



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

Appeal Numbers: IA/40827/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 29 August 2014**

**Determination
Promulgated
On 10 September 2014**

**Before
UPPER TRIBUNAL JUDGE CHANA**

Between

**MR SAMUEL KUSI
(ANONMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellants: Mr D Adma Adaw, Counsel

For the respondent: Mr L Tarlow, Senior Presenting Officer

DETERMINATION AND REASONS

1. The appellant is the Secretary of State for the Home Department and the appellant is, a citizen of Ghana born on 10 March 1974. I shall however for the sake of convenience referred to Mr Kusi as the appellant and the Secretary of State of the respondent which were the designations they had Before the First-tier Tribunal.
2. The appellant appeals against the decision of the respondent dated 13 August 2013 refusing to issue him with a residence card pursuant to

regulation 8 of the Immigration (European Economic Area) Regulations 2006 (the '2006 Regulations').

3. Permission to appeal was granted to the respondent by First-tier Tribunal Judge Cruthers stating that it is arguable that the judge fell into error by not making reference to the case of **Kareem (Proxy Marriages - EU Law) [2014] UKUT (IAC)** and has not explained why this appeal fell to be allowed.
4. In his determination the First-tier Tribunal Judge made the following findings.
 - a. The appellant and her husband, a German national were married on 24 December 2012 in Ghana by proxy.
 - b. The respondent asserts that the marriage between the appellant and a sponsor was one of marriage of convenience. He has considered the answers given by the appellant and the sponsor in an interview upon which the respondent made a positive assertion that the marriage between them was one of convenience.
 - c. He is satisfied that the discrepancies identified in the answers given by the couple not individually or cumulatively go to the root of the matter and did not undermine the appellant's case.
 - d. The only reason given by the respondent for asserting that the marriage was one of convenience was because the sponsor was described as a spinster on the marriage certificate whereas she was in fact a divorcee. The appellant claims that it was a mistake on the part of the authorities which was corrected. The sponsor did not seek to hide from the respondent that he was a divorcee.
 - e. Registration of the appellant's proxy marriage was not compulsory and it was not the registration that validated the marriage but the fact of the marriage having taken place.
 - f. The appellant provided a letter from the Guinean High Commission which stated that the appellant's marriage was properly registered in accordance with customary marriage laws of Ghana.
 - g. On the basis of the evidence, the appellant's marriage is a valid marriage contracted by proxy even though it was not properly registered since registration was not compulsory.
 - h. The respondent was not satisfied that the appellant's relationship was durable in accordance with rule 8 (5) of the 2006 regulations. Even if the marriage between the appellant and sponsor was not valid, the appellant and her

EEA sponsor were in a durable relationship and therefore satisfied the requirements of the 2006 Regulations. There is no reason to doubt the credibility of the appellant and her sponsor. They met each other in June 2010 and started living together soon after. They were married on 24 December 2012. By the time the appeal came before me they were living together in a relationship for nearly 2 years.

- i. On the evidence the appellant has satisfied that on a balance of probabilities that he and the sponsor were married to each other and in her durable relationship and the appellant was entitled to be granted a residence card according to the 2006 Regulations.
5. At the hearing, Mr Adama conceded that in light of the case of **Kareem**, the Judge materially erred in law on this point. He asked however that the appeal should succeed on the basis that the appellant and his EEA national are in a durable relationship and therefore the appellant is entitled to a residence card as an extended family member in accordance with regulation 17 of the 2006 regulations. He asked that the appeal be remitted to the Secretary of State awaiting their lawful decision.
6. Mr Tarlow on behalf of the respondent accepted that the determination reflects that there was no cross-examination by the respondent or the appellant or his EEA national at the hearing. He said that in the circumstances the Judge was entitled to find that there was a durable relationship between the appellant and her EEA national sponsor in accordance with regulation 8 (5) of the 2006 regulations.
7. In the circumstances and given Mr Tarlow's submissions, I find that The First-tier Tribunal Judge materially erred in law by not applying the principles in the case of **Kareem** in order for a proxy marriage to be recognised in the United Kingdom.
8. I therefore set aside the determination of the First-tier Tribunal Judge. The Judge did not make a decision on whether the appellant should succeed pursuant to regulation 8 (5) of the 2006 regulations, in the circumstances, I remit the appeal to the Secretary of State awaiting their lawful decision.

Conclusions

9. I allow the Secretary of State's appeal to the limited extent that it be sent back to her awaiting her lawful decision. This appeal must accordingly be allowed

Decision

The Secretary of State's appeal is allowed.

This 8th day of September 2014

Signed by,

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Mrs S Chana
A Deputy Judge of the Upper Tribunal