



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

Appeal Number: IA/28043/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 8<sup>th</sup> May 2017**

**Decision & Reasons Promulgated  
On 17<sup>th</sup> May 2017**

**Before**

**UPPER TRIBUNAL JUDGE RIMINGTON**

**Between**

**MR MICHAEL KWAME AMPONSAH  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr K Siaw instructed by KIP Oplex

For the Respondent: Mr S Kotas, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, a citizen of Ghana, born on 24<sup>th</sup> April 1971, appealed the decision of First-tier Tribunal Judge J K Swaney dated 21<sup>st</sup> September 2016 dismissing the appellant's appeal against the Secretary of State's decision of 23<sup>rd</sup> January 2015 to refuse to issue him with a residence permit

pursuant to the Immigration (European Economic Area) Regulations 2006 (the EEA Regulations).

2. The appellant applied for a residence card as the spouse of an EEA national pursuant to Regulation 7 of the EEA Regulations on 3<sup>rd</sup> January 2015.

#### Grounds for Permission to Appeal

3. The grounds of appeal were granted on the basis that the judge materially erred in the light of **Awuku v Secretary of State for the Home Department [2016] EWCA Civ 1303**.
4. The grounds for permission to appeal noted that the respondent accepted that the marriage certificate was legalised by the Spanish authorities in Accra. All parties including the Immigration Judge accepted that the marriage certificate was legalised by the Spanish authorities and therefore there was a statutory presumption that the marriage certificate was a document which the Spanish authorities had verified and endorsed. The Spanish authorities accepted the marriage certificate as evidence of marriage between the appellant and his sponsor.
5. The judge erred in failing to accept a document, which had been legalised by the Spanish authorities, should be treated in the same way that would have been accepted a marriage certificate issued by the United Kingdom authorities. This was discrimination and an error of law. Specifically the judge failed to give reasons why the legalisation of the marriage certificate by the Spanish authorities had no significance in law to him.

#### The Hearing

6. At the hearing before me Mr Kotas conceded that there had been an error of law, accepted that **Awuku** was now good law and that there was no reason why I should not make a decision in favour of the appellant and contrary to the conclusion of the First-tier Tribunal Judge.
7. Specifically at paragraph 19, which I preserve, the judge found that:  
*"I find on the balance of probabilities that the registrar of the Accra Metropolitan Assembly Marriage Registry is a competent authority that has the power to issue a marriage certificate. There is no suggestion that the marriage certificate is not genuine and I find on the balance of probabilities that it is".*
8. The judge from paragraph 20 of the decision onwards applied **Kareem (proxy marriages - EU law)** [2014] UKUT 24 and **TA and Others (Kareem explained) Ghana** [2014] UKUT 00316 (IAC). He noted that where a marriage certificate is issued by a competent authority in accordance with the registration laws of the country where the marriage took place, that will usually be sufficient but 'that was not the end of the

matter' and it needed to be held to be valid under Spanish law, Spain being the country of nationality of his wife.

9. The judge appeared to find at paragraph 22 that the issue was whether or not legalisation by the Spanish Embassy confirmed the marriage's validity under Spanish law.
10. In fact, the case law now confirms, paragraph 15 of **Awuku**, that in the law of England and Wales, the general rule is that the formal validity of a marriage is governed by the law of the country where the marriage was celebrated ("the *lex loci celebrationis*") and that the marriage celebrated in the mode or according to the rites or ceremonies required by the law of the country where the marriage takes place is as far as formal requisites go, valid. And further:

*"In general the law of a country where a marriage is solemnised must alone decide all questions relating to the validity of the ceremony by which the marriage is alleged to have been constituted ... A marriage by proxy will be treated as valid in England if recognised by the local law even if one of the parties is domiciled and resident in England and the power of attorney authorising the proxy to act is executed in England".*

It was also noted under **CB (Validity of marriage: proxy marriage) Brazil [2008] UKAIT 00080** the Upper Tribunal rejected a submission that different rules should be applied to the legal framework governing validity of marriage when the issue arose in the context of immigration law and that the Tribunal reaffirmed the formal validity of a marriage governed by the *lex loci celebrationis*. If Brazilian law recognised proxy marriages, the marriage of the appellant and his wife was valid under the law of England and Wales and as a consequence the relevant requirements of the EEA Regulations were met.

11. As such, the conclusions of **Kareem** and **TA (Kareem explained)** were considered to have attempted to create a new private international rule for the purposes of EU law and that the substantive law relating to marriage was outside EU competence and the formal validity of a marriage should be determined by the private international law *of the host state*, and in this case it would be Ghana. As such, the reasoning of the Tribunal in **Kareem** and **TA (Kareem)** was flawed.
12. It is clear in relation to the First-tier Tribunal decision that **Awuku** must be declaratory. **Kareem** was contrary to the freedom of movement and residence within the EU and did not apply.
13. I therefore set the decision of Judge Swaney aside, retaining and preserving the essential paragraphs at 19 in relation to the registration of the marriage by a competent authority, and I allow the appeal.

No anonymity direction is made.

Signed Helen Rimington

Date signed 15<sup>th</sup> May 2017

Upper Tribunal Judge Rimington

**TO THE RESPONDENT**  
**FEE AWARD**

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make no fee award because of the complexities involved in the decision and the declaratory nature of **Awuku**.

Signed

Date 15<sup>th</sup> May 2017

Upper Tribunal Judge Rimington