



IAC-FH-CK-V1

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

Appeal Number: IA/20424/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 13 November 2014**

**Decision & Reasons  
Promulgated  
On 19 November 2014**

**Before**

**THE HONOURABLE MRS JUSTICE ANDREWS DBE  
UPPER TRIBUNAL JUDGE MOULDEN**

**Between**

**MR LOIC GAETAN TCHELIEBOU NOUBISIE  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr M Wainwright, Law Klinik LLP

For the Respondent: Ms L Kenny, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against a determination by the First-tier Tribunal promulgated on 15 July 2014. First-tier Tribunal Judge Bagral dismissed the appeal of the appellant against a decision of the Secretary of State to refuse a residence card to him on the basis of his marriage to an EEA national exercising treaty rights within the EEA.

2. The appellant claims that he was married to his partner, a Ms Celine Vieira, who is a French national, under a customary marriage which took place in the Cameroon on 1 December 2010. Various documents were produced as evidence in support of the proxy marriage. Initially his application for a residence card was refused on the basis that proxy marriages were not recognised in the Ivory Coast, but he renewed his application. Although the Secretary of State still refused to accept that the marriage had been treated as valid by the appropriate authorities where it was conducted, that decision was reversed by the First-tier Tribunal, which made a finding in paragraph 14 of the determination that it was prepared to accept that the marriage had been duly registered in accordance with the law and was thus valid.
3. However, the next hurdle that had to be overcome was to satisfy the Secretary of State (and the Tribunal on appeal) that the proxy marriage was recognised in the country of the nationality of the sponsor, in this case France. That requirement is compulsory, as set out in the case of **Kareem (Proxy marriages - EU law) [2014] UKUT 00024**. That decision has subsequently been clarified and confirmed in the case of **TA and Others (Kareem explained) Ghana [2014] UKUT 00316**.
4. In the absence of evidence that the marriage would be recognised in France, the appeal was bound to fail regardless of any finding that the First-tier Tribunal Judge reached on the question of whether the spouse was exercising treaty rights. However it was the finding on the latter issue, which was adverse to the appellant, which is the subject matter of the appeal that comes before us with permission of a Judge of the First-tier Tribunal granted on 9 October 2014.
5. The basic challenge was on the basis of inadequacy of the Judge's reasoning in paragraph 15 of the determination for rejection of the evidence that was adduced by the appellant to show that his partner was working within the jurisdiction. She claimed that she was employed by a company called Farkas Cleaning Services Limited. When the Secretary of State originally refused the application, a legitimate concern had been raised as to whether or not that company was actually trading. A company search had been performed for that company, and although it showed it was incorporated on 5 September 2011, at the time when the reasoned decision was given it was listed as non-trading and its cash net worth and current liabilities were unreported. Not surprisingly, therefore, the Secretary of State said: "this Department has questions regarding whether or not your sponsor is genuinely employed with this company."
6. Queries were also raised by the Secretary of State in relation to the wage slips that were provided and the evidence of money being paid into the sponsor's bank account. On behalf of the appellant Mr Wainwright submitted that if one looks at the face of the documents that were supplied, and in particular the payslips, there is nothing to indicate that they are anything other than perfectly genuine documents. They bear an national insurance number, they show that tax was deducted through

PAYE, they show the amount of national insurance that was deducted, and they show the tax code, all of which could have been checked by the Secretary of State and verified with HM Revenue & Customs. They are addressed to the appellant's partner at her address at Katherine Road in London which also appears on her bank statements, so the information is consistent.

7. In at least one instance the bank statement and the amount of money on the payslips tally although, as the Judge said, there were some payslips which were adduced in the bundle without the corresponding bank statements and there appears to be only one example where the payslip and the bank statements match.
8. The Judge said in the determination that no further evidence of the sponsor's employment has been adduced from HMRC that would independently verify the sponsor's employment. Mr Wainwright pointed out that on the face of the documents they appear to be genuine; they could easily be checked with HMRC and in the absence of any reason to dispute their authenticity it is not incumbent on the appellant to go any further than to produce such documents.
9. The Judge also said that no response was made by the appellant to the respondent's assertions in the refusal. That appears to be a reference to the concerns about whether the company Farkas Cleaning Services was trading. However, in the bundles before the First-tier Tribunal (certainly in the Respondents' bundle) there was a print-out of an updated web search from Companies House which clearly shows that the company was trading, and it was trading in the sector of cleaning services which the appellant and his partner attested was the type of job that she was doing. Although that document may have emanated from the respondent rather than the appellant, it was factually incorrect for the Judge to say that no response has been made to that assertion that the company was not trading.
10. Although the Judge goes on to say in paragraph 15 "on the totality of the evidence I am far from satisfied that the sponsor is working" there is no real explanation as to why that conclusion was reached or why he felt the evidence was unsatisfactory. There is no suggestion that the evidence has been concocted or that the documents had been forged and no such suggestion has been made by the Secretary of State.
11. Looking at the material in the round it does seem to us that there is an error of law in the way in which the First-tier Tribunal has dealt with the evidence about the sponsor's work, and if that were the only point arising on this appeal then there would be very little difficulty in coming to the conclusion that the appellant should succeed.
12. However, the problem is whether or not that error of law is material. Ms Kenny on behalf of the Secretary of State submits that it cannot be a material error of law because one comes back to the fatal flaw in the application, namely the failure to provide the evidence that satisfies the

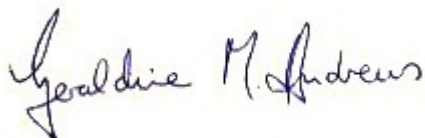
test in **Kareem**. We agree with those submissions. The position is that the application as it stood at the time the appeal came before the First-tier Tribunal was doomed to failure by reason of the absence of that evidence. That remains the case.

13. Of course it will always be open to the appellant to make a fresh application with supporting documentation and to provide the missing evidence of the recognition of his marriage under French law, but given that that evidence was missing before the First-tier Tribunal, we are unable to come to the conclusion that the error that we find was made in the determination actually had any significant bearing on the outcome. The appeal fell to be dismissed in any event for reasons identified specifically by the First-tier Tribunal Judge in paragraph 13 of the determination where he said: "As a starting point there is no evidence that the marriage is recognised in France, the country of nationality of the sponsor."
14. For those reasons, and obviously with some regret given that we find that the point that was raised by Mr Wainwright was well-made as far as it went, we dismiss this appeal.

### **Notice of Decision**

The appeal is dismissed.

No anonymity direction is made.



Signed

Date 13 November 2014

Mrs Justice Andrews