



IAC-FH-CK-V1

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

Appeal Number: IA/33591/2013

THE IMMIGRATION ACTS

Heard at Field House

**On 17 October 2014
Extempore judgment**

**Determination
Promulgated
On 21 October 2014**

Before

UPPER TRIBUNAL JUDGE COKER

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

MR FRANCIS REINIS KUMAH

Appellant

Respondent

Representation:

For the Appellant: Mr L Tarlow, Home Office Presenting Officer
For the Respondent: Ms D Ofei-Kwatia, Counsel

DETERMINATION AND REASONS

1. This is the appeal of Mr Kumah, a Ghanaian citizen who sought an EEA residence card as the spouse of a Dutch citizen exercising treaty rights in the UK. The application was refused on 13 July 2013 and Mr Kumah exercised his right of appeal. The appeal was allowed by the First-tier Tribunal Judge with a finding by the judge that the proxy marriage

certificate produced along with the additional documents was valid and evidence that the parties were married.

2. Permission to appeal was granted on the grounds that the judge had erred in law in failing to consider and make findings as to the validity of the marriage in accordance with Dutch law.
3. Although valiantly argued by Ms Ofei-Kwatia that the decision of the judge fell within the scope of **Kareem [2014] UKUT 24 (IAC)** I cannot agree with her. In **TA and Others [2014] UKUT 00316 (IAC)** it was clear that following the decision in **Kareem** the determination of whether there is a marital relationship for the purposes of the EEA Regulations must always be examined in accordance with the laws of the member state from which the Union citizen obtains nationality. In this case there was no evidence in connection with the validity of the proxy marriage as per Dutch law, and in the absence of that it is plain that the First-tier Tribunal Judge erred in finding that the marriage entitled Mr Kumah to an EEA residence card.
4. Mr Kumah through his representatives submitted a Rule 24 reply seeking to in effect cross-appeal, submitting that the respondent had not discharged the burden of proof with regard to a durable relationship. The respondent in her letter accompanying the decision refusing the residence card did consider the existence or otherwise of a durable relationship. The grounds seeking permission to appeal that decision to the First-tier Tribunal did not challenge that finding. The appeal before the First-tier Tribunal was solely around the issue of the validity of the proxy marriage.
5. It cannot be an error of law for the First-tier Tribunal to fail to consider a ground of appeal that was not put to them and it cannot be an error of law for the First-tier Tribunal to fail to consider something or to fail to make findings on a matter that was not pleaded. The applicant was legally represented both at the time of the making of this application, the submission of his grounds of appeal and before the First-tier Tribunal.
6. I therefore set aside the determination of the First-tier Tribunal and remake the decision by dismissing Mr Kumah's appeal against the refusal to grant him a residence card.

Signed

Date 20th October 2014

Upper Tribunal Judge Coker