



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

**Appeal  
Number**

**IA/25425/2013**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 4 June 2014 at On 5 June 2014  
Determination  
promulgated**

**Before**

**Deputy Judge of the Upper Tribunal I. A. Lewis**

**Between**

**Secretary of State for the Home Department**

**Appellant**

**and**

**Victoria Adjei**

(Anonymity direction not made)

**Respondent**

**Representation**

For the Appellant: Mr. S. Kandola, Home Office Presenting Officer.

For the Respondent: No appearance.

**DETERMINATION AND REASONS**

1. This is an appeal against the decision of First-tier Tribunal Judge Clapham promulgated on 27 February 2014, allowing Ms Adjei's appeal against the Secretary of State's decision dated 30

May 2013 to refuse to issue a residence card under the Immigration (European Economic Area) Regulations 2006.

2. Although before me the Secretary of State is the appellant and Ms Adjei is the respondent, for the sake of consistency with the proceedings before the First-tier Tribunal I shall hereafter refer to Ms Adjei as the Appellant and the Secretary of State as the Respondent.

### **Background**

3. The Appellant is a national of Ghana born on 24 August 1961. On 27 September 2012 an application for a residence card as confirmation of a right to reside in the United Kingdom was made on her behalf. The application was based on a Ghanaian customary marriage by proxy to Martinho Armando Nanque said to have taken place in Ghana, in the absence of the parties to the marriage, on 17 August 2012.

4. The Appellant's application was refused for reasons set out in a 'reasons for refusal' letter dated 30 May 2013, and a Notice of Immigration Decision was issued on the same date. The Respondent was not satisfied that the marriage was valid.

5. The Appellant appealed to the IAC. She requested that her appeal be dealt with 'on the papers'. The First-tier Tribunal Judge allowed the Appellant's appeal without a hearing for reasons set out in his determination.

6. The Respondent sought permission to appeal which was granted by First-tier Tribunal Judge Landes on 14 April 2014.

### **No appearance**

7. There was no appearance by or on behalf of the Appellant.

8. The Tribunal has received a letter from the Appellant's representatives, Geeta Patel & Co. dated 14 May 2014 acknowledging the fact of the listing of the appeal before the Upper Tribunal, but stating: "*We confirm that our client wishes to withdraw the original appeal and will not be attending the forthcoming hearing*".

9. Necessarily this letter confirms that due notice of the hearing was given.

10. In my judgement it is too late for the Appellant to withdraw her original appeal. Such withdrawal would need to be pursuant to rule 17 of the Asylum and Immigration Tribunal (Procedure) Rules 2005, which applies in respect of proceedings before the First-tier Tribunal. The proceedings before the First-tier Tribunal have been concluded, and the Appellant has the benefit of a favourable decision.

11. I must consider the Appellant's stated position by reference to the Tribunal Procedure (Upper Tribunal) Rules 2008. Withdrawal is governed by rule 17 therein. In the circumstances it seems to me that the letter from the Appellant's representatives may be treated as a "*notice of the withdrawal of [the Appellant's] case*" (which is subtly different from a withdrawal of her *appeal*). Withdrawal will not take effect unless the Upper Tribunal consents. Of course, if the Appellant's case is 'withdrawn' and the proceedings terminated at this stage the consequence will be that the First-tier Tribunal decision stands. Accordingly I do not consent to withdrawal, but rather treat the Appellant's letter as indicating that she does not seek to resist the Respondent's challenge to the decision of the First-tier Tribunal.

12. In any event, in all the circumstances I am satisfied that it is appropriate to proceed with the appeal in the Appellant's absence.

### **Consideration**

13. The First-tier Tribunal Judge allowed the Appellant's appeal on the basis that he was satisfied that the Appellant's marriage was duly registered and valid.

14. The Respondent's grounds of appeal seek to challenge that conclusion with particular reference to the decision in **Kareem (Proxy marriages - EU law) [2014] UKUT 00024 (IAC)** - promulgated on 16 January 2014, and therefore before the First-tier Tribunal's consideration of this appeal. It is pleaded that the Judge erred in not having regard to **Kareem**. Moreover it is pleaded that if **Kareem** had been applied, the First-tier Tribunal would have been bound to dismiss the appeal.

15. As noted above, I proceed on the basis that the Appellant does not resist this challenge to the decision of the First-tier Tribunal.

16. Even if it were otherwise I have no hesitation in concluding that the First-tier Tribunal Judge misdirected himself by not having regard to the relevant case law, pursuant to which he should have considered as a starting point the question of whether a marriage was contracted between the Appellant and Mr Nanque according to the national law of the country of Mr Nanque's nationality (Portugal). The Judge did not do so. Indeed I am unable to find any reference in the Judge's determination to Mr Nanque's nationality at all.

17. Moreover, the Appellant had produced no evidence as to the validity of the marriage under the law of Portugal. As such, the First-tier Tribunal would indeed have been bound to find that insufficient evidence had been provided to discharge the burden of proof.

18. In all such circumstances I find that the decision of the First-tier Tribunal Judge was flawed for material error of law and I set it aside.

19. The decision in the appeal accordingly needs to be remade. In light of the Appellant's indication that she wishes to withdraw her initial appeal, I remake the decision by dismissing the appeal. Following **Kareem**, and for the reasons already indicated above, the Appellant has not shown that a valid marriage was contracted between her and Mr Nanque. The Appellant has not otherwise provided evidence of a 'durable relationship' within the meaning of the Regulations.

### **Decision**

20. The decision of the First-tier Tribunal Judge contained a material error of law and is set aside.

21. I remake the decision in the appeal. The appeal is dismissed.

**Deputy Judge of the Upper Tribunal I. A. Lewis 4 June 2014**