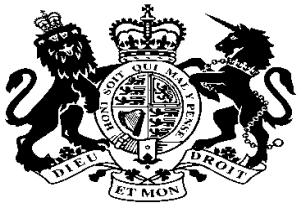

Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/23929/2014**

THE IMMIGRATION ACTS

Heard at Field House	**Decision Promulgated**
On 4th August 2015	**On 14th August 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

SECRETARY OF STATE FO THE HOME DEPARTMENT

Appellant

And

Mrs SHEITU IDDRIS
(Anonymity direction not made)

Respondent

Representation:

For the Appellant: Mr I Jarvis, Senior Home Office presenting officer.
For the Respondent: Mr S Unigwe (counsel) instructed by BWF, solicitors

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. The Secretary of State for the Home Department brings this appeal, but in order to avoid confusion, the parties are referred to as they were in the First Tier Tribunal.

This is an appeal by the Secretary of State against the decision of First Tier Tribunal Judge Hawden-Beal, promulgated on 29 October 2014, allowing the appellant's appeal under the Immigration (EEA) Regulations 2006.

Background

3 The appellant was born on 17 March 1987 and is a citizen of Ghana.

4 On 30 December 2013, the respondent refused the appellant's application for a residence card as confirmation of a right to reside in the UK as a family member of an EEA national. The appellant's husband is a Belgian national. The appellant married her husband in a Ghanaian proxy marriage ceremony. The respondent refused to accept that the appellant was a party to a valid marriage or that the appellant was in a durable relationship with an EEA national.

The Judge's Decision

5 The appellant appealed to the First Tier Tribunal. First Tier Tribunal Judge Hawden-Beal ("the judge") allowed the appellant's appeal, finding that the appellant's marriage was valid in both Ghanaian and Belgian law.

6 The respondent lodged grounds of appeal and, on 25 March 2015, First Tier Tribunal Judge Ievins gave permission to appeal, stating that it is arguable that the documentary evidence about validity of marriage in Belgium may have been misinterpreted.

The Hearing

7 Mr Jarvis for the respondent submitted that the judge made a material error in law in the assessment of the evidence relating to the recognition of a Ghanaian proxy marriage in Belgium. He relied on the cases of Kareem (Proxy marriages - EU law) [2014] UKUT 24(IAC) and TA and Others (Kareem explained) Ghana [2014] UKUT 00316 (IAC), and argued that the documentary evidence indicated that the Ghanaian proxy marriage required to be validated and investigated by Belgian authorities before it was recognised, and that has not happened in this case. He argued that there is no evidence to show that the Belgian authorities have recognised the appellant's marriage. He relied on headnote (g) in the case of Kareem and submitted that it is not enough to refer, in broad terms, to legislative provisions. What is required is specific evidence to show that the marriage is recognised in the relevant EEA country. There are no findings in relation to a durable relationship in terms of Regulation 8(5) of the 2006 Regulations. The Secretary of State does not accept that there is a durable relationship.

8 In reply, Mr Unigwe argued that the judge did not make an error in law. He relied on the headnote in TA and argued that the judge had examined the evidence of marriage in accordance with the law in the EEA state and had taken account of the extract of Belgium code of private international law reproduced at Annex L of the appellant's bundle. He referred to specific articles of that code and argued that the

evidence produced demonstrated that the appellant's Ghanaian proxy marriage is recognised in Belgian law, so that the conclusion arrived at by the judge is supported by the evidence that was before the judge.

Analysis

9 In Kareem (Proxy marriages - EU law) [2014] UKUT 24(IAC) it was held that (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

10 In TA and Others (Kareem explained) Ghana [2014] UKUT 00316 (IAC) it was held 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.

11 The focus in this case is entirely on whether or not the appellant's Ghanaian proxy marriage is recognised in Belgian law. The judge correctly directs himself at [17] of the decision, and at [21] of the decision, the judge finds that "*…the customary proxy marriage celebrated in Ghana is valid under Ghanaian law*". The challenge by the

respondent focuses on [22] and [23] of the decision. The focus is on the manner in which the judge treated a letter from the Belgian federal government service of Home Affairs, reproduced at L1 to L3 of the appellant's bundle.

12 At [22], the judge considers the Belgian code of international private law reproduced at Annex L of the appellant's bundle. It is there that the judge falls into an error of law which I find to be material. In this case, the appellant did not produce evidence that the Ghanaian proxy marriage was recognised in Belgian law. The appellant produced extracts of Belgian law and it was the judge who then embarked on his own exercise of interpretation of Belgian law. I turn to paragraph 68(g) of Kareem. This is a case where there has been "*mere production of legal materials from the EEA country…*" and, as established in Kareem, that is "*…insufficient evidence…*"

Conclusion

13 I therefore find that the judge's decision promulgated on 29 October 2014 contains a material error of law and must be set aside.

14 Parties are agreed that because the judge found that Regulation 7 of the 2006 Regulations was met, no fact finding exercise was carried out in relation to Regulation 8(5) of the 2006 Regulations. The respondent's decision was made on 30 December 2013. The appellant contracted a customary proxy marriage in Ghana on 7 June 2013.

Remittal to First- tier Tribunal

15. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25th of September 2012 the case may be remitted to the First Tier Tribunal if the Upper Tribunal is satisfied that:

> *(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or*
>
> *(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal*.

16. In this case I have determined that the case should be remitted because none of the findings of fact are to stand and the matter will be a complete re hearing.

17. I consequently remit the matter back to the First-tier Tribunal to be heard before any First-tier Immigration judge other than First Tier Tribunal Judge Hawden-Beal.

Decision

18. The making of the decision of the First-tier tribunal is tainted by a material error of law

19. I set aside the decision.

20. I remit the case to the First-tier Tribunal to be heard of new.

Signed Date 7th August 2015

Deputy Upper Tribunal Judge Doyle