



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

Appeal Number: IA 11569/2014

THE IMMIGRATION ACTS

**Heard at FIELD HOUSE
On 10TH SEPTEMBER 2014**

**Determination
Promulgated
On 22ND SEPTEMBER 2014**

Before

**UPPER TRIBUNAL JUDGE CLIVE LANE
DEPUTY UPPER TRIBUNAL JUDGE G A BLACK**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

SOPHIA OSEI NKETIA
Claimant

Representation:

For the Appellant: Mr L. Tarlow (Home office presenting officer)
For the Claimant: Mr N Balroop (Michael & co Legal Services)

DECISION AND DIRECTIONS

1. In this appeal the appellant is referred to as the Secretary of State and the respondent is referred to as the claimant.
2. This matter comes before us for consideration as to whether or not there is a material error of law in a determination of the First Tier Tribunal (Judge Birk) promulgated on 10th June 2014, in which she allowed the appeal under Regulation 7 of the Immigration (EEA) Regulations 2006, on the grounds that the claimant was the spouse of an EEA national.

Background

3. The claimant is a citizen of Ghana whose date of birth is 30th April 1984. She appealed the decision made on 11 February 2014 by the Secretary of State refusing her application for a residence card on the basis of a proxy marriage in Ghana to a Belgian national who was exercising Treaty rights in the UK.
4. The reason for refusal was that the proxy marriage conditions under Ghanaian law were not met. There was no evidence that the parties were in a durable relationship.
5. The appeal before the First Tier Tribunal proceeded on the basis of submissions only. The Tribunal found that the claimant met the requirements under Ghanaian law. The Tribunal considered **CB(Validity of marriage; proxy marriage) Brazil [2008] UKAIT 00080** and **NA(customary marriage and divorce - evidence) Ghana [2009] UKAIT00009**. At [16] the Tribunal concluded that it was not necessary to go further to consider **Kareem (proxy marriage- EU law [2014] UKUT 00024** or whether or not there was a durable relationship pursuant to Regulation 8.

Grounds of appeal

6. The Secretary of State argued that the Tribunal misinterpreted the decision in **Kareem**. The Tribunal should first have considered whether the marriage was recognised in the EEA Member State of the sponsor, namely Belgium. There was no evidence advanced in this regard.
7. Permission to appeal was granted by First Tier Tribunal Judge McDade on 29th July 2014.

Hearing before us

8. Mr Tarlow relied on the grounds of appeal. After some discussion it was effectively conceded by Mr Balroop that the Tribunal erred in law in light of the recent Upper Tribunal decision of **TA & others(Kareem explained)[2014] UKUT 316(IAC)** which clarified any uncertainty as to the Upper Tribunal's decision in **Kareem**. It is clearly the position that the lawfulness of proxy marriages is to be considered having regard to and in

accordance with the laws in the relevant EEA member State (**Kareem** at [11]).

Discussion and decision

9. We decided that there was a material error of law in the determination as the Tribunal failed to apply the correct approach in **Kareem**. The first consideration ought to have been whether or not the marriage was lawful under laws of the EEA member State. The Tribunal failed to engage in any consideration of the applicable legal provisions in Belgium, the sponsor's EEA State.
10. We have decided to set aside the decision under Regulation 7 (Immigration (EEA) Regulations 2006.
11. As the Tribunal did not proceed to consider the question of the durability of the relationship under Regulation 8 (indeed it was not asked to do so) we took the view that the most sensible course of action was for the matter to be remitted to First Tier Judge Birk for her to deal with Regulation 8.

Decision

12. **The decision of the First-tier Tribunal is set aside. The findings of fact are preserved.**
13. **The matter is remitted to the First Tier Tribunal at Birmingham for hearing before Judge Birk on 24th September 2014. The only issue which remains for the First-tier Tribunal to determine is that arising under Regulation 8 of the Immigration (EEA) Regulations 2006 (durability of the relationship).**

Signed

Date 11.9.2014

GA Black

Deputy Judge of the Upper Tribunal

There was no anonymity order made by the First tier Tribunal.
The fee award made by the Tribunal is set aside.

Signed

Date 11.9.2014

GA Black
Deputy Judge of the Upper Tribunal