



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

Appeal Number: IA/00418/2014

THE IMMIGRATION ACTS

Heard at Field House

Decision and Reasons

Promulgated

On 13 August 2015

On 14 September 2015

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL ARCHER

Between

EUGENIA ATAA AFJEI

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Nath, Senior Home Office Presenting Officer

For the Respondent: Mr S Sharma, Counsel, instructed by Justice and Law solicitors

DECISION AND REASONS

1. This appeal is not subject to an anonymity order by the First-tier Tribunal pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. Neither party has invited me to make an anonymity order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) and I have not done so.
2. The appellant (hereafter the Secretary of State) appeals against the decision of the First-tier Tribunal (Judge Clayton) allowing the respondent's

appeal against a decision taken on 13 December 2013 to refuse a residence card under the Immigration (EEA) Regulations 2006 (“the 2006 Regulations”) as confirmation of being the spouse of an EEA national exercising treaty rights in the UK.

Introduction

3. The respondent entered the UK on a working holiday visa valid from 20 December 2005 to 20 December 2007. On 12 December 2007 she sought further leave to remain in the UK as a student but that was refused on 10 January 2008 with no right of appeal. On 28 October 2013 the respondent applied for a residence card.
4. The Secretary of State disputed the validity of the proxy marriage in Ghana, whether the relationship between the respondent and the EEA sponsor was genuine and the credibility of the EEA sponsor as to whether he was genuinely working in the UK. The application was therefore refused.

The Appeal

5. The respondent appealed to the First-tier Tribunal and attended an oral hearing at Taylor House on 2 March 2015. She was represented by Mr N Garrod, Counsel. The First-tier Tribunal found that the respondent and the EEA sponsor had a genuine subsisting relationship, a valid proxy marriage did take place in Ghana and the EEA sponsor is a Belgian citizen who came to the UK to work and was exercising treaty rights in the UK. The appeal was allowed.

The Appeal to the Upper Tribunal

6. The Secretary of State sought permission to appeal to the Upper Tribunal on the basis that the First-tier Tribunal had erred in law because there was no finding that the proxy marriage would be recognised under Belgian law, the judge gave no reasons for the finding that the EEA sponsor was in employment in the UK despite the concerns of the Secretary of State.
7. Permission to appeal was granted by First-tier Tribunal Judge Nicholson on 22 June 2015 because there was no finding that the proxy marriage would be recognised under Belgian law, the judge gave no explanation for the finding that the EEA sponsor was working in the UK and it was arguable that the judge took the view at paragraph 38 of the decision that the EEA sponsor was exercising treaty rights simply because he came to the UK to work.
8. Thus, the appeal came before me

Discussion

9. Mr Nath relied upon the grounds of appeal.

10. Mr Sharma submitted that the judge did consider the marriage certificate plus the expert report. Such marriage is acceptable in Belgium. The respondent's bundle includes a copy of the register from Companies House showing that the employer company is genuine and there was ample evidence of work in the form of pay slips and BACS. The EEA sponsor did give evidence that he was paid in cash – that is how the case was dealt with on the day. It is not clear why the pay slips refer to BACS as the method of payment.
11. The Secretary of State did not accept that the proxy marriage in Ghana was valid. I have considered the findings of the Upper Tribunal in **Kareem (Proxy marriages - EU law) (2014) UKUT 00024 (IAC)**. The general principles from that case are as follows;
- (i) 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.
 - (ii) 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.
 - (iii) 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.
 - (iv) 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.
 - (v) 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.
 - (vi) 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.
 - (vii) 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.

(viii) These remarks apply solely to the question of whether a person is a spouse for the purposes of EU law. It does not relate to other relationships that might be regarded as similar to marriage, such as civil partnerships or durable relationships.

12. In this case, the judge gave reasons at paragraphs 35-37 for finding that as at the date of application the parties were validly married according to Ghanaian customary law. However, there is no finding that the marriage would be recognised under Belgian law. That is a material error of law in light of **Kareem**.
13. The Secretary of State raised clear issues about the claim that the EEA sponsor was working including discrepancies in the pay slips and the fact that the EEA sponsor claimed to be paid in cash even though the pay slips said he was paid by BACS. I find that the reasons given by the judge at paragraph 38 are inadequate because the contested matters of evidence are simply not addressed. The judge merely stated that *"I accept the respondent's submission that there was a lack of clarity concerning his employment but nevertheless on a balance of probabilities I accept that he did come to the UK for the purpose of work and since that time has been exercising treaty rights"*. I find that the failure to give adequate reasons is a further material error of law.
14. Thus, the First-tier Tribunal's decision to allow the respondent's appeal under the 2006 Regulations involved the making of an error of law and its decision cannot stand.

Decision

15. Both representatives invited me to order a rehearing in the First-tier Tribunal if I set aside the judge's decision. Bearing in mind paragraph 7.2 of the *Senior President's Practice Statements* I consider that an appropriate course of action. However, the Secretary of State does not dispute all of the findings made by the judge and the following findings are preserved;
 - (i) The respondent and the EEA sponsor have a genuine subsisting relationship.
 - (ii) A valid proxy marriage did take place in Ghana and the respondent and the EEA sponsor are validly married according to Ghanaian customary law.
 - (iii) The EEA sponsor is a Belgian citizen and came to the UK for the purpose of work.
16. Consequently, I set aside the decision of the First-tier Tribunal. I order the appeal to be heard again in the First-Tier Tribunal to be determined by a judge other than the previous First-tier judge.

Signed 

Date 12 September 2015

Judge Archer
Deputy Judge of the Upper Tribunal