



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

Appeal Number: IA/51555/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 12 June 2014**

**Determination**

**Promulgated**

**On 27 June 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE GIBB**

**Between**

**SAMUEL SERBEH  
(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr P Saini, Counsel, instructed by Michael & Co Legal Services

For the Respondent: Mr T Melvin, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant is a citizen of Ghana. He came to the UK as a visitor in 2004, and subsequently overstayed. An application for leave to remain on compassionate grounds was refused in 2007, and an appeal against that

refusal was dismissed in the same year. The appellant remained in the UK, as an overstayer, and subsequently made an application for an EEA residence card based on his marriage to a Dutch national. This application was refused on 25 November 2013. The appellant opted for a paper determination, and his appeal was dismissed by Judge of the First-tier Tribunal Robson, in a determination promulgated on 25 March 2014.

2. Permission to appeal was granted by Designated Judge David Taylor, on 2 May 2014. The decision contained the following:

“Although the grounds do little more than disagree with the judge’s decision, it is apparent that the judge failed to take any account of the most recent Upper Tribunal decision on proxy marriages involving an EEA citizen, namely **Kareem (Proxy Marriages - EU Law) [2014] UKUT 00024**. That case must be considered in detail in the context of the facts of this appellant’s case at any oral hearing of the appeal.”

3. At the error of law hearing I heard submissions from both sides. I was provided with a copy of the **Kareem** decision. Mr Melvin, for the respondent, produced written submissions.
4. Mr Saini, for the appellant, rested his submissions on headnote (b) of the **Kareem** case, particularly the observation that the production of a marriage certificate issued by a competent authority will ‘usually be sufficient’. It was therefore argued that the judge had erred in law in not regarding the customary marriage certificate as raising a presumption that the couple were married. Mr Melvin, for the respondent submitted, in essence, that the judge was entitled to make the findings that he did at paragraphs 20 to 24, and also those at paragraphs 26 to 27 in relation to the lack of evidence for a durable relationship (if the couple were not found to be legally married).

### **Decision and Reasons**

5. I have decided that there was no material error of law in the determination, and that the judge’s decision dismissing the appeal remains undisturbed. Any consideration of the **Kareem** case would have made no difference to the negative outcome.
6. The **Kareem** decision has introduced an additional element to be considered, namely the legal system of the nationality of the Union citizen. In this case, as in the **Kareem** case, that is the Dutch civil code.
7. The order of things, however, still starts with considering the law of the country in which the marriage was celebrated. In order to be successful the appellant would therefore have to show that the marriage was conducted in a way that would make it valid in Ghana. Under **Kareem** it would then be necessary to go on to look at the question of whether the marriage would be recognised under the Dutch civil code.

8. In this appeal the judge concluded that the documentary evidence did not establish that the relevant legal requirements had been met for a valid proxy marriage in Ghana. As noted by the judge granting permission the grounds disagree with that decision, but in my view it cannot be said that those were findings that were not open to the judge on the evidence before him.
9. I do not accept the submission as to the meaning of the headnote in **Kareem**. I accept that there is some room for ambiguity, but the detail of the judgment makes it clear that the case is not setting up a presumption in the way suggested. In any event the document produced in this appeal appears to be one registering a customary marriage. It is not a marriage certificate in the sense of a document issued by the civil authority that has conducted the marriage. On that basis also the attempt to use the comments in headnote (b) of Kareem appears to me to be wide of the mark.
10. The more detailed submissions as to the Dutch civil code are therefore addressing an issue that does not arise. If the judge was entitled to find, on the evidence before him, that the customary marriage did not meet the requirements for validity in Ghana, then any additional argument that it would be recognised under the Dutch civil code would fail at the first hurdle, because the marriage could not be shown to be valid under the law of the state where it took place.
11. For these reasons I have decided that the judge's decision in this appeal did not involve an error of law that was material to the outcome. Even if the **Kareem** case had been considered it could have made no difference.
12. It was not suggested that there was any need for anonymity in this appeal, and I make no such order. The appeal having been dismissed there can be no question of any fee award.

### **Decision**

13. No material error of law having been found the judge's decision dismissing the appeal remains undisturbed.
14. The appeal to the Upper Tribunal is dismissed.

Signed

Date

Deputy Upper Tribunal Judge Gibb