



**Upper Tribunal  
(Immigration and Asylum Chamber)  
IA/28024/2013**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Determination  
Promulgated**

**On 22 July 2014**

**On 25 July 2014**

**Before**

**Deputy Upper Tribunal Judge MANUELL**

**Between**

**MR MARK OSEI MINTAH**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr B Owusu, Solicitor  
(BWF Solicitors)

For the Respondent: Mr T Wilding, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The Appellant appealed with permission granted on 6 May 2014 by First-tier Tribunal Judge Brunnen against the dismissal of his appeal seeking the issue of a residence card under regulation 7, alternatively regulation 8, of the Immigration (European Economic

Area) Regulations 2006 (as amended) (“the EEA Regulations”) by First-tier Tribunal Judge NMK Lawrence in a determination promulgated on 8 May 2014. The Appellant is a national of Ghana, born on 16 January 1975. He claimed that he was married by proxy to an EEA national with the right of permanent residence in the United Kingdom.

2. Judge Lawrence found that the Appellant had not shown that he had satisfied the EEA Regulations. The Appellant had failed to prove either a valid marriage (see Kareem (Proxy marriages – EU law) [2014] UKUT 00024 (IAC)) or a durable relationship. The judge refused to consider the Article 8 ECHR claim which the Appellant had raised in his Notice of Appeal, on the basis that there were no Removal Directions. Here it must be said that the confusion was caused by the Secretary of State whose Notice of Immigration decision dated 19 June 2013 (the foundation of the appeal) stated that the application “has also been considered under Article 8 of the Human Rights Act (sic)”, whereas the reasons for refusal letter took the stance that an application under Article 8 ECHR would have to be made separately if the Appellant wished any such claim to be considered. As will be explained later in this determination, however, the Article 8 ECHR element of the appeal is not material.
3. Permission to appeal was granted by First-tier Tribunal Judge Brunnen because he considered it arguable that the judge had erred in his refusal to consider Article 8 ECHR and in his consideration of what constituted a durable relationship in law, even if the judge had found for good reasons that the Appellant was not lawfully married nor in a durable relationship.
4. By notice under rule 24 of the Upper Tribunal Procedure Rules, in the form of a letter dated 16 June 2014, the Respondent (the Secretary of State) indicated that she opposed the application for permission to appeal.
5. It was agreed by the parties at the start of the hearing at the tribunal’s request that there were two obvious typographical errors in the judge’s determination, at [22] and [28], where the word “not” had been omitted from the last sentence in each paragraph. No other reading made sense.

6. Mr Owusu for the Appellant accepted that there could be no challenge to the proxy marriage findings. The judge had, however, misdirected himself as to the meaning of regulation 8(5) in various ways, for example in stating that the Appellant would have to have shown that a previous relationship had ended. Although the judge had disbelieved much of the Appellant's evidence, there had been adequate independent evidence of the durable relationship, for example in the letters from the children's school and from the family's GP. Mr Owusu identified each relevant item in the Appellant's appeal bundle which had been before the judge. The judge had been perverse when refusing to accept them as cogent evidence.
7. The judge's approach to Article 8 ECHR was wrong. Plainly there had been an Article 8 ECHR decision by the Secretary of State and the judge had accepted that the Appellant had two children by his claimed EEA national partner. The determination should be set aside for perversity.
8. Mr Wilding for the Respondent (the Secretary of State) submitted that the determination although admittedly not ideal contained no material error of law. The determination had addressed the durable relationship point and the judge had been unimpressed by the Appellant's evidence as he explained. But it was a matter for the tribunal whether that was a sufficient finding in the face of the independent evidence.
9. The tribunal indicated at this point that it was unable to uphold the judge's findings on whether or not there was a durable relationship. There was a material error of law in his approach to the evidence. The durable relationship was not an issue which the Secretary of State had addressed at any stage of the decision-making process, but the tribunal had been required to examine the point at the hearing, subject to the need for regulation 17(4) to be applied by the Secretary of State in the light of the tribunal's findings. The determination would have to be remade to that extent.
10. The judge had been entitled to find against the Appellant on the proxy marriage issue, which was not in dispute. Unfortunately the judge failed to examine the durable relationship issue with the necessary degree of judicial impartiality and balance. This was not simply a question of the weight to be given to the evidence.

Although the judge was right to have expressed reservations about the Appellant's honesty and character, the judge had had to accept that the Appellant had two children by the EEA national whom he claimed was his partner. There was also recent independent evidence from the head teacher of the children's school that the children's parents (identified in the letter as the Appellant and his partner) lived at the same address and were known to the school. There was similar recent evidence from the family's GP.

11. The judge was surely too hard [25] on the nurse who had used official paper to write in support of the Appellant relationship, as there was no evidence before him that she had not received consent to such modest private use. To that extent she was offering some evidence of her standing. The children's birth certificates produced to the judge stated the addresses at which the Appellant and his partner had claimed to be living at the material time. There was no requirement to show that the Appellant's relationship with a previous partner had ended, given that the dates of birth of the two children by his EEA partner post dated the child by the earlier partner. It was the reasonable and obvious inference when considered against the other evidence that the earlier relationship was long over.
12. All of these matters should have been evaluated by the judge in an even handed way. Unfortunately the very poor impression which the Appellant's oral evidence made on the judge, no doubt exacerbated by the sham of the proxy marriage, caused the judge to fail to recognise the independent evidence for what it was.
13. The tribunal accordingly sets aside the judge's findings about the durable relationship. For the reasons given above, which need not be repeated, the tribunal remakes that part of the decision in the Appellant's favour and finds that he has shown by independent evidence deserving of weight that he is in a durable relationship with his EEA national partner, and that the durable relationship is in his case akin to marriage.
14. The judge made no findings at all about whether the EEA national partner was a qualified person within regulation 6. That had been disputed by the Secretary of State, but as the Appellant's appeal had been dismissed there was no basis on which the Respondent could draw attention to the apparent omission. Mr Owusu for the

Appellant pointed out, however, that the EEA national partner had already achieved permanent residence status, so regulation 6 was no longer relevant. Nevertheless, for the tribunal's information the EEA national partner was in fact working as a child minder: a certificate of her status as a registered child minder had been produced at the hearing and was in the Appellant's bundle.

15. Any residual issue about that can be considered by the Secretary of State when she decides how to exercise her discretion under Regulation 17(4)(a), where both qualification or the right of permanent residence are preconditions.
16. In these circumstances the Article 8 ECHR element of this appeal is irrelevant and the tribunal need not examine it further.

### **DECISION**

There was a material error of law in part of the First-tier Tribunal's determination, which is set aside to the extent that the Appellant's appeal under regulation 8(5) was dismissed. The following decision is substituted:

The Appellant's appeal under regulation 8(5) is allowed to the limited extent that the Secretary of State's mandatory discretion under regulation 17(4) has not yet been exercised. The original application is accordingly returned to the Secretary of State for regulation 17(4) to be applied in the light of the findings in this determination.

**Signed**

**Dated**

**Deputy Upper Tribunal Judge Manuell**

### **TO THE RESPONDENT** **FEE AWARD**

Although the Appellant's appeal has succeeded in part, the Appellant was responsible for the difficulties with his application to the Respondent. There is accordingly no fee award.

**Signed**

**Dated**

**Deputy Upper Tribunal Judge Manuell**