



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

Appeal Number: IA/51670/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 1<sup>st</sup> September 2014**

**Determination  
Promulgated  
On 29<sup>th</sup> September 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON**

**Between**

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

Appellant

**And**

**Mr Charles AMOAKO  
(Anonymity Direction Not Made)**

Respondent

**Representation:**

For the Appellant: MS Jaisri instructed by Crown & Mehira Solicitors  
For the Respondent: Mr, Home Office Presenting Officer

**DETERMINATION AND REASONS**

**The Appellant**

1. The application for permission to appeal was made by the Secretary of State but nonetheless I shall refer to the parties as they were termed before the First Tier Tribunal, that is Mr Amoako as the appellant and The Secretary of State as the respondent.

2. The appellant is a citizen of Ghana born on 1<sup>st</sup> January 1975, and he made an application for a residence card as confirmation of a right to reside in the UK on the basis of a marriage or durable relationship with a Belgian and EEA national.
3. The respondent refused the appellant's application with reference to Regulation 7 of the EEA Regulations on 20<sup>th</sup> November 2013. 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.
4. First-tier Tribunal Judge Maxwell determined the matter on 22<sup>nd</sup> May 2014 and allowed the appeal on 28<sup>th</sup> May 2014. The judge accepted that there was a valid customary marriage and the certificate of registration of marriage was genuine. He found that the appellant had produced a letter from the Ghanaian High Commission dated 22<sup>nd</sup> January 2014 which stated that the competent authorities in Ghana had confirmed that the marriage was properly registered in accordance with the Customary Marriage and Divorce (Registration) Law 1985 and the Amendment Law 1991.
5. The Secretary of State applied for Permission to Appeal on the basis that the judge had failed to follow **Kareem (Proxy marriages EU law) Nigeria [2014] UKUT 24** and thus there was an error of law.
6. There was no finding that any evidence of the relevant foreign law was provided by the appellant.

### **The Hearing**

7. Mr Tufan submitted that the judge had scant regard to **Kareem** and the determination was very short. **Kareem** was promulgated by the date the judge considered the appeal and this should have been followed. **TA and Others (Kareem explained) Ghana [2014] UKUT 316 (IAC)** confirmed that evidence in relation to foreign law should be provided for a proxy marriage of an EEA national. Indeed Mr Jaisiri confirmed that he raised **Kareem** with the judge at the First Tier Tribunal hearing. He argued that if he were not persuaded the certificate was issued by a competent authority *then* the EEA national's country's laws should be considered with respect a proxy marriage.
8. Mr Jaisiri confirmed that he raised **Kareem** with the judge but that his failure to follow **Kareem** was not an error of law. Only if the judge were satisfied that the marriage certificate was not issued by a competent authority need he go on to consider the matter of whether the sponsor national's country permitted proxy marriages.

### **Conclusions**

9. 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 fundamental question was whether, in that case, according to *Austrian* law, the marriage could be regarded as having been celebrated in Ghana and thus whether a proxy or customary marriage would be recognised in Austria. In this instance the relevant laws are those of Belgium.
10. **Kareem** confirms that there must be proof of the private international law of the relevant country, in this case Belgium 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 (Belgium) 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].
11. **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.
12. In this instance there was no evidence of the relevant foreign law. There was no examination of the law of the member state with regards proxy marriages, **Kareem** [17]. I do not accept that the issue of the law of Belgium should come after a consideration of the documentation. The judge made an error of law and I set aside his determination and remake the decision.
13. No evidence was submitted in relation to the point regarding Belgium law and as fundamental point, I find that the appeal must fail in respect of the validity of marriage further to the EEA Regulations.
14. I was asked to consider the matter with respect to durability of the relationship. There was little evidence before me with regard this and as pointed out in the refusal letter of the respondent it is expected that the appellant should demonstrate he has been living with his EEA sponsor for two years. This refusal pointed out that the appellant had provided no evidence that he resided together was a couple at the same address prior to the date of his customary marriage certificate and one scanned copy of a bill from Sky was insufficient. No further evidence was provided to me despite the appellant having had nearly 10 months notice (from the date of decision) that this might be required. Indeed Mr Jaisiri himself acknowledged the paucity of evidence and although he did not withdraw the application indicated that the appellant would have to make a fresh application.

15. 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.
16. For the reasons given above I find an error of law in the determination of Judge Maxwell and set aside his determination. I remake that determination and dismiss the appeal under Regulation 7 and Regulation 8(5) of the EEA Regulations on the basis of the reasoning above.
17. At the outset I note no decision to remove the appellant has been made. That said, I find no family life has been established and even if the appellant has established a right to a private life that is precarious. He entered illegally in only 2011.
18. The appellant cannot succeed under paragraph 276 ADE as he has not been living in the UK for twenty years and I do not accept that he has lost cultural ties with Ghana or there are significant obstacles to his reintegration in Ghana. He has relations in Ghana whom he claimed attended his proxy marriage ceremony and has spent the majority of his life in Ghana. There are no arguably good grounds for considering the matter outside the Immigration Rules **Shahzad (Art 8: legitimate aim)** [2014] UKUT 00085 (IAC).
19. Following the **Razgar v SSHD [2004] UKHL 27** principles, I do not accept that he has established a right to a family life. Even if he had established a private life and I note that the threshold is low, the refusal is in accordance with the law and necessary for the rights and freedoms of others through the maintenance of immigration control.
20. I give weight to Section 117 of the Nationality Immigration and Asylum Act and note that this appellant entered the UK illegally, has remained in the UK illegally and appears to have worked illegally. Further to **Huang v SSHD [2007] UKHL 11** I did not find that the appellant's private life had been prejudiced in a manner sufficiently serious to outweigh the respondent's decision.

### **Order**

The appeal of Mr Amoako is dismissed under the EEA Regulations and on Human Rights grounds.

Signed  
2014

Date 25<sup>th</sup> September

Deputy Upper Tribunal Judge Rimmington