



IAC-FH-NL-V1

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

Appeal Number: IA/03389/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 30<sup>th</sup> October 2014**

**Determination  
Promulgated  
On 4<sup>th</sup> November 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MRS ANGELA ANIMA ODEI**

Respondent

**Representation:**

For the Appellant: Mr S Kandola, Home Office Presenting Officer  
For the Respondent: Ms F Shaw, Counsel instructed by Nasim & Company Solicitors

**DECISION AND REASONS  
EX TEMPORE JUDGMENT**

1. The Respondent is the Appellant in these proceedings but for ease of reference I shall refer to the parties as they were known at the First-tier

Tribunal. The Respondent appeals the decision of the First-tier Tribunal, Judge Elliman, promulgated on 11<sup>th</sup> August 2014 in which the judge allowed the Appellant's appeal against the refusal of the Respondent to issue her with a residence card as the family member of an EEA national under Regulation 7 of the Immigration (European Economic Area) Regulations 2006. The judge concluded, without reference to case law which is binding upon her, namely that of **Kareem (proxy marriages - EU law) [2014] UKUT 00024** and **TA & Others (Kareem explained) UKUT 00316**, also promulgated in 2014 so the point that in order for a proxy marriage to be valid it must be recognised in the EEA Sponsor's country of nationality. Judge Elliman considered the question of validity in the context of foreign law, in this case the country of locus in terms of the proxy marriage which was Ghana and failed to address the EEA national's legal framework of marriage. In that context the judge plainly fell into error. It was accepted by the Appellant's representative before me that the decision in respect of Regulation 7 could not stand as the evidence did not establish that there was in fact a valid marriage.

2. The judge's decision reveals a further error of law in that the Appellant raised a Ground of Appeal in the alternative which was that the Respondent's decision that she was not in a durable relationship with her EEA Sponsor ran contrary to the evidence. That ground was not determined by the judge, perhaps not surprisingly given the cognitive finding in respect of marriage. However, it remains an area of dispute which has not been litigated and the Appellant has not had the benefit of a hearing with regard to that factual dispute. The parties were in agreement before me that the matter should be remitted to the First-tier Tribunal for resolution of that dispute. That is a course of action which is appropriate as there are insufficient factual findings in the decision of the judge to allow me to re-make the decision and it is appropriate, given the extent and nature of the evidence to be tested that the Appellant should have her opportunity at the First-tier Tribunal.

Signed

Date

Deputy Upper Tribunal Judge Davidge

30<sup>th</sup> October 2014