



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/01726/2014**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at: Field House
On 29 August 2014**

**Determination
Promulgated
On 2 September 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

RACHEAL AMEYAA

Respondent

Representation:

For the Appellant: Mr S Whitwell, Home Office Presenting Officer
For the Respondent: Mr J Wells, Maliks & Khan

DECISION AND DIRECTIONS

1. This is an appeal by the Secretary of State against the determination of First-tier Tribunal Judge Oliver in which he allowed the appeal of Ms Ameyaa, a citizen of Ghana, against the Secretary of State's decision to refuse to issue a residence card as confirmation of a right to reside in the

United Kingdom as the family member of an EEA national. I shall refer to Ms Ameyaa as the Applicant, although she was the Appellant in the proceedings below.

2. The Secretary of State's application for permission to appeal against the First-tier Tribunal Judge's decision was granted on 9 July 2014 by First-tier Tribunal Judge T R P Hollingworth.
3. At the hearing before me Mr Whitwell appeared for the Secretary of State and Mr Wells represented the Applicant. Mr Wells submitted a mother and baby discharge summary from the Luton & Dunstable delivery suite confirming the birth of the Applicant's daughter on 22 August 2014 and also an email from the French Consulate confirming that the Applicant's marriage could not be recognised by French law until registered in the French civil register.
4. Mr Wells said that it was accepted that the Applicant's marriage was not recognised as valid under French law and therefore that the Judge erred in law to the extent that he found the marriage to be valid. However despite it being considered and rejected in the refusal letter the Judge did not make any finding in respect of the durability of the Applicant's relationship with the sponsor. The decision in respect of durability could not be remade without hearing oral evidence from the Applicant. As she was not able to attend due to the birth of her child last week it was appropriate for an error of law to be found and the decision to allow the appeal set aside but for the matter to be remitted to the First-tier Tribunal so that oral evidence could be called.
5. Mr Whitwell on behalf of the Secretary of State agreed that in the circumstances this was the appropriate course particularly due to the fact that the grant of a registration certificate under regulation 16(5) is discretionary and the question of the Applicant's potentially adverse immigration history had been raised.

Error of law

6. The Applicant applied for a residence card as confirmation of a right to reside in the United Kingdom as the spouse of an EEA national exercising treaty rights. She claimed that having met in May 2012 she and her husband Gabriel Baffour, a French national, went through a customary marriage by proxy in Accra on 5 November 2012. The Secretary of State refused the application firstly by reference to regulation 7 of the Immigration (European Economic Area)

Regulations 2006 on the basis that it was not accepted that the proxy marriage was valid and secondly because it was not accepted that the Applicant was in a durable relationship by reference to regulation 8(5).

7. At the appeal hearing the First-tier Tribunal Judge properly directed himself to the authority of NA (Customary marriages and divorces - evidence) Ghana [2009] UKAIT 00009. However he failed to have regard to Kareem (Proxy marriages - EU law) [2014] UKUT 00024 (IAC). Had he done so he would have been bound to consider whether the marriage was valid according to the law of the EEA national's home country, in this case France. As it was the Judge heard oral evidence and found on the basis of that evidence and the documentation submitted that the marriage was valid without considering whether it was valid according to the law of the EEA national's home state. The failure to follow the guidance given in Kareem was an error of law. The fact that it was a material error is borne out by the evidence now submitted to the Tribunal by the Applicant confirming that the marriage, not having been entered into the French Civil Register, is not recognised as valid under French law. On this basis the decision to allow the appeal must be set aside.
8. Having set aside the decision it would be possible on the evidence that was before the First-tier Tribunal to remake the decision in respect of regulation 7 and inevitable in this respect that the appeal would be dismissed. However the Secretary of State's decision was not confined to regulation 7 but also made by reference to regulation 8 (5). Neither advocate was content for me to remake the decision in this respect without hearing oral evidence from the Applicant. It may seem apparent that the Applicant and Mr Baffour, who both gave evidence accepted by the First-tier Tribunal to the effect that they had been living together since July 2012 and that the Appellant was expecting their child, are in a durable relationship. Further given that the Appellant has now given birth to a child it may appear that there is further evidence of the durability of that relationship. Nevertheless it is the wish of the representatives that the durability of the relationship be evidenced further and, as pointed out by Mr Whitwell, the issue of residence documentation is discretionary and in these circumstances the Applicant's immigration history may also be a relevant factor in the consideration.
9. Due to the nature of the error of law and in particular the need to hear detailed oral evidence from the Applicant it is

appropriate for this matter to be remitted to the First-tier Tribunal for rehearing.

Conclusion

10. The decision of the First-tier Tribunal involved the making of an error of law for the reasons set out above.
11. I set aside the decision of the First-tier Tribunal and in accordance with the President's direction this matter is suitable for and should be remitted to the First-tier Tribunal.

Signed:

Date:

**J F W Phillips
Deputy Judge of the Upper Tribunal**