Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/38358/2013

THE IMMIGRATION ACTS

Heard at Field House
Determination Promulgated
On 29 July 2014 **On 7 August 2014**

Before

DESIGNATED TRIBUNAL JUDGE DIGNEY

Between

KWABENA NKETIA DARDOM

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the respondent: Mr Nath, Home Office Presenting Officer
For the appellant: Ms Okyere-Darko

DETERMINATION

1. The appellant, a citizen of Ghana, applied on 16 October 2012 for a residence card as confirmation of a right of residency in the United Kingdom. The right was claimed on the basis of the appellant's marriage to a German national exercising treaty rights in the United Kingdom. The

application was refused because it was not accepted that the documents relating to the marriage were genuine, it was not accepted that the parties were in a durable relationship and there was no evidence that the "wife" was exercising treaty rights in this country.

2. An appeal aginst the decision was dismissed. The judge concluded, in the light of the case of Kareem (Proxy marriages – EU law) [2014] UKUT 00024(IAC) that it was necessary where a proxy marriage is relied on, as is the case here, that the marriage is valid under the national law of the EEA citizen; in this case the law of Germany. The judge concluded that the appellant could not prove that the marriage was valid under German law and therefore the appellant could not rely on it for the present purposes.

3. It was also argued that the judge's findings on the durable nature of the relationship were flawed and it is said that the judge took into account irrelevant considerations in reaching this conclusion.

4. In granting permission and concluding that the ground as a whole raised an arguable issue, Judge Chohan said:

> In essence, the grounds submit that the judge failed to apply the principles as set out in the Tribunal decision in the case of Kareem (Proxy marriages – EU law) [2014] UKUT 00024(IAC). The grounds argue that the judge erred in finding that the proxy marriage was not valid in Germany, which was not required as a consideration; and reference is made to the judge's findings at paragraph 78 where it is stated that the proxy marriage may be one that may be regarded as valid in UK jurisdiction.

5. The case is set out in paragraphs 4 to 7 of the grounds. The argument is that this case falls under paragraph 68 (b)[1] of Kareem and not 68 (d). This is a case where there was a marriage certificate issued by the competent authorities in Ghana, and therefore the question of validity under German law does not arise.

6. The trouble with this agreement is that it has been dealt with in the recent reported Upper Tribunal case of TA and others (Kareem explained) Ghana [2014} UKUT 00316 (IAC). The case explains why the argument in that case, which is the same as that put forward in the grounds here, is misconceived. The head note of that case reads:

> Following the decision in Kareem (proxy marriages – EU law) [2014] UKUT 24, the determination of whether there is a marital relationship for the purposes of the Immigration (EEA) Regulations 2006 must always [underlined in the original] be

[1] Paragraph 68 is set out in the appendix.

> examined in accordance with the laws of the Member State from which the Union citizen obtains nationality.

7. Paragraph 20 of the determination reads:

> Given that which I set out above, it is difficult to see how the Upper Tribunal in Kareem could have been any clearer in its conclusion that when consideration is being given to whether an applicant has undertaken a valid marriage for the purposes of the 2006 Regulations, such consideration has to be assessed by reference to the laws of the legal system of the nationality of the relevant Union citizen. Mr Akohene's submissions to the contrary are entirely misconceived and are born out of a failure to read the determination in Kareem as a whole.

8. At the hearing Ms Okyere-Darko did not seek to argue that either Kareem or TA were wrongly decided but sought to argue that the marriage was valid under German law. She relied on a document headed International Marriages which was handed in at the earlier hearing. This document, which was last updated in 2003, is a very generalised statement about marriage and it is not clear what body produced it or what are the qualifications of the author. More to the point proxy marriages are not mentioned at all. Ms Okyere-Darko had to admit that the most one can say about the document is that it does not suggest that proxy marriages are incapable of being recognised by German law, but the document is certainly not evidence that they are. No judge could have accepted that Ghanaian proxy marriages are recognised in Germany on the strength of this document and in particular that this particular marriage would have been accepted. There is no error of law in the judge's conclusion in paragraph 77 of the determination that the appellant has not discharged the burden of establishing that the proxy marriage he entered into was recognised in Ghana

9. Ms Okyere-Darko also argued that the judge's conclusions on a durable relationship are flawed. It is said that the judge took into account irrelevant matters. I can see no error of law in either his reasoning or his conclusions on this point. The two points criticised, that some of the letters had the couple's previous address and that Noah's birth certificate had not been produced, where both matters that were generally relevant. It cannot be said that the judge gave these matters weight that they could not bear. The conclusion that the judge reached was clearly open to him on the evidence and his reasoning is clear and logical.

10. The original determination did not contain an error of law and shall stand.

The appeal is dismissed

Designated Judge Digney Judge of the Upper Tribunal 29 July 2014

APPENDIX

a. A person who is the spouse of an EEA national who is a qualified person in the United Kingdom can derive rights of free movement and residence if proof of the marital relationship is provided.

b. The production of a marriage certificate issued by a competent authority (that is, issued according to the registration laws of the country where the marriage took place) will usually be sufficient. If not in English (or Welsh in relation to proceedings in Wales), a certified translation of the marriage certificate will be required.

c. A document which calls itself a marriage certificate will not raise a presumption of the marriage it purports to record unless it has been issued by an authority with legal power to create or confirm the facts it attests.

d. In appeals where there is no such marriage certificate or where there is doubt that a marriage certificate has been issued by a competent authority, then the marital relationship may be proved by other evidence. This will require the Tribunal to determine whether a marriage was contracted.

e. In such an appeal, 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.

f. In all such situations, when resolving issues that arise because of conflicts of law, proper respect must be given to the qualified person's rights as provided by the European Treaties, including the right to marry and the rights of free movement and residence.

g. It should be assumed that, without independent and reliable evidence about the recognition of the marriage under the laws of the EEA country and/or the country where the marriage took place, the Tribunal is likely to be unable to find that sufficient evidence has been provided to discharge the burden of proof. Mere production of legal materials from the EEA country or country where the marriage took place will be insufficient evidence because they will rarely show how such law is understood or applied in those countries. Mere assertions as to the effect of such laws will, for similar reasons, carry no weight.