Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/53429/2013

THE IMMIGRATION ACTS

Heard at Stoke-on-Trent, Bennett House	**Determination Promulgated**
On 18 December 2014	**On 19 March 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

MS OPHELIA ESI BEMPONG
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant/Respondent: Ms Rutherford of Counsel
For the Respondent/Appellant: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The present appeal is by the respondent in the First-tier Tribunal (FTT), who is the appellant before this Tribunal. I will refer to the parties by their designations before the FTT notwithstanding that their roles are reversed in the Upper Tribunal.

2. The appellant is a Ghanaian national who was born in March 1988.

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3. The appellant entered the UK on 1 June 2012 on a six month visit visa. On 17 May 2013 she submitted a residence card application. This was on the basis of her relationship with Andrew Kwesi Hasford, an Italian national born in December 1989. The appellant claims to have started a relationship with Mr Hasford which subsequently resulted in their marriage. Mr Hasford, who is believed to be from a Ghanaian background, had a job in the UK and is therefore entitled to exercise Treaty rights in the UK.

4. The respondent, having considered the application, refused to issue a residence card on 24 November 2013 because she regarded the relationship to be a marriage of convenience. The appellant had failed to produce a valid marriage certificate as evidence that she was related as claimed to an EEA national and having regard to the contents of Regulation 8 the Immigration (European Economic Area) Regulations 2006 ("2006 Regulations") the appellant had failed to prove a durable relationship with an EEA national such as would entitle her to stay in the UK under the 2006 Regulations.

Appeal Proceedings

5. The appellant appealed to the FTT. Her appeal came before Judge of the First-tier Tribunal Ferguson sitting in Birmingham ("the Immigration Judge"). He decided that the appellant was entitled to a residence card as confirmation of her right to reside in the UK as the spouse of an EEA national exercising Treaty rights. The judge accepted that a proxy marriage conducted in Ghana is "recognised as a valid marriage". The Immigration Judge also referred to the case of **CB Brazil [2008] UKAIT 00080**. That case, according to the Immigration Judge, confirmed there was no exception in immigration cases to the Rule that a marriage is governed by the domestic law of the country in which it takes place. In his view, provided the marriage was valid in Ghana this was sufficient for the respondent to recognise that marriage certificate and grant the necessary residence card. The Immigration Judge therefore allowed the appeal and made no anonymity direction or fee award.

6. The respondent appeals. Judge of the First-tier Tribunal Easterman considered that the grounds were at least arguable having regard to the case of **Kareem (proxy marriages – EU law) [2014] UKUT 24**. That case was clear authority for the proposition that when a marriage certificate is issued by a competent authority in the country of marriage there was an additional requirement that an applicant had to show that the marriage was valid and recognised in the country of the EEA state from which the marriage partner comes. In this case the marriage partner, i.e. the sponsor, was an Italian national who claimed to be exercising Treaty rights in the UK. He therefore had to demonstrate a valid form of document recognising that the validity of the marriage in Italy before a residence card could be issued. This important principle was reinforced by the case before the Upper Tribunal of **TA (Kareem explained) Ghana [2014] UKUT 00316 (IAC)**. This was a matter therefore that required proper consideration by the Upper Tribunal.

The Hearing before the Upper Tribunal

7. I heard oral submissions by both representatives. The respondent relied on the grounds of appeal. These relied on the case of **Kareem** and stated that there was no valid marriage recognised in the UK. The grounds also pointed out that the Immigration Judge had failed to reach a conclusion as to the "durable relationship" issue, although that "matter was clearly in play". The respondent sought a reversal of the decision and if necessary a rehearing to determine the durability of the relationship.

8. Ms Rutherford, who appeared for the appellant, accepted that the Immigration Judge had not dealt fully with the issue of the validity of the marriage in Italy but the parties were living at the same address and new evidence was available to establish this. She therefore submitted that there was a durable relationship between the sponsor and the appellant.

9. At the end of the hearing I indicated my decision which was to find a material error of law in the decision of the FTT on the basis that the Immigration Judge had not considered the case of **Kareem** or reached any, any adequate conclusions, on the issue of the extent of the durable relationship between the appellant and the sponsor. I indicated that I would re-make the decision leaving in place the original fact-findings of the Immigration Judge, which were not impugned. I also indicated that I would take account of the new documents submitted to support the durable relationship before reaching a conclusion on that point. Mr McVeety did not object to me taking this course.

10. I now turn to consider the substantive merits of the appellant's case that she qualified for a residence card either on the basis of her marriage to Mr Hasford or, in the alternative, that she was in a durable relationship with the sponsor, an EEA national, so as to qualify as an "extended family member" under Regulation 8 of the 2006 Regulations.

My Conclusions

11. The appellant had the burden of showing that she was a family member of an EEA national who was exercising treaty rights in the UK or that she was an "extended family member". Regulation 7, which deals with family members, requires only that the appellant is the sponsor's "spouse". However, it has been established in the case of **Kareem** and the case of **TA** that the marital relationship recognised by the 2006 Regulations had been recognised under the laws of the member state from which the EEA citizen obtained his nationality. The issue of whether the appellant was in a durable relationship with an EEA national within the meaning of Regulation 8 of the 2006 Regulations was an issue of fact to be determined at the date of the hearing before the First-tier Tribunal.

12. The only documents relating to the marriage between the appellant and the sponsor before the First-tier Tribunal confirmed the existence of a

customary marriage between them recognised in Ghana. No documents were produced to confirm that the marriage was recognised in Italy. There are peripheral documents about Italian marriage law but nothing that would satisfy the **Kareem** principle. Ms Rutherford did not seriously dissent from the view that this case could not succeed under Regulation 7 because the appellant had not demonstrated that she was married to the sponsor and that that marriage was recognised by the laws of Italy.

13. The position in relation to Regulation 8 needs revisiting to reflect the recent documentation.

14. Unfortunately, the evidence of the parties were in a "durable relationship" is lacking. They had a child together (K born in 2014). However, at the time of the appellant's application she claims to have lived with the sponsor at a certain address. This is also the address on the marriage certificate from Ghana in March 2013. There are several documents which refer to the sponsor living at that address but none showing the appellant and the sponsor as being resident at that address. An interview was conducted with both the appellant and the sponsor on 22nd November 2013. There were discrepancies in the two accounts given in interview. For example in describing the previous day the appellant said that they had eaten their evening meal at 6, whereas the sponsor said it had been at "around 7 or 8". This is something one would have expected them to remember from the previous day. A full list of these inconsistencies and discrepancies is contained in the respondent's reasons for refusal letter dated 24th November 2013.

15. Several additional documents were submitted at the hearing on 25th June 2014. The appellant and the sponsor claim to have cohabited at a second address in a nearby town. They include a tenancy agreement dated 3 December 2013 within those additional documents. However, this document does not have many of the hallmarks of a modern private sector tenancy agreement. It does refer to the rent payable, but it refers to "nil" deposit being payable, which is highly unusual. It refers to the tenancy being a "controlled" tenancy in clause 1.10 but controlled tenancies as such were abolished in 1989. Unfortunately for the appellant, the documents which post-date the tenancy agreement in 2013, such as the NHS letters which were submitted at the hearing before the Upper Tribunal do not refer to the appellant as living at the address on the tenancy agreement. Again, there do not appear to be any documents which show that both the appellant and the sponsor were living at the same address. For example a TV licence renewal notice refers to the appellant as living at a third address. The photographs produced do not demonstrate a durable relationship but can easily be taken solely for that purpose. Nor does the single birthday card, which was handed in at the Upper Tribunal hearing, help to show a durable relationship.

16. In the circumstances I find that the appellant has not discharged the burden which rests on her of showing that the relationship between her and the sponsor was a durable one. It seems much more likely that the relationship was a "marriage of convenience" as the respondent suspects.

It follows that the appellant has failed to satisfy either the requirements of Regulation 7 or the requirements of Regulation 8 of the 2006 Regulations.

My Decision

17. In all the circumstances I am satisfied that the respondent reached the correct decision. Having found a material error of law in the decision of the First-tier Tribunal I set aside that decision and substitute the decision of this Tribunal. The appeal before me by the respondent is allowed. I substitute my decision which is that the appeal against the decision of the respondent to refuse a residence card is dismissed.

18. There is no application before me and there was no application before the FTT for an anonymity direction and I make no such direction.

19. The Immigration Judge did not make any fee award.

Signed Dated **17 March 2015**

Deputy Upper Tribunal Judge Hanbury