



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

Appeal Number: IA/00656/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 7 July 2014**

**Oral Determination
Promulgated
On 30 July 2014**

Before

UPPER TRIBUNAL JUDGE JORDAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

GERRAD AKOWUAH

Respondent

Representation:

For the Appellant: Mr L Tarlow, Senior Home Office Presenting Officer

For the Respondent: Mr E Anyene, Counsel instructed by Wellbeck Anin Solicitors

DETERMINATION AND REASONS

- 1.** This is the Secretary of State's appeal. I shall, however, refer to Mr Akowuah as the appellant as he was before the First-tier Tribunal. The appellant is a citizen of Ghana who was born on 10 June 1988. He entered the United Kingdom on 7 July 2008, on a visit visa, valid until 20 November 2008 and thereafter overstayed. He made an unsuccessful application for an EEA residence card on 9 October 2012. He then applied on 5 June 2013, once again for an EEA residence card, whereby he sought

confirmation that he was residing in the United Kingdom as a family member of an EEA national exercising Treaty rights in the United Kingdom. It was on the basis that he had gone through a proxy marriage which was in accordance with Ghanaian law and as such he was entitled to recognition of the fact that he was the spouse of a Union citizen, a citizen of Belgium, and thereby entitled to a right to remain in the United Kingdom.

2. There were a number of matters which were raised by way of challenge by the Secretary of State. Not only was the validity of the marriage challenged but also whether the appellant spouse was exercising Treaty rights in the United Kingdom and therefore came within the protection which is afforded under the Regulations and the Directive. The difficulty faced by the appellant emerges in the case of **Kareem (proxy marriages - EU law) [2014] UKUT 00024 (IAC)**. This was a decision that was made by the Tribunal in January 2014 and it therefore predates the decision of Judge Aziz which decision was promulgated on 23 April 2014 after consideration without a hearing which took place at Hatton Cross on 14 April 2014.
3. The position of European citizens is dealt with particularly in the summary provided in the italic words in these terms:

“(e) 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.

(g) 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.”

4. The consideration that was provided by the Tribunal in the case of **Kareem** was concerned with spouses’ rights of free movement and residence derived from a marriage having been contracted and depending upon it. In light of the connection between the rights of free movement and residence and the nationality laws of the member state the Tribunal concluded that in a situation where the marital relationship was disputed the question of whether there was a marital relationship had to be examined in accordance with the laws of the member state, in this case Belgium, and from which therefore that citizen derived his free movement rights. In paragraph 18 of the decision the Tribunal said:

“The same conclusion may readily be reached by a different route. Within EU law it is essential that Member States facilitate the free movement and residence rights of Union citizens and their spouses. This would not be achieved if it were left to a host Member State to decide whether a Union citizen has contracted a marriage. Different Member States would be able to reach different conclusions about the Union citizen’s marital status. This would leave Union citizens unclear as to whether their spouses could move freely with them; and might even mean that the Union citizen could move with greater freedom to one Member State (where the marriage would be recognised) than to another (where it might not be). Such difficulties would be contrary to fundamental EU law principles. Therefore, we perceive EU law as requiring the identification of the legal system in which a marriage is said to have been contracted in such a way as to ensure that the Union citizen’s marital status is not at risk of being differently determined by different Member States. Given the intrinsic link between nationality of a Member State and free movement rights, we conclude that the legal system of the nationality of the Union citizen must itself govern whether a marriage has been contracted.”

5. The contention made on behalf of the appellant in this appeal is that it is not necessary to look to the second stage in what is said to be a two-stage process where it has been accepted that the marriage has been validly performed in accordance with the law of the country where the marriage was celebrated. It is only where that remains in doubt that one needs to go on to consider whether it would be recognised in the country from which the spouse derives her European citizenship. In my judgment that is a misinterpretation of what is said in **Kareem** where it is clear that what is required is a pan-European recognition system of marriages which are conducted in another state outside the European Union so that there is a European-wide recognition of that marriage in order to enable the free movement rights of spouses to be properly put into effect. It would make no sense in my judgment if there were to be such a partial scheme as is suggested by the appellant in this appeal. Accordingly there was no proper consideration of what Belgian law thinks about this particular marriage and the case was doomed to fail. In those circumstances I apply **Kareem** and conclude that the application for a residence card had to be dismissed. In those circumstances I allow the Secretary of State’s appeal against the decision of First-tier Tribunal Judge Aziz who allowed the appeal under the EEA Regulations.

DECISION

The Judge made an error on a point of law and I substitute a determination allowing the Secretary of State’s appeal against the determination of the First-tier Tribunal Judge. I substitute a decision dismissing the appeal of Mr Akowuah on all the grounds advanced.

A handwritten signature in black ink, appearing to read 'AJ Jordan', with a long horizontal stroke extending to the right.

ANDREW JORDAN
JUDGE OF THE UPPER TRIBUNAL