



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/34718/2013

THE IMMIGRATION ACTS

Heard at Field House  
on 20 May 2013

Determination promulgated  
On 21<sup>st</sup> May 2014

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ABINA SERWAAH

Respondent

For the Appellant: Mr E Akohene, of Afrifa & Partners, Solicitors  
For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

No anonymity order requested or made

DETERMINATION AND REASONS

1. This determination refers to parties as they were in the First-tier Tribunal.
2. The SSHD appeals against a determination by First-tier Tribunal Judge Boyd, promulgated on 18 February 2014, allowing the appellant's appeal against refusal of a residence card as the family member (wife) of an EEA national under the Immigration (EEA) Regulations 2006.
3. The appellant produced with her application to the SSHD a Ghanaian customary marriage certificate, along with a statutory declaration of marriage by proxy.

4. The SSHD's "reasons for refusal letter" of 6 August 2013 said that although such proxy marriages could be recognised, they had to be registered in Ghana, and there was no evidence of that.
5. Judge Boyd allowed the appeal on the view that the SSHD's own sources showed that registration was not mandatory and that a statutory declaration such as produced was sufficient. He therefore held at ¶13 that the appellant had established a marriage valid under the law of Ghana and so recognised in the UK.
6. The SSHD's grounds of appeal to the UT raise two issues. The first is that the judge failed to take note of *Kareem* (proxy marriages – EU law) Nigeria [2014] UKUT 24, promulgated shortly before his decision, which required him to address "whether this type of marriage is recognised in the EEA state of the sponsor, Belgium". The second is that at ¶12 the judge went wrong by relying upon a UT decision which was unreported and which predated *Kareem*.
7. Mr Whitwell referred to *Kareem* at ¶11 in particular, "... whether a person is married is a matter that falls within the competence of the individual member states", and headnote (e), "... the starting point will be to decide whether a marriage was contracted between the appellant and the qualified person according to the national law of the EEA country of the qualified person's nationality". He referred "for completeness" also to *AO* (unreported decisions are not precedents) [2008] UKAIT 00056.
8. Mr Akohene referred in his submissions to the UT's general remarks in *Kareem* at ¶68, saying that based on (b) a marriage certificate issued according to the registration laws of the country where the marriage took place will usually be sufficient, based on (d) that proof of the marital relationship by other evidence is required only where there is no marriage certificate or there is doubt whether it was issued by a competent authority, and based on (g) that an appellant may prove her case by evidence of recognition of the marriage under the laws of the country where the marriage took place. He said that only if there were misgivings about recognition of the marriage in Ghana would any question of cross-checking by reference to recognition in Belgium arise. The judge resolved the issue by reference to the evidence about validity of the marriage in Ghana. The SSHD's grounds did not attack that point.
9. Mr Akohene also sought to support his case by reference to Article 24 on equal treatment of Union citizens, but I do not think that raises any issue which I need to resolve.
10. Mr Whitwell responded that *Kareem* could not be construed as submitted for the appellant, which would deprive the case of all significance.
11. I reserved my determination.

12. I prefer Mr Akohene's submissions on *Kareem*. There is no need to consider whether a marriage is recognised in the home state of the sponsor unless there is difficulty over whether it is recognised in the state where the marriage was contracted. In this case the judge resolved the latter point in the appellant's favour. The SSHD's grounds and submissions do not suggest that he erred in doing so. They assume that proof of recognition in the EU citizen's country is required in all cases. That is not what *Kareem* says. Absence of reference to *Kareem* in the determination is immaterial.
13. The judge does not say how he came to be referred to the unreported UT determination but at most this was to back up his finding that the statutory declaration was sufficient. The SSHD has not said that he intrinsically erred on that point, so this is also immaterial.
14. The determination of the First-tier Tribunal shall stand.

A handwritten signature in black ink, reading "Hugh Maclean". The signature is written in a cursive style with a large, stylized initial 'H'.

21 May 2014  
Judge of the Upper Tribunal