



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/50393/2013**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On October 28, 2014**

**Decision & Reasons
Promulgated
On October 30, 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR JOHN APPIAH

(No direction for anonymity made)

Respondent

Representation:

For the Appellant: Mr Tarlow (Home Office Presenting Officer)

For the Respondent: Mr Akahao (Legal representative)

DETERMINATION AND REASONS

1. Whereas the respondent is the appealing party, I shall, in the interests of convenience and consistency, replicate the nomenclature of the decision at first instance.

2. The appellant, born December 21, 1957 is a citizen of Ghana. The appellant claimed to have entered the United Kingdom on December 22, 2004 and in December 2010 he met the sponsor, Gifty Apoku Asiamah. They went through a proxy marriage on May 5, 2011 and it was registered on August 23, 2012. His sponsor is an EEA national exercising treaty rights in the United Kingdom. He applied for a residence card based on his marriage.
3. The respondent refused his application on November 17, 2013.
4. On December 3, 2013 the appellant appealed under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 and Regulation 26 of the Immigration (European Economic Area) Regulations 2006 (hereinafter called the 2006 Regulations) arguing the application should have been allowed.
5. The matter was listed before Judge of the First-tier Tribunal Bart-Stewart (hereinafter referred to as “the FtTJ”) on June 16, 2014. In a determination promulgated on July 14, 2014 she found the marriage was a valid marriage or in the alternative she found the parties were in a durable relationship and consequently met the Rules.
6. The respondent appealed that decision on July 21, 2014. Permission to appeal was granted by Judge of the First-tier Tribunal Hollingsworth on September 11, 2014. He found the FtTJ may have erred by not following the guidance set out in Kareem (proxy marriages-EU law) [2014] UKUT 24 and TA and others (Kareem explained) Ghana [2014] UKUT 316. .
7. The appellant and sponsor were in attendance at the hearing.

PRELIMINARY ISSUES

8. Mr Akahao accepted the appellant could not show a valid marriage but maintained there was no error in law because the FtTJ had, in the alternative, found the appellant was in a durable relationship and therefore was entitled to his residence card under Regulation 17 of the 2006 Regulations because he was a family member.
9. Mr Tarlow sought permission to challenge the FtTJ’s finding on durable relationship but I refused him permission. The FtTJ had considered the evidence and had made specific findings on this. The time for challenging those findings was when appeal grounds were lodged. The FtTJ was satisfied and gave reasons for accepting the relationship.

10. In the circumstances Mr Tarlow had no further submissions.

ASSESSMENT OF ERROR IN LAW.

11. Both parties agreed the FtTJ could not allow this appeal on the basis of the marriage. If that was the only basis the appeal was allowed then I would simply remake the decision and dismiss the appeal. However, the FtTJ set out in paragraphs [9] and [10] the evidence and in paragraph [18] he concluded-

“I am satisfied that even if the parties had not discharged the burden of proof with regard to showing they had entered into a customary marriage, on the balance of probabilities the parties have lived together in a durable relationship since 2011 as stated in their respective evidence. There is no suggestion in the refusal letter or the submissions at the hearing that the parties were not living together for at least since the marriage over two years ago.”

12. I am satisfied the FtTJ allowed this appeal, in the alternative, on that basis and consequently there is no material error. The appeal was allowed on the basis he satisfied Regulation 17 albeit not for the reasons the application was originally made.

DECISION

13. There is no material error of law and the decision stands.
14. Under Rule 14(1) The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) the appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. No order has been made and no request for an order was submitted to me.

Signed:

Dated: **October 30, 2014**

Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT

I reverse the fee award because this appeal was not allowed on the basis it was claimed but was granted following oral evidence. In the circumstances a fee award is not appropriate.

Signed:

Dated: **October 30, 2014**

Deputy Upper Tribunal Judge Alis