



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/45189/2013

THE IMMIGRATION ACTS

Heard at Field House
On 26th August 2014

Determination Promulgated
On 28th August 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

FASLAT SALAMI
(Anonymity Direction Not Made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Reinhold, instructed by Ronik Solicitors
For the Respondent: Mr S Avery, Home Office Presenting Officer

DETERMINATION AND REASONS

The Appellant

1. The appellant is a citizen of Ghana, born on 7th July 1983 and she made an application on 21st November 2012 for a residence card as confirmation of a right to

reside in the UK on the basis of a marriage or durable relationship with an Austrian (EEA) national Hajj Larry. This application was refused on 10th October 2013.

2. The respondent refused the appellant's application with reference to Regulation 7 of the EEA Regulations. The respondent alleged that the appellant had also failed to provide satisfactory evidence she was in a durable relationship with an EEA national in accordance with Regulation 8.
3. At the hearing Ms Rheinhold confirmed that the appellant was making no appeal further to Article 8.
4. The detailed refusal letter stated that the appellant had not provided evidence to demonstrate she had registered her customary marriage in accordance with the Customary Marriage and Divorce (Registration) Law 1985. Accordingly it was not legally recognised as valid in Ghana and thus could not be accepted as valid in the UK.
5. First-tier Tribunal Judge Sangha determined the matter on the papers on 31st January 2014 and issued a determination on 27th February 2014 allowing the appeal. The judge accepted that there was a valid customary marriage and the certificate of registration of marriage was genuine. However, following **Kareem (Proxy marriages EU law) Nigeria [2014] UKUT 24** an error of law was found in that determination and the matter was set down for a fresh hearing in the Upper Tribunal allowing the appellant to submit further evidence in relation to Austrian law and any further documentation.

The Hearing

6. Ms Reinhold pointed to the email dated 17th July 2014 from an official in the Austrian Embassy in Ghana. She submitted that the requirement was that the marriage was registered legally and the marriage which took place on 11th February 2012 was indeed registered and the subsequent letter from the Consular Section of the High Commission in London dated 17th December 2013 confirmed that the document provided by the appellant was signed by Bernard K B Quantson and that the competent authorities in Ghana had confirmed that the marriage was properly registered in accordance with the Customary Marriages and Divorce (Registration) Law 1985. The marriage was thus valid.
7. In the alternative the documentation showed that the appellant and her EEA sponsor Mr Hajj lived at the same address and that the Sky utility bill indicated that they had lived at the same address since 2012. They were in a durable relationship.
8. The appellant and Mr Hajj attended the hearing but there was no witness statement. She confirmed that she had entered the UK in 2004 on a visit visa which expired after six months. Since that time she had stayed in the country illegally.
9. Mr Avery submitted that there was no information from the Austrian Embassy regarding proxy marriages.

Conclusions

10. It is clear from paragraph 22 of **Kareem** that the question to be asked is whether the appellant is the spouse of a qualified person for the purposes of EU law and in that light it is important to seek to determine the legal system in which it is to be established whether the appellant was in a marital relationship. The question is whether, according to Austrian law, as the sponsor in this case is Austrian, the marriage would be regarded as having been celebrated in Ghana or in the UK and thus whether a proxy or customary marriage will be recognised in Austria.
11. **Kareem** confirms that there must be proof of the private international law of the relevant country, in this case Austria as to whether marriages in the form of proxy marriages are valid and such evidence will not only have to identify relevant legal provisions in that other country (Austria) but identify how they operate in practice. The legal system of the nationality of the Union citizen governs whether a marriage has been contracted **Kareem** [18].
12. **TA and Others (Kareem explained) Ghana** [2014] UKUT 00316 (IAC) confirms that 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 be examined in accordance with the laws of the Member State from which the Union citizen obtains nationality.
13. In this instance there was no evidence of the relevant (Austrian) foreign law. There was no examination of the law of the member state with regards proxy marriages, **Kareem** [17]. The appellant produced a fresh bundle of evidence under cover of a letter dated 18th August 2014 but the email dated 17th July 2014 from Hartmut Branstatter merely stated

“customary marriage in Ghana is legal and valid”

“...Christian marriages as well as Islamic marriages have to be ‘legalised’ by the registration office as customary marriage

And the appendix from 14 July:

“this kind of marriage has to be ‘legalised’ with an official marriage at the AMA (Accra Metropolitan Assembly)

14. This did not identify the status or title or expertise of the author of the email, the provisions of Austrian law and the relevant section or whether marriages in the form of proxy marriages are valid. In fact it appeared to indicate that there needed to be ‘an official marriage’. I am not persuaded that the requirements as identified in **Kareem** have been complied with. I do not accept that an email from someone merely stated to be an official person (albeit I accept he does appear to work for the Austrian Embassy) can satisfy the requirements for setting out the provisions of Austrian law in respect of valid marriages. No mention of proxy marriages was made at all.

15. As this is a fundamental point and in line with I find that the appeal must fail in respect of the validity of marriage further to the EEA Regulations.
16. I was asked to consider the matter with respect to durability of the relationship. This issue was raised in the reasons for refusal letter from the respondent dated 10th October 2013. Regulations 8(5) of the EEA Regulations 2006 establishes that extended family members encompass those who can show that they are in a durable relationship with an EEA national. The respondent stated that it would expect the appellant to demonstrate that she had been living here with her EEA national for at least 2 years although I find that there is no bright line.
17. As evidence of the relationship the appellant submitted to the respondent bank statements, 2 Sky documents and 3 photographs. No further evidence was submitted to the Tribunal. I can see that there was a Sky bill dated June 2012 but that is only one document to date the appellant at Mr Hajj's property in 2012. I can see that there are bank statements from May 2013 but these do not persuade me that the appellant is in a durable relationship with the sponsor merely that they live at the same address.
18. Despite having given the appellant the opportunity of an adjournment no witness statement from either the appellant or the sponsor was tendered. I appreciate that they were at court together but in view of the sparsity of the evidence provided and the time available to the appellant to obtain such evidence I am not persuaded that they are in a relationship akin to marriage or one which fulfils the requirements.
19. Ms Rheinhold quoted from the Secretary of State's Guidance notes regarding evidence to be provided and although I can accept that bank statements were provided which located both the appellant and the sponsor at the same address in Prospect Hill in Walthamstow there was no evidence of them having any joint accounts for example for any utility.
20. I can accept that the appellant have purported to produce documentation of a marriage in Ghana but this merely reflects a series of letters from officials. There was a statutory declaration from the said parents of the appellant and sponsor but no further witness statements. Although the statutory declaration stated the address of the appellant and sponsor as being Walthamstow without further supporting evidence I am not persuaded that much weight can be attached to that document. There was no other independent information about the deponents of the statutory declarations made on 18th May 2013 and 25th November 2013 save that they were the claimed parents of the appellant and sponsor. A documentary trail of confirmation of signatures of officials in Ghana does not shed further light on who made those declarations or the process of identifying those deponents.

21. The dearth of evidence and the nature of evidence produced overall does not persuade me that there is a durable relationship for the purposes of the EEA Regulations.

Order

The appeal of Ms Salami is dismissed

Signed

Date 26th August 2014

Deputy Upper Tribunal Judge Rimington