



IAC-AH-V1

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

Appeal Number: IA/17045/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 4th November 2014
Re made 25.4.2015**

**Decision & Reasons Promulgated
On 29th April 2015**

Before

DEPUTY JUDGE OF THE FIRST-TIER TRIBUNAL MS GA BLACK

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR MAXWELL SONU
(ANONYMITY DIRECTION NOT MADE)**

Claimant

Re making decision

Background

1. The Claimant was born on 15th February 1983 and is a citizen of Ghana.
2. The Secretary of State refused his application for a residence card under the Immigration (EEA) Regulations 2006 with reference to Regulations 7 and 8. The Claimant failed to provide evidence to show that the proxy marriage in Ghana was lawful according to Ghanaian law (as the parties needed to show that they were of Ghanaian descent), that the statutory declaration was defective and that the guidelines in **Kareem (Proxy marriages- EU law) [2014] UKUT 00024 (IAC)** were not met. There was insufficient evidence of cohabitation to show the parties were in a durable relationship.

3. In a decision and reasons dated 13th November 2014, to which I refer and on which I rely, the Upper Tribunal found a material error of law and set aside the decision of the First-tier Tribunal. Directions were made for the parties to produce evidence and submissions with reference to the application of Regulation 8(5) Immigration EEA Regulations 2006 which remained to be determined. The Upper Tribunal found that the First -tier Tribunal should have gone on to consider the application of Regulation 8(5) as to the durability of the relationship. It made some positive comments in its determination [7] but did not give any proper consideration of the evidence or issue, and further the Secretary of State did not have the opportunity to consider the 153 page bundle of documents submitted for the hearing.

Consideration of Regulation 8(5)

4. Pursuant to the directions the Claimant has produced the original bundle of evidence together with photographs, a letter confirming pregnancy, witness statements from friends and neighbours, utility bills, the child's birth certificate, and documents for employment and wage slips. The Secretary of State did not respond to the directions made and has not to date served any written submissions. I have in mind that at the error of law hearing there was no challenge by the Secretary of State to the fact that the Claimant's wife, who was pregnant at the First-tier hearing and had since given birth to their son, or that the relationship was genuine and subsisting. I find evidence to show that the parties have been living together and are in a genuine relationship, and that they now have a child together. I proceed to remake the decision by allowing the appeal under Regulation 8(5). I am satisfied on the evidence before me that the Claimant is in a durable relationship with his partner who is an EEA national exercising Treaty Rights.

The matter remains to be considered by the Secretary of State under Regulation 17 EEA Regulation.

Notice of Decision

5. The appeal is allowed under Regulation 8(5) of the EEA Immigration Regulations.

No anonymity direction is made.

Signed

Date 25.4.2015

Judge GA Black
Deputy Judge of the Upper Tribunal