



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

Appeal Number: IA/05428/2014

THE IMMIGRATION ACTS

Heard at Field House

On 7 October 2014

**Determination
Promulgated**

On 24 October 2014

Before

**UPPER TRIBUNAL JUDGE PITT
DEPUTY UPPER TRIBUNAL JUDGE GIBB**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**KWABENA YAMOA
(NO ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr T Wilding, Home Office Presenting Officer

For the Respondent: None (and the Appellant did not attend)

DETERMINATION AND REASONS

1. The appellant, a citizen of Ghana, applied for a residence card as the spouse of an EEA national exercising treaty rights in the UK. The application was refused on 13 January 2014, but the appellant's appeal was then allowed, on the papers, by Judge of the First-tier Tribunal James (determination promulgated 23 July 2014).
2. The Secretary of State applied for permission to appeal on the basis that the judge had not considered and applied the law as described in **Kareem (Proxy marriages - EU law) Nigeria [2014] UKUT 24 (IAC)** (16

January 2014). Permission to appeal was granted by Judge of the First-tier Tribunal Brunnen on 7 August 2014.

3. There was no appearance on the day of the hearing, and no message of any sort was received. We noted that notices of hearing had been served to the appellant at his home address, and to his representatives, Michael & Co Legal Services. These were accompanied by standard directions about the hearing. There was therefore nothing to suggest that the appellant was not aware of the hearing, and neither was there any application for an adjournment. Having considered these matters we decided to proceed with the hearing in the absence of the appellant. We were satisfied that he had been notified of the hearing, and we considered that it was in the interests of justice to proceed (Rule 38 of the Tribunal Procedure (Upper Tribunal) Rules 2008).
4. The determination of this appeal on the papers, in July 2014, postdated the promulgation of the **Kareem** case. **TA and Others (Kareem explained) Ghana [2014] UKUT 00316 (IAC)** clarified **Kareem**, removing room for misunderstandings that had arisen from certain statements in the headnote.
5. We have decided that there was an error of law material to the outcome of the appeal, namely the failure to consider the law as stated in the **Kareem** case. We accept that the **Kareem** case was promulgated some months before the determination on the papers, and that it did amount to a statement of the law. As such the decision allowing the appeal without considering the **Kareem** point must be said to involve an error on a point of law that was material to the outcome.
6. We therefore set aside the decision allowing the appeal. Since there is no evidence before us about the legal position in the country of nationality of the EEA partner (the Netherlands) we re-make the decision by dismissing the appeal. Following **Kareem** there is a need for such evidence, even if all other matters were to be decided in favour of the marriage having complied with the requirements for validity in Ghana. The appeal of the Secretary of State is therefore allowed.
7. It was not suggested that there was any need for anonymity in this appeal, and we make no such order. The judge who allowed the appeal at the First-tier made a whole fee award, but since we are remaking the decision by dismissing the appeal there can be no fee award.

Decision

8. The decision allowing the appeal is set aside. The decision in the appeal is remade as follows.
9. The appeal is dismissed.

Signed
Deputy Upper Tribunal Judge Gibb

Date
22 October 2014