



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

Appeal Number: IA/53630/2013

THE IMMIGRATION ACTS

Heard at Manchester

On 16th July 2014

Determination

Promulgated

On 21st July 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE LEVER

Between

MRS JOYANNE ADU

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Darko

For the Respondent: Mr Harrison

DETERMINATION AND REASONS

Introduction

1. The Appellant born on 3rd September 1979 is a citizen of Ghana. The Appellant was represented by Miss Darko. The Respondent was represented by Mr Harrison, a Home Office Presenting Officer.

Substantive Issues under Appeal

2. The Appellant had made application for a residence card as confirmation of a right to reside in the United Kingdom. The Respondent had refused that application and the refusal letter was dated 6th December 2013. The Appellant had appealed that decision and her appeal was heard by Judge of the First-tier Tribunal Chambers sitting at Manchester on 14th April 2014. He allowed the appeal. Application for permission to appeal was made by the Respondent and granted by Judge of the First-tier Tribunal Page on 23rd May 2014. The grant of permission was on the basis that the judge had not considered the decision in the case of **Kareem (Proxy marriages - EU law) [2014] UKUT 00024** promulgated on 16th January 2014. The matter came before me in order to firstly decide whether an error of law had been made in this case.

The Respondent's Submissions

3. Mr Harrison adopted the application for permission to appeal and further noted that the case of **Kareem** had been endorsed in the decision of **TA Ghana [2014] UKUT 00316**.

The Appellant's Submissions

4. Miss Darko properly conceded that the judge had made an error of law in not considering the case of **Kareem** involving as this case did proxy marriages and whether such marriage in the form that it took would have been valid under the law of the EEA national country namely France. She further stated that submissions at the hearing had been made as an alternative to the question of marriage on the grounds of the durability of the relationship under Regulation 8(5) of the 2006 Regulations although it does not appear that this had been dealt with by the judge.
5. I said that I would provide a decision with reasons on the question of the error of law in this case. I now provide that decision.

Decision and Reasons

6. Firstly, as conceded by both representatives there was an error of law made by the judge in the First-tier Tribunal in terms of on the face of it failing to apply the decision in **Kareem** concerning the validity of proxy marriages. The decision in **Kareem** has been recently endorsed in the decision of **TA** where it said that the determination of whether there is a marital relationship for the purposes of the Immigration (EEA) Regulations 2006 must always be examined in accordance with the laws of the Member State from which the union citizen obtains nationality. In this case that would be France.
7. Further it was perhaps incumbent upon the judge in terms of Section 84(1) (d) of the Nationality, Immigration and Asylum Act 2002 to consider whether the decision in respect of entry to or residence in the United Kingdom breached the Appellant's rights under the community treaties. That would have included an examination of whether the Appellant was in a durable relationship with her EEA national partner as understood and

within the terms of Regulation 8(5) of the 2006 Regulations. That would have been an alternative matter to consider irrespective of the validity of the proxy marriage.

8. For the above reasons therefore I find that an error of law material in its consequence was made by the First-tier Tribunal in this case and set aside that decision and issue directions for that decision to be made afresh.

Signed

Date

Deputy Upper Tribunal Judge Lever