



IAC-FH-NL-V1

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

Appeal Number: IA/02313/2014

THE IMMIGRATION ACTS

Heard at Field House

**Decision and Reasons
Promulgated**

On 12 November 2014

On 24 November 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

AMMA OBIRI BRENYA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Owusu, a solicitor

For the Respondent: Mr Jarvis, Home Office Presenting Officer

DECISION AND REASONS FOR FINDING NO MATERIAL ERROR OF LAW

Introduction

1. In this appeal I will refer to the parties by their designation before the First Tier Tribunal even though those roles are reversed.
2. I have been taken to some case law in this matter, principally the case of **Kareem (Proxy marriages – EU law) [2014] UKUT 24 (Kareem)**, a decision of the Upper Tribunal. In that case Mr Ockelton, Vice-President, said that “there must be sufficient evidence in a claim under Regulation 7 of the EEA Regulations which deals with family members to show that

the marriage between the parties would be recognised within the country of the other spouse, in other words the non-UK national's nationality. Mere assertions were insufficient and they would not carry sufficient weight". I have also been referred to the case of **TA & Others (Kareem explained) Ghana [2014] UKUT 00316**. That was a decision of Mr O'Connor in June 2014 in which he said: "there must always be evidence that the marriage has been examined in accordance with the laws of the Member State for the union citizen concerned".

3. In this case the application, as I understand it, was for a residence card on two alternative bases. The appellant relied on both Regulation 7, which deals with "family members", including spouses and civil partners and Regulation 8(5) which deals with the partners of EEA nationals other than civil partners. Under the latter regulation the appellant had to prove to the decision maker that was in a durable relationship with an EEA national.
4. The conclusions of Immigration Judge Cohen (the Immigration Judge) were challenged on both bases. The grounds are succinctly drafted by Mr Jarvis's colleague, Anna Hill. They assert that **Kareem** had not been referred to by the Immigration Judge. It should have been. Furthermore, the decision that the appellant was an "extended family member" of an EEA national was reached without adequate findings on the durable nature of the relationship between the appellant and the sponsor.
5. I will deal with Article 8(5) first.

Whether the appellant was an "extended family member" of an EEA national?

6. The appellant described the nature of her relationship with Mr Oppong, her husband, in her witness statement. This is dealt with in the determination of the First-tier Tribunal (the FTT) at paragraphs 6 to 9. The appellant's evidence was unchallenged (see paragraph 7 of the determination). In particular, the Immigration Judge states in paragraph 7 that there was no cross-examination of the appellant. The Immigration Judge also heard oral evidence from the sponsor, who gave evidence in English. He adopted his witness statement as part of his evidence and relied on the documentation filed in support of the appeal. Ms Vatish, the Secretary of State's representative at that hearing, simply adopted the refusal and did not cross-examine or otherwise challenge any of the evidence. In the circumstances the Immigration Judge was entitled to conclude that sufficient evidence had been produced of a durable relationship and the assertion in the grounds of appeal that the Immigration Judge insufficient or inadequate findings for his conclusions that the appellant fulfilled the requirements of Regulation 8 (5) is not made out. I find there to be no material error of law in relation to that regulation.

Whether the appellant was a "family member" of an EEA national?

7. The second challenge under **Kareem** causes the Upper Tribunal a longer pause for thought. It is not clear that the Immigration Judge was referred to **Kareem** but he plainly should have been. For recognition of marriages conducted outside the EEA the requirements of Regulation 7 had to be fulfilled before the marriage to Mr Oppong could be recognised.
8. A document had been obtained from the Austrian Embassy in German and translated into English dated 7 March 2014. I am told by Mr Jarvis, who appears for the Secretary of State, that document was before the First-tier Tribunal. It states that, according to the laws of Austria, the sponsor's country of nationality in this case, the form of marriage celebrated by

these parties was recognised. It was according to Austrian law a form of marriage which would be accepted as sufficient. The Austrian Embassy representative went on to say the proof of whether the marriage took place and the form that it actually took place in are generally provided by the foreign marriage certificate. I am told this is not disputed. This was provided in the form of a letter from a firm of solicitors called Bernard Wiseman Family Solicitors who, I understand, have now changed their name to BWF Solicitors

Conclusions

9. There was an error in the determination of the First-tier Tribunal in failing to refer to **Kareem** or properly set out the law. However, having considered all the evidence before the FTT, I am satisfied that the error was not a material one having regard to that evidence. If that evidence is properly looked at it is sufficient to show that the appellant was indeed the spouse or civil partner of an EEA national, namely Mr Oppong. I am satisfied that the appellant was the spouse of an Austrian citizen and that the marriage that they went through under Ghanaian law, which was undisputed, was recognised according to the laws of Austria. In the circumstances, they qualified under Regulation 7 as well as Regulation 8 (5) of the EEA Regulations.

Decision

10. It is a matter for the Secretary of State to decide whether to grant a residence card or not but I have decided that there was no material error of law in the decision of the First-tier Tribunal and therefore the decision of the First-tier Tribunal to allow the appellant's appeal stands.

Signed

Date **21 November 2014**

Deputy Upper Tribunal Judge Hanbury