



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/06896/2014**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 3rd November 2014**

**Decision Promulgated
On 8th December 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

**Mr Basil Cudjoe
(Anonymity Direction Not Made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Bahja, instructed by Jesuis Solicitors
For the Respondent: Mr S Kandola Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Ghana and born on 12th December 1981 and he applied for a residence card as confirmation of a right to reside in the UK on the basis of his marriage or durable relationship with a Portuguese, (EEA) national, Ms A M Ramos

Mendes Pereira. This application was refused on 21st January 2014 by the respondent.

2. The respondent refused the appellant's application with reference to Regulation 7 of the EEA Regulations and noted that the appellant had also failed to provide satisfactory evidence that he was in a durable relationship with an EEA national in accordance with Regulation 8.
3. The detailed refusal letter stated that the appellant had not provided evidence to demonstrate he had registered a customary marriage in accordance with the Customary Marriage and Divorce (Registration) Law 1985. Accordingly it was not legally recognised as valid in Ghana and thus could not be accepted as valid in the UK.
4. First-tier Tribunal Judge Dennis determined the matter on 2nd April 2014 and issued a determination on 3rd July 2014 dismissing the appeal. An application for permission to appeal by the respondent was granted by First Tier Tribunal Judge Hollingworth on the basis that the appellant was entitled to assume that all the relevant material submitted to the respondent would have been included in the respondent's bundle and which would have been provided to the judge. The matter came before me.
5. At the hearing however Mr Bahja did not contest the decision of Judge Dennis on procedural grounds or the point taken with respect to letters returned to the appellant, and in my view rightly so. However Mr Bahja submitted that the judge should have considered adjourning for an oral hearing or the appellant should have been given a chance to respond in view of the lack of the respondent's bundle.
6. Nonetheless, I find the appellant had instructed solicitors, Ravi Sethi and it was confirmed that these solicitors were instructed until after the refusal decision of the First Tier Tribunal was sent to the appellant. The solicitors were on file with the Tribunal and were notified by the Tribunal on 7th March 2014, well before the decision by Judge Dennis, that the appellant had indicated that he wished to have the decision made on the papers and that any further evidence should be submitted by 1st April 2014. Although the judge made reference to the appellant seemingly not living at the address he concentrated his consideration of the durable relationship on the basis of the lack of documentation. The solicitors, and thus by default the appellant, are notified in the notice of hearing from the Tribunal that 'the Tribunal may determine the appeal on the basis of the appeal documents together with any further written evidence or submissions you may wish to make'. Solicitors were aware

that the respondent may not necessarily submit a respondent's bundle and the burden of proof is on the appellant. At the hearing Mr Bahja himself confirmed that he was not aware as to what documentation had indeed been sent to the respondent save for the application form. Indeed the application form EEA2 made absolutely no reference to any further documentation at all in the document 'checklist'. There was no indication that any documentation had been forwarded to the respondent in relation to the 'durable relationship'. Indeed the respondent in the reasons for refusal letter stated 'you have provided no evidence that you resided together as a couple at the same address prior to the date of your customary marriage'. I do not accept in this instance that the judge could have expected further information to have accompanied the respondent's bundle with respect to the durable relationship, that it has been shown there was at the relevant time there was any further documentation and thus that the judge made an error in proceeding.

7. I turn to Mr Bahja's second complaint which was that the judge had failed to apply **Kareem (Proxy marriages EU law) Nigeria [2014] UKUT 24** and thus the decision was flawed.
8. **Kareem**, as confirmed in **TA and Others (Kareem explained) Ghana [2014] UKUT 00316 (IAC)** identifies that whether there is a marital relationship, for the purposes of the Immigration (EEA) Regulations 2006, must always be examined in accordance with the laws of the Member State from which the Union citizen obtains nationality. This, however, does not negate the finding in **Kareem** that the judge is entitled to consider the documentation itself. In this instance the judge found that the documentation itself was deficient and recorded this at [7] and [8] of his decision. Even if the judge had got the order of consideration wrong, if he had gone on to consider **Kareem**, and as Mr Bahja accepted, no information was provided regarding the law of Portugal and proxy marriages. This was fatal to the appeal.
9. I find that there is no error of law in the determination of the First Tier Tribunal judge for the reasons explained above and the determination shall stand.

Signed

Date 3rd November 2014

Deputy Upper Tribunal Judge Rimington