



**Upper Tribunal  
(Immigration and Asylum Chamber) Appeal Number  
IA/42180/2013**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 12 December 2014**

**Decision & Reasons promulgated  
On 15 December 2014**

**Before**

**Deputy Judge of the Upper Tribunal I. A. Lewis**

**Between**

**Secretary of State for the Home Department**

**Appellant**

**and**

**Francis Kofi Arthur  
(Anonymity order not made)**

**Respondent**

**Representation**

For the Appellant: Mr. L. Tarlow, Home Office Presenting Officer.

For the Respondent: Mr. O. Jibowu of Counsel instructed by MJ Solomon & Partners.

**DECISION AND REASONS**

1. This is an appeal against the decision of First-tier Tribunal Judge Hague promulgated on 30 May 2014, allowing Mr Arthur's appeal against the Secretary of State's decision dated 23 September 2013 to refuse to issue a residence card under the Immigration (European Economic Area) Regulations 2006.

2. Although before me the Secretary of State is the appellant and Mr Arthur is the respondent, for the sake of consistency with the proceedings before the First-tier Tribunal I shall hereafter refer to Mr Arthur as the Appellant and the Secretary of State as the Respondent.

## **Background**

3. The Appellant is a national of Ghana born on 17 July 1965. On 11 April 2013 an application for a residence card as confirmation of a right to reside in the United Kingdom was made on his behalf. The application was based on a Ghanaian customary marriage by proxy to Ms Marisol Nfono Eyama, a Spanish national, said to have taken place in Ghana, in the absence of the parties to the marriage, on 28 December 2012.
4. The Appellant's application was refused for reasons set out in a 'reasons for refusal' letter dated 23 September 2013, and a Notice of Immigration Decision was issued on the same date. The Respondent was not satisfied that the marriage was valid, and was not otherwise satisfied that the Appellant was in a 'durable relationship'.
5. The Appellant appealed to the IAC. He requested that his appeal be dealt with 'on the papers'.
6. The Appellant's appeal was first determined by First-tier Tribunal Judge V A Cox. In a determination promulgated on 28 January 2014 the appeal was allowed. However, the Respondent sought permission to appeal, which was granted with reference to the case of **Kareem (Proxy marriages - EU law) [2014] UKUT 00024 (IAC)**. By way of a determination promulgated on 2 April 2013 Deputy Upper Tribunal Judge Shaerf found that there had been an error of law, set aside the determination of First-tier Tribunal Judge Cox, and remitted the case for hearing afresh in the First-tier Tribunal before a judge other than Judge Cox.
7. The appeal was next considered by First-tier Tribunal Judge Hague without a hearing 'on the papers'. Judge Hague allowed the Appellant's appeal for reasons set out in his determination.
8. The Respondent again sought permission to appeal, but made that application 'out-of-time'. Permission to appeal was initially refused by First-tier Tribunal Judge Davies on 4 August 2014 on the basis that he refused to extend time for the Respondent to appeal. However, on 31 October 2014 Upper Tribunal Judge Storey extended time, and granted permission to appeal.

### **Consideration**

9. The First-tier Tribunal Judge allowed the Appellant's appeal on the basis that he was satisfied that the Appellant's marriage was duly registered and valid.
10. The Respondent's grounds of appeal seek to challenge that conclusion with particular reference to the decision in **Kareem**. In this context I have also had regard to **TA and others (Kareem explained) Ghana [2014] UKUT 00316 (IAC)**.
11. I accept the substance of the Respondent's challenge. First-tier Tribunal Judge Hague misdirected himself by not having proper regard to the relevant case law, pursuant to which he should have considered as a starting point the question of whether a marriage was contracted between the Appellant and Ms Eyama according to the national law of Spain. The Judge did not do so.
12. Judge Hague adopted an approach to the case of **Kareem** which was essentially the same as that advanced in the submission to the Upper Tribunal in **TA** (see paragraphs 9 and 10), and roundly rejected by the Upper Tribunal.
13. I agree with the reasoning in **Kareem** and **TA** and find that the First-tier Tribunal Judge was in error in failing to consider the validity of the Appellant's marriage in Spanish law.
14. I note that Mr Jibowu was quick to recognise the difficulty presented to the Appellant in light of **Kareem**, and **TA**, and acknowledged that any challenge to those cases would need to be taken at a higher level. I also note that whilst he sought to argue that the decision in **Kareem** was incongruous with the decision in **CB (validity of marriage: proxy marriage) Brazil [2008] UKAIT 00080**, that case was in fact plainly in the contemplation of the Tribunal deciding **Kareem** (see paragraphs 5 and 64). In any event **CB** relates to how UK domestic law perceives proxy marriages, and does not thereby assist in an understanding of how the laws of other countries approach such marriages. I detect no incongruity.
15. In all such circumstances I find that the decision of the First-tier Tribunal Judge was flawed for material error of law and I set it aside.
16. The decision in the appeal accordingly needs to be remade.
17. No relevant material has been provided, and no submission made, in respect of the validity of the Appellant's marriage under Spanish

law. In such circumstances I find that the Appellant has failed to discharge the burden of proof in establishing that he has contracted a marriage with Ms Eyama in accordance with the law of Spain.

18. Moreover, no material has been filed either before the First-tier Tribunal or the Upper Tribunal to demonstrate that the Appellant is in a durable relationship with Ms Eyama. In this context I note that the Respondent did not accept the limited supporting material submitted with the application to have established a durable relationship (see page 4 of the RFRL). Before the First-tier Tribunal there were no witness statements from either the Appellant or his partner, and no further supporting materials relevant to the issue of durability of relationship. Nothing further has been filed before the Upper Tribunal, notwithstanding the Directions issued with the Notice of Hearing. Although the Appellant attended the hearing today, Ms Eyama did not. In such circumstances there is insufficient before the Tribunal for the Appellant to be able to discharge the burden of proof in this regard.
19. For essentially the same reasons, I am unable to conclude that there would be any interference in the Appellant's private and/or family life if he were to be removed in consequence of the Respondent's decision. No relevant evidence has been filed - not even a witness statement - detailing the nature of any private and/or family life.
20. Accordingly I remake the decision by dismissing the appeal.

**Notice of Decision**

21. The decision of the First-tier Tribunal Judge contained a material error of law and is set aside.
22. I remake the decision in the appeal. The appeal is dismissed.

**Deputy Judge of the Upper Tribunal I. A. Lewis  
2014**

**12 December**