



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

Appeal Numbers: IA/19705/2014

THE IMMIGRATION ACTS

Heard at Birmingham

On 17 November 2014

Determination

Promulgated

On 18 November 2014

Before

UPPER TRIBUNAL JUDGE PITT

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ALEXANDER OBIRI

Respondent

Representation:

For the Appellants: Mr Smart, Senior Home Office Presenting Officer

For the Respondent: In person

DETERMINATION AND REASONS

1. For the purposes of this appeal I refer to Mr Obiri as the appellant and the Secretary of State as the respondent, reflecting their positions as they were before the First-tier Tribunal.
2. The appellant is a citizen of Ghana and he was born on 20 November 1987.
3. The appeal is against the decision promulgated on 21 July 2014 of First-tier Tribunal Judge Woolley which allowed the appeal against the respondent's decision of 30 April 2014 to refuse to issue a residence card

as confirmation of a right to reside in the United Kingdom (UK) as the spouse of an EEA national exercising Treaty rights.

4. The main dispute here was whether the appellant and a French national had entered into a valid marriage conducted by proxy in Ghana.
5. The respondent's grounds of appeal maintained that he had not and relied on the cases of *Kareem (proxy marriages - EU law) [2014] UKUT 24* as confirmed by *TA and Others (Kareem explained) Ghana [2014] UKUT 316 (IAC)* as it had not been shown that the marriage would be recognised as valid by the French authorities. The First-tier Tribunal judge erred in failing to have regard to those authorities.
6. In response to the respondent's arguments, the appellant told me that he had spoken to the French Embassy who had told him that the marriage was valid. He did not have anything in writing from the French authorities or anything else to show that proxy marriages were accepted there. That evidence was not before the First-tier Tribunal, however.
7. It was my view that the First-tier Tribunal did not have proper regard to the reported cases of *Kareem* and *TA* and materially erred where there was no evidence of whether the marriage was accepted as valid in France. I set aside the decision for that reason and proceeded to re-make the appeal.
8. It was also my judgement that the appeal as regards the marriage had to fail where the only evidence of how the marriage would be viewed in France was given by the appellant before me and related to telephone call made at some point to the French authorities in the UK. There was no indication of exactly when the telephone call took place, who was spoken to, their status as regards being able to give a view on validity of marriages in France and so on. I did not find the appellant's oral evidence about the telephone call to be at all sufficient to show that the proxy marriage would be regarded as lawful in France.
9. I also did not find that the evidence was sufficient to show that the appellant had a durable relationship with an EEA national exercising Treaty rights. At the hearing he told me that his partner was abroad visiting her mother and had not returned as her mother was unwell. I had no written evidence to show that the wife was abroad or that her mother was unwell. Where this appeal could only but be an important matter to a partner it was my view that some documentary evidence showing why the partner could not attend could be expected. Where there was nothing it was not my view that, without her being present to confirm and submit to cross-examination, I could place much weight on the written evidence of the appellant's partner that was before me.
10. I also did not find the limited documentary evidence of cohabitation was sufficient to show that the couple had lived together as partners or been in a durable relationship for 2 years. The evidence comprised gas bills,

council tax bills, pay slips for the partner and health insurance documents for the appellant. In my judgement these documents showed, at best, that the appellant and the French national shared an address. It was not sufficient to show a durable relationship, particularly so where the partner had not attended the hearing, the explanation for that being insufficient.

11. I also find that the refusal of a residence card is not a matter that can be said to engage Article 8 of the ECHR and the appellant has not made an application on that basis in the required manner so I say nothing further in that regard.

Decision

12. The decision of the First-tier Tribunal contains an error on a point of law and is set aside. I re-make the appeal as refused on all grounds.

Signed:

Date 17 November 2014

Upper Tribunal Judge Pitt