by the First-tier Tribunal was open to it on the French law evidence before it.
6. The respondent renews her application to the Upper Tribunal. The proposed grounds of appeal on the second application were, in particular, that in refusing permission, the Tribunal misdirected itself by failing to consider the Judicial headnote in *Kareem (Proxy marriages – EU law) [2014] UKUT 24 (IAC)*. It is right that the Judge did not direct himself by reference to *Kareem*, but having regard to that decision, and to the decision of the Upper Tribunal in *TA and Others (Kareem explained) Ghana [2014] UKUT 316 (IAC)* that ground of appeal is arguable.

7. The respondent also notes that the First-tier Tribunal cited *JO (Uganda) v Secretary of State for the Home Department [2010] EWCA Civ 10*, a decision on Article 8 ECHR. It is unclear what the relevance is of that decision to the issues in this appeal.
8. The question for the Upper Tribunal when considering error of law is whether the French Code Civil as it stood at the date of decision permitted the celebration in Ghana of a proxy marriage. Article 146-1 is in plain terms: a French citizen may not contract a marriage overseas with another French citizen or with an alien unless they are physically present. Expert evidence will be required to clarify whether the provision of Article 170 that a marriage contracted abroad is valid where it is celebrated in the forms used in the country of marriage varies the absolute terms of Article 146-1 or is a gloss thereon. The attention of the parties is drawn to the amendment to the relevant article of the Code Civil (now appearing as Article 170-1) by Loi No 2006-1376, in force from 1 March 2007.
9. Permission to appeal is granted.”

5. Thus the appeal came before me today.
6. Ms Lagunju at the outset of the hearing conceded that there was a material error of law within the judge’s decision. I was invited by both her and Mr Kandola to remit this appeal by consent to the First-tier Tribunal for a de novo hearing.
7. They both contended that the judge had materially erred in failing to engage with all elements of this appeal and had thereby not resolved the issues that were before him. In particular whether there was a valid civil marriage, if not was there a valid proxy marriage according to French law and finally failure to deal with Regulation 8(5) of the above-mentioned EEA Regulations.
8. I share the analysis of the two advocates before me.
9. For the above-mentioned reasons I find that the decision of the First-tier Tribunal contains material errors of law and has to be set aside in its entirety. All parties were agreed that, in the circumstances, it was appropriate for the appeal to be remitted and that all matters be determined afresh by the First-tier Tribunal. In view of the appellant’s address I was asked for this matter to proceed by way of a hearing at Taylor House, London.

### **Notice of Decision**

The making of a decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal, to be dealt with afresh, pursuant to Section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), before any judge aside from Judge Dickson.

### **Directions**

Any further documentary evidence relied upon by either party to be filed and served upon the other party no later than fourteen days prior to the date of hearing.

No anonymity direction is made.

Signed

Date 30 November 2015

Deputy Upper Tribunal Judge Appleyard