



IAC-FH-AR-V1

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

Appeal Number: IA/24365/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 11th February 2016**

**Decision & Reasons Promulgated
On 1st March 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**KWADWO DUAH
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr S Walker, Home Office Presenting Officer

For the Respondent: Miss J Heybroek, Counsel, instructed by Nasim & Co Solicitors

DECISION AND REASONS

1. Although the Secretary of State is the Appellant in this appeal I will refer to the parties as they were before the First-tier Tribunal.
2. The Appellant, a national of Ghana, appeals against the decision of the Secretary of State of 20th May 2014 to refuse his application for a residence card as a family member of an Austrian national. The Appellant and the EEA national claim to have been married by proxy in Ghana on 24th December 2011. In a decision promulgated on 11 August 2015 First-tier Tribunal Judge C Greasley allowed the appeal. The First-tier Tribunal

Judge accepted that the proxy marriage met the requirements of Ghanaian laws. The Secretary of State now appeals with permission to this Tribunal.

3. In the grounds of appeal the Secretary of State contends that the First-tier Tribunal Judge erred in allowing the appeal in that he failed to consider the guidance in the case of **Kareem (Proxy marriages - EU law) [2014] UKUT 00024 (IAC)** as clarified in the case of **TA and Others (Kareem explained) Ghana [2014] UKUT 00316 (IAC)** which provide that in proxy marriage cases with an EEA national the marriage must be examined in accordance with the laws of the member state from which the EU citizen obtains nationality.
4. The judge granting permission to appeal granted permission on the basis of the grounds and further noted that the First-tier Tribunal Judge failed to make any findings to enable a decision to be made as to whether the Appellant and his partner are in a durable relationship in accordance with Regulation 8(5) of the EEA Regulations.
5. At the hearing before me Miss Heybroek conceded that the judge erred in relation to the assessment of the validity of the marriage in that the judge failed to consider whether the marriage was valid under Austrian law.

Error of Law

6. In light of her concession and in light of the clear error on the part of the judge to consider the evidence in relation to how the marriage would be viewed under Austrian law in accordance with the case law set out above, I am satisfied that the First-tier Tribunal Judge erred in failing to consider whether the proxy marriage is valid under Austrian law. I therefore set aside the decision of the First-tier Tribunal Judge. As there is no challenge to the findings of the First-tier Tribunal Judge in relation to the validity of the marriage under Ghanaian law I preserve those findings.

Remaking

7. In terms of the remaking Miss Heybroek made an application out of time under Rule 15(2A) to admit further evidence in the interests of justice. The letter she sought to admit is a letter dated May 2015 from the Austrian Embassy in London. This is in response to a letter dated 22nd May 2015 from the instructing solicitors to the Austrian Embassy seeking clarification in relation to the recognition of the Ghanaian proxy marriage in Austria. The response along with her translation is contained in a bundle of documents submitted at the hearing by Miss Heybroek. She accepted that there was no explanation as to why this document was not before the First-tier Tribunal as it clearly precedes the hearing in August 2015. She submitted that her instructing solicitors sent her the entire file and that she found this document in the file but could not explain why it had not been before the First-tier Tribunal Judge.
8. Mr Walker indicated that the Secretary of State did not object to the submission of this document. He accepted that it was a question of fairness to the Appellant and accepted that it was relevant to the determination of the issue of remaking the decision.

9. The letter from the Austrian Embassy confirms that in accordance with Section 16 paragraph 2 of the Austrian International Private Law Act the formal requirements of a marriage outside of Austria must be determined according to the legislation applicable to each partner/individual and that it is also sufficient that the formal requirements of the place where the marriage was held are complied with. The letter goes on to say that whether or not the bride or groom may anticipate in the marriage by proxy is a question of formality so that the compliance with the formal requirements of the local law is sufficient.
10. Mr Walker accepted that it was clear from this letter that the Austrian authorities do recognise a proxy marriage conducted in Ghana if it is compliant with the laws in that country.
11. I take into account the unchallenged finding made by First-tier Tribunal Judge Greasley that the Appellant's marriage is valid under Ghanaian law. In light of this further evidence I am satisfied that the Appellant has now demonstrated that the marriage conducted in Ghana is recognised by the authorities in Austria. I therefore find that the Appellant and the sponsor are legally married in accordance with the law of Austria.
12. In these circumstances I am satisfied that the Appellant has demonstrated that he is the family member of an Austrian national. There is no challenge to any of the other findings in relation to the exercise of treaty rights by the Appellant's partner. In these circumstances I allow the appeal under the EEA Regulations.

Notice of Decision

13. The decision of the First-tier Tribunal Judge contained a material error of law and I set the decision aside.
14. I remake the decision by allowing it under the EEA Regulations.

No anonymity direction is made.

Signed

Date: 24th February 2016

Deputy Upper Tribunal Judge Grimes

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Signed

Date: 24th February 2016

Deputy Upper Tribunal Judge Grimes