



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

Appeal Number: EA/12991/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 7 November 2018**

**Decision & Reasons
Promulgated
On 21 November 2018**

Before

**THE HONOURABLE MR JUSTICE MARK TURNER
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)
UPPER TRIBUNAL JUDGE CRAIG**

Between

**MISS AKUA ODURO AGYEI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms R Spio-Aidoo, solicitor, R Spio & Co Solicitors

For the Respondent: Mr N Bramble, Home Office Presenting Officer

DECISION AND REASONS

On 25 April 2016, the appellant submitted an application for a residence card as the wife of an EEA national, Mr Hamza Sulemana, who is a citizen of Spain born on 22 September 1977. The basis of the application was that they had married on 22 September 2015 in Ghana by proxy and had an Islamic marriage ceremony in the UK on 19 March 2016.

The application was refused on 14 October 2016. The basis of the refusal was that the appellant had not provided proof that Mr Sulemana was Ghanaian. When the matter came before the First-tier Tribunal Judge, the central question was as to whether the nationality of Mr Sulemana was Ghanaian. The

submissions before the judge therefore were directed towards the question as to whether or not it was a necessary ingredient of a lawful marriage in Ghana by proxy that both parties should be Ghanaian, there being no dispute that the appellant herself was a Ghanaian national.

Regrettably, the authorities to which the judge was referred were inadequate to the extent that they related to cases which had been decided either before or in ignorance of the existence of a UKBA document which effectively would have determined the matter had the judge's attention been drawn to it. In the case of **Amoako v Secretary of State for the Home Department, appeal number IA/23315/2012**, the matter was considered by the Upper Tribunal and its attention was drawn to this document.

It was therefore unnecessary for the parties to look any further than the contents of this publication. It was entitled "Customary Marriage and Divorce/Proxy Marriages contracted in Ghana" and dated 17 January 2012. At page 3 of that document is provided:

"Ghanaian nationals in Ghana or abroad:

At least one of the parties must be a Ghanaian national;

if both parties are non-Ghanaian nationals at least one of the parents of any of the couple must be a Ghanaian national."

In this case, the test set out in the Customary Marriage and Divorce/Proxy Marriages contracted in Ghana document was satisfied.

However, on the incomplete materials with which she was provided, the First-tier Judge concluded that as a matter of Ghanaian law both parties had to be shown to have been Ghanaian nationals. It is clear, therefore, that the judge was inadvertently misled and that feature persisted up until the date of this hearing with the respondent continuing to promote the suggestion that Ghanaian law required both parties to a proxy marriage to be of Ghanaian nationality.

Mr Bramble, who appears on behalf of the respondent before us today, having been shown the detail of the case of **Amoako** and the reference there to the UKBA document has, realistically, conceded that there is no residual basis upon which he can resist this appeal and in these circumstances, we have no hesitation in allowing this appeal and remaking the decision of the judge on the basis that the Secretary of State was in error in refusing the application by the appellant in relation to the residence card.

Notice of Decision

The appeal is allowed.

No anonymity direction is made.

Signed Mark Turner

Date 13 November 2018

Mr Justice Mark Turner