



**Upper Tribunal
(Immigration and Asylum Chamber)**
IA/02429/2014

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 3rd November 2014**

**Decision Promulgated
On 8th December 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**Ms Mercy Tetteh
(Anonymity Direction Not Made)**

Respondent

Representation:

For the Appellant: Mr S Kandola Home Office Presenting Officer
For the Respondent: Ms Mercy Tetteh.

DECISION AND REASONS

1. The application for permission to appeal was made by the respondent but for the purposes of this appeal I shall refer to the parties as they were described before the First Tier Tribunal.

2. The appellant is a citizen of Ghana and born on 12th December 1981 and she applied for a residence card as confirmation of a right to reside in the UK on the basis of her marriage or durable relationship with a French (EEA) national, Mr R Frimpong. This application was refused on 16th December 2013.
3. The respondent refused the appellant's application with reference to Regulation 7 of the EEA Regulations. The respondent alleged that the appellant had also failed to provide satisfactory evidence she was in a durable relationship with an EEA national in accordance with Regulation 8.
4. The detailed refusal letter stated that the appellant had not provided evidence to demonstrate she had registered her customary marriage in accordance with the Customary Marriage and Divorce (Registration) Law 1985. Accordingly it was not legally recognised as valid in Ghana and thus could not be accepted as valid in the UK.
5. First-tier Tribunal Judge Herbert determined the matter on 25th June 2014 and issued a determination on 30th July 2014 allowing the appeal. An application for permission to appeal by the respondent was granted by First Tier Tribunal Judge Chambers. The matter came before me.
6. Judge Herbert accepted that there was a valid customary marriage. The judge noted **Kareem (Proxy marriages EU law) Nigeria [2014] UKUT 24** and stated [8] that 'the production of a marriage certificate issued by a competent authority (that is issued according to the registration laws of the country where the marriage took place) would usually be sufficient'. He found the relevant customary law to be complied with was Ghanaian law and therefore the marriage was valid. I find this was an error of law as **Kareem** confirms that there must be proof of the private international law of the relevant country, in this case French law, as to whether marriages in the form of proxy marriages are valid and such evidence not only has to identify relevant legal provisions in that other country (France) but identify how they operate in practice. The legal system of the nationality of the Union citizen governs whether a marriage has been contracted **Kareem** [18].
7. **TA and Others (Kareem explained) Ghana [2014] UKUT 00316 (IAC)** confirms that following the decision in Kareem the determination of whether there is a marital relationship for the purposes of the Immigration (EEA) Regulations 2006 must always be examined in accordance with the laws of the Member State from which the Union citizen obtains nationality.

8. In this instance there was no evidence of the relevant (France) foreign law and the judge erred in law in allowing the appeal on this basis.
9. The appellant appeared in person before me and requested an adjournment. She and her then solicitors, Edward Marshall, were sent a notice of appeal 6th October 2014 at which point she instructed alternative solicitors. She states that she did not formally instruct the new solicitors until last Tuesday but she was aware of the hearing date when the notice was sent out. I find that the appellant had sufficient time within which to instruct other solicitors and for them to attend the hearing before me. Indeed the appellant had instructed solicitors for the hearing before the First Tier Tribunal but the relevant documentation, in respect of the relevant law, had not been produced. Appropriate directions had been issued by the Upper Tribunal with the relevant reminder further to Rule 15(2) of the Tribunal Procedure (Upper Tribunal) Procedure Rules 2008.
10. I find that there is an error of law in the determination of the First Tier Tribunal judge for the reasons explained above and I set aside that determination. I remake the decision with respect to the validity of the marriage and dismiss the appeal further to Regulation 7 for the reasons given above.
11. Nonetheless the judge failed to make findings with respect the relevant aspects of Regulation 8 and whether the appellant is in a durable relationship. On this basis alone I remit the matter back to the First Tier Tribunal for a fresh hearing. No documentation had been produced in relation to French law and proxy marriages either before the First Tier Tribunal or before me. The First Tier Tribunal Judge however made no findings in respect of the durable relationship.
12. The matter, however, in view of the nature and extent of the findings to be made, should be returned to the First Tier Tribunal for a hearing de novo in respect of Regulation 8 (durable relationship) alone.

Signed

Date 3rd November 2014

Deputy Upper Tribunal Judge Rimington