



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

Appeal Number: IA/11191/2014

THE IMMIGRATION ACTS

Heard at Bradford

**Decision and Reasons
Promulgated**

On 29th October 2014

On 11th November 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE KELLY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MRS LYDIA GYAMFI

Respondent

Representation:

For the Appellant: Mr I Jarvis, Senior Home Office Presenting Officer

For the Respondent: Mr N Ene, Legal Representative

DECISION AND REASONS

1. The Secretary of State for the Home Department appeals against the decision of First-tier Tribunal Judge Bagral who, in a determination promulgated on the 11th July 2014, allowed the respondent's appeal against refusal to grant her a Residence Card as the spouse of an EEA national exercising European Union Treaty rights in the United Kingdom.

2. The respondent, who is a citizen of Ghana, was married by proxy to a German citizen, Mr David Amponsah (hereafter, “the sponsor”). In order to show that she qualified as his family member, the respondent had to demonstrate that her marriage was legally recognised.
3. Judge Bagral was satisfied that the appellant’s proxy marriage was legally recognised in Ghana, which was where it had taken place. The Secretary of State does not challenge that finding in this appeal. The Secretary of State’s appeal arises from the fact that the judge went on to hold that that finding was sufficient for the appellant to establish that she was a ‘family member’ for the purposes of Regulation 7 of the Immigration (European Economic Area) Regulations 2006. She based this conclusion upon the following passage from the headnote to the report of the decision in Kareem (Proxy marriages – EU law) [2014] UKUT 00024 (IAC) –

It should be assumed that, without independent and reliable evidence about the recognition of the marriage under the laws of the EEA country and/or the country where the marriage took place, the Tribunal is likely to be unable to find that sufficient evidence has been provided to discharge the burden of proof. [Judge Bagral’s added emphasis]

On the strength of this statement, the judge rejected the Presenting Officer’s submission that it was necessary for the appellant to show that her marriage was legally recognised under German law.

4. However, whilst the headnote to the report in Kareem might be considered misleading, the legal position has now been clarified by the decision in TA and Others (Kareem explained) Ghana [2014] UKUT 000316 (IAC). The headnote of the latter decision reads as follows –

Following the decision in Kareem (Proxy marriages – EU law) [2014] UKUT 00024 (IAC), the determination of 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. [Original emphasis]

5. It follows from the above that the judge erred in law by holding that recognition of the appellant’s marriage under Ghanaian law sufficed for the purposes of the requirements of the Regulations. Moreover, as there was no evidence before the Tribunal that the marriage was recognised under German law, it follows that the judge ought not to have allowed the appeal outright on the basis that she did.
6. However, that is not the end of the matter. The decision-maker had also considered, in the alternative, whether the appellant was in a relationship akin to marriage, and thus an ‘extended family member’ of the sponsor under Regulation 8. Having held that the appellant was a family member of the sponsor, the judge did not consider the alternative possibility of extended family membership. It is thus appropriate to remit the appeal in order for Judge Bagral to make a finding upon this matter.

7. It may be appropriate to sound a note of caution. Should the judge find that the appellant is as a matter of fact in a relationship with the sponsor which is akin to marriage, it would only be appropriate to allow the appeal to the limited extent that the decision to refuse the application for a Residence Card is not in accordance with the law. This is because, in contrast to the position of a 'family member', the Secretary of State's decision to issue of a Residence Card to an 'extended family member' is discretionary [see Regulation 17(4)]. Whether or not that stage is reached is something that will of course depend upon how Judge Bagral finds the facts in accordance with the evidence.

Notice of Decision

8. The decision by the First-tier Tribunal to allow the appeal outright is set aside, and the matter is remitted for Judge Bagral to consider whether the Secretary of State's refusal to grant the application for a Residence Card was in accordance with the law.

Anonymity not directed.

Signed

Date **29th October 2014**

David Kelly
Deputy Judge of the Upper Tribunal