



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

Appeal Number: IA/19659/2014

THE IMMIGRATION ACTS

Heard at: Manchester

**Determination
Promulgated**

On: 19th December 2014

On 11th March 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE BRUCE

Between

Secretary of State for the Home Department

Appellant

and

**Victoria Ayele Kanlow Commodore
(no anonymity order made)**

Respondent

**For the Appellant:
Officer**

Mr Harrison, Senior Home Office Presenting

For the Respondent: Ms Darko, BWF Solicitors

DETERMINATION AND REASONS

1. The Respondent is a national of Ghana date of birth 4th June 1974. On the 12th August 2014 the First-tier Tribunal (Judge North) allowed her appeal against a decision to refuse to issue her with residence card confirming her right to reside in the UK as the family member of an EEA national. The Secretary of State now has permission to appeal against that decision.
2. The Respondent's case was that she was married to a Dutch national, Mr Alexandra Takyi. They had been married by proxy according to Ghanaian customary law. In the alternative it was her case that as she was in a durable relationship with Mr Takyi, her application fell to be considered under Regulation 8.

3. The Secretary of State did not accept that the marriage was valid, or that there was sufficient evidence to find that this was a durable relationship.
4. The First-tier Tribunal made findings of fact that this is a genuine relationship. Having regard to the expert evidence before it as well as the findings of the Upper Tribunal in NA (Customary Marriage and Divorce – Evidence) Ghana [2009] UKAIT 00009, the First-tier Tribunal was satisfied that their proxy customary marriage was considered lawful in Ghana and the appeal was allowed on that basis.
5. The grounds of appeal are that the First-tier Tribunal failed to consider whether the proxy customary marriage was recognised by the Dutch authorities. In accordance with the Upper Tribunal decision in Kareem (proxy marriage - EU law) [2014] UKUT 24 applicants are required to show that their marriages are considered valid in the EEA country that they are claiming their free movement rights from.

Error of Law

6. For the Respondent Mr Darko accepted that the First-tier Tribunal has failed to address the Kareem point, and no findings have been made as to whether the Dutch authorities would recognise this marriage. The decision must to that extent be set aside, although the parties are in agreement that the findings of fact, that this marriage is recognised in Ghana and that it is a genuine durable relationship, must stand.

The Re-Made Decision

7. Mr Darko relies on evidence that was all before the First-tier Tribunal. He has produced the extracts from the Dutch Civil Code that were before the Tribunal in Kareem. Although these *prima facie* indicate that such marriages are recognised, the Tribunal did not consider these bare materials sufficient to make a positive finding that Ghanaian proxy marriages are recognised by Dutch Law: there was for instance no direct evidence from the Dutch authorities or an expert about how these provisions were applied. In this case Mr Darko has a letter from the Dutch embassy in London. The writer, M Zegwaari confirms as follows:

“the recognition of marriages contracted outside the Netherlands is governed by articles 10:31 to 10:34 of the Dutch Civil Code. An English summary of the relevant parts is given in paragraphs 27 and 28 of the Upper Tribunals’ decision in Kareem (Proxy marriages – EU law) [2014] UKUT 00024 (IAC)”.

R Zegwaari adds that the embassy will only make a more formal declaration in respect of a specific marriage in the context of a passport application.

8. I am satisfied on a balance of probabilities that this marriage is recognised by the Dutch authorities. That it is so is set down in the Dutch Civil Code and that this is applied as it reads has been confirmed by R Zegwaari of the Dutch embassy.
9. In the alternative I note that the Secretary of State has not challenged the findings that this was a genuine relationship. This couple have been together in excess of two years. As such Ms Commodore also qualifies as an extended family member under Regulation 8. If the Secretary of State does not accept the evidence from the Dutch embassy she will no doubt wish to exercise her discretion under Regulation 17(4)(b) and consider whether to grant her a residence permit on that basis.

Decisions

10. I make no direction as to anonymity.
11. The decision of the First-tier Tribunal contains an error of law and it is set aside.
12. I remake the decision in the appeal as follows:
“the appeal is allowed with reference to the Immigration (EEA) Regulations 2006”

Deputy Upper Tribunal Judge Bruce
7th March 2015