



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/37877/2013**

THE IMMIGRATION ACTS

Heard at Field House

On June 27, 2014

Determination

Promulgated

On July 1, 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

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

Appellant

and

**MISS TRUSTY AMOFAH AFRIYIE
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Ms Everett (Home Office Presenting
Officer)

For the Respondent: Mr Siaw (Legal Representative)

DETERMINATION AND REASONS

1. Although this is an appeal by the Secretary of State for the Home Department I will refer below to the parties as they were identified at the First-tier Hearing namely the Secretary of State for the Home Department will from hereon be referred to as the respondent and Miss Trusty Amofah Afriyie as the appellant.

2. The appellant, born October 3, 1989, is a citizen of Ghana. On June 20, 2013 she applied for a residence card as the spouse of an EEA national exercising treaty rights. In support of her marriage she had submitted a Ghanaian marriage certificate dated December 29, 2012 and a statutory declaration dated February 15, 2013 that stated the marriage took place by proxy.
3. The respondent refused her application on October 26, 2013.
4. On November 7, 2013 the appellant appealed under section 82(1) of the Nationality, Immigration and Asylum Act 2002 and Regulation 26 of the Immigration (European Economic Area) Regulations 2006.
5. The matter was listed before Judge of the First-tier Tribunal Cockrill (hereinafter referred to as “the FtTJ”) on March 19, 2014 and in a determination promulgated on March 31, 2014 he allowed her appeal.
6. The respondent appealed that decision on April 4, 2014. Permission to appeal was granted by Judge of the First-tier Tribunal Heynes on May 12, 2014 who found it was arguable that the FtTJ had erred by failing to have regard to the Tribunal decision of Kareem (Proxy Marriages-EU law) [2014] UKUT 00024.
7. The matter was listed before me on the above date and the appellant was in attendance.

SUBMISSIONS

8. Ms Everett relied on the grounds of appeal and submitted that whilst no challenge was made to the documents submitted from Ghana she submitted, as found by the Tribunal in Kareem, that the appellant had to show that a proxy marriage was valid in France as this was the sponsor’s home state. The skeleton argument provided by Mr Siaw misunderstood the point that the Tribunal made in Kareem. Whilst she understood the submissions she submitted Mr Siaw had failed to grasp that the appellant still had to show proxy marriages were accepted in France.
9. Mr Siaw relied on his skeleton argument and the findings made by the FtTJ. He submitted there was no error of law as the FtTJ had concluded the documentation was correct athere was no need to

prove the EEA state recognised the document. He referred me to paragraph [68] of Kareem.

ERROR OF LAW ASSESSMENT

10. Before setting out my findings I would say it was regrettable that neither representative brought the decision of Kareem to the FtTJ's attention despite it having been promulgated in January 2014. If this decision had been brought to the FtTJ's attention then I am satisfied this appeal would not be before me.

11. Paragraph [7] of Kareem states-

“The Member States do not share a common definition of spouse, each state defining marital relationships for itself. For example, in several Member States a person cannot be a spouse if of the same sex as the partner whilst the laws of other Member States describe such a person as a spouse. Similarly, whilst many Member States refuse to describe any person in a polygamous relationship as a spouse other than the person first married, the laws of other Member States may recognise all partners as spouses in certain circumstances. In terms of EU law, the law of marriage can be said to be within the competence of the Member States.”

12. Paragraph [18] of Kareem states-

“ ... Within EU law, it is essential that Member States facilitate the free movement and residence rights of Union citizens and their spouses. This would not be achieved if it were left to a host Member State to decide whether a Union citizen has contracted a marriage. Different Member States would be able to reach different conclusions about that Union citizen's marital status. This would leave Union citizens unclear as to whether their spouses could move freely with them; and might mean that the Union citizen could move with greater freedom to one Member State (where the marriage would be recognised) than to another (where it might not be). Such difficulties would be contrary to fundamental EU law principles. Therefore, we perceive EU law as requiring the identification of the legal system in which a marriage is said to have been contracted in such a way as to ensure that the Union citizen's marital status is not at risk of being differently determined by different Member States. Given the intrinsic link between nationality of a Member State and free movement rights, we conclude that the legal

system of the nationality of the Union citizen must itself govern whether a marriage has been contracted.”

13. Mr Siaw sought to persuade me that as the marriage certificate and documents were accepted then there was no need for the appellant to show anything else. He referred me to Kareem and in particular the general observations in paragraph [68].
14. Ms Everett effectively adopted the approach taken by the Tribunal in Kareem.
15. It is important to note that paragraph [68] of Kareem is not merely dealing with proxy marriages but dealing with foreign marriages generally.
16. I am satisfied that the appellant has to show proxy marriages are valid in France. If the sponsor and appellant had married in Ghana in person then there would be no issue.
17. The issue the FtTJ failed to address was that the parties did not physically marry in Ghana but instead married by proxy. Proxy marriages are legal but they are only legal when evidence that the sponsor’s state accepts them as valid is produced.
18. The Tribunal stated at paragraph [68(g)] of Kareem-

“It should be assumed that, without independent and reliable evidence about the recognition of the marriage under the laws of the EEA country and/or the country where the marriage took place, the Tribunal is likely to be unable to find that sufficient evidence has been provided to discharge the burden of proof. Mere production of legal materials from the EEA country or country where the marriage took place will be insufficient evidence because they will rarely show how such law is understood or applied in those countries. Mere assertions as to the effect of such laws will, for similar reasons, carry no weight.”
19. There was no evidence before the FtTJ that France recognised proxy marriages and for the reasons set out above I find there was an error in law.
20. No additional documents were submitted and I indicated to the representatives that if there was an error in law I would remake the decision by refusing the appellant’s application.

21. As a side issue I make the observation that the obvious solution is for the appellant to provide sufficient evidence to show that France accepts her proxy marriage under French law.

DECISION

22. There is a material error of law.
23. I set aside the original decision and I remake the decision and dismiss the appeal under the 2006 Regulations.
24. Under Rule 14(1) The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) the appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. No order has been made and no request for an order was submitted to me.

Signed:

Dated:

Deputy Upper Tribunal Judge Alis



TO THE RESPONDENT

I reverse the fee award made by the First-tier Tribunal because I have dismissed the appeal.

Signed:

Dated:

Deputy Upper Tribunal Judge Alis