Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/53361/2013**

THE IMMIGRATION ACTS

Heard at: Field House	**Decision Promulgated**
On: 18th November 2014	**On: 13th January 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE BRUCE

Between

Secretary of State for the Home Department

Appellant

and

Patience Agyeman Prempeh
(no anonymity direction made)

Respondent

For the Appellant: Ms Kenny, Senior Home Office Presenting Officer
For the Respondent: Mr Garrod, Counsel instructed by Justice and Law Solicitors

DECISION AND REASONS

1. The Respondent is a national of Ghana date of birth 21st May 1973. On the 6th May 2014 the First-tier Tribunal (Judge Ross) allowed her appeal against a decision to refuse to issue her with a card to confirm her right of residence as the spouse/ partner of an EEA national exercising his treaty rights in the UK. The Secretary of State now has permission to appeal against that decision.

2. The matter in issue was whether Mrs Prempeh's marriage to Dutch national Mr Dwuma was a valid one. It had been conducted by proxy in accordance with Ghanaian customary norms, whilst both parties

were in the UK.

3. On appeal the First-tier Tribunal was satisfied that this marriage had complied with all the relevant requirements of Ghanaian law relating to customary marriages. The Tribunal accepted as genuine a marriage certificate issued by the relevant authorities. On that basis it was found that the marriage would be considered valid in the UK. The appeal was allowed.

4. The Secretary of State obtained permission to appeal that decision on the ground that the First-tier Tribunal had made a material misdirection in law in finding that the only matter in issue was whether this was a marriage recognised by the Ghanaian authorities. The Secretary of State submitted that the First-tier Tribunal was bound to consider whether the marriage would be recognised by the Dutch authorities, following the authority of Kareem (Proxy Marriages – EU law) [2014] UKUT 00024 (IAC). The ratio of that decision is that where free movement rights are claimed, the entitlement to those rights must be proven according to the law of the relevant member state.

Error of Law

5. On the 25th July 2014 I heard submissions on whether the decision contained an error of law as alleged in the grounds of appeal. The Secretary of State relied on Kareem and further on TA (*Kareem* explained) Ghana [2014] UKUT 316 (IAC). Mr Garrod for Mrs Prempeh submitted that TA was wrongly decided. He submitted that the Tribunal only need look to Dutch law where there is some doubt about the validity of the marriage in Ghana. Since the First-tier Tribunal here accepted that the marriage was recognised by the Ghanaian authorities there was no need to go any further: Mr Garrod submitted this was not a case where confirmation of the marriage's validity in Dutch law was required. I rejected those arguments. TA is a reported decision and I am bound by it. As it makes clear in its headnote *"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".* This was not done in this case and it follows that the decision contains an error such that it must be set aside and remade.

The Re-making

6. The findings of fact were all preserved. I was not however prepared to go ahead to re-make the decision. That was because Mrs Prempeh had not had an opportunity to provide any evidence about the status of her marriage according to Dutch law. The hearing was reconvened in October 2014 in order to hear submissions on that and live

evidence about whether, in the alternative, the couple are in a 'durable relationship'. Unfortunately the hearing was not able to proceed that day because the requested Twi interpreter had not been booked.

7. By the time that the matter came back before the Tribunal on the 18th November 2014 Mrs Prempeh had been able to obtain the following evidence:

- Case law from the Supreme Court of the Netherlands (Hoge Raad NJ 2004 nr.4). The case concerned an action by the parents of a child born in the Netherlands who had not had the name of his father recorded on his birth certificate. The parents had been married according to Ghanaian custom and the Civil Registrar of Amsterdam had declined to record them as married. The Hoge Raad held that there was nothing in Dutch law preventing the marriage being recognised as valid. The Registrar was accordingly free to recognise it and record the same on the child's birth certificate.

- Email correspondence between Justice and Law Solicitors and the Dutch Embassy in Accra. This includes an email dated 12th November 2014 from the Consular Section which advises that unless a specific application –such as for a passport - is made the embassy will not be making comment on validity of marriages according to Dutch law, other than to point out that "the provisions of Dutch law governing the recognition of marriages contracted outside the Netherlands are listed in paragraphs 27 and 28 of the Upper Tribunals' determination in the case of Kareem (Proxy marriages – EU law) [2014] UKUT 00024 (IAC)"

- Legal opinion from Hagg & Van Koesveld Advocaten dated 25th September 2014 which reiterates the provisions set out in Kareem and certifies that they do apply: "Dutch law recognises foreign (customary) marriages provided that they are registered according to the Customary Marriage and Divorce Registration Law of 1985". The marriage in the instant case has been so registered in Ghana. If the parties wish to have it registered in the Netherlands they must present the certificate to the Dutch Embassy for 'legalisation'.

- Letter dated 11th November 2014 from Mr Mareel Mungroop of Mungroop Advocatuur confirming that he has made, on the parties behalf, a request for the registration of the Ghanaian marriage in the Netherlands, but that this process can take 3-4 months.

8. Although the material had been served on the Secretary of State it had not been passed to Mrs Kenny and so she was not in a position to deal with it without taking instructions. I therefore indicated that I would delay promulgation of my determination until Mrs Kenny had been able to make written submissions. Mrs Kenny did that and on her written submissions arrived with me on the 10th December 2014. My findings are as follows.

9. Neither Kareem nor TA is authority for the proposition that Ghanaian customary marriages are not recognised according to Dutch law. In fact neither Tribunal considered itself to have sufficient evidence on the point. The extracts from the Dutch Civil Code cited in Kareem were unsupported by caselaw or legal opinion as to their application, and in those circumstances the Tribunal was left in the dark as to their meaning. In this case Mrs Prempeh has provided a decision of the Supreme Court of the Netherlands (in translation), an email from the embassy and the opinion of a practising lawyer all of which confirm that Code is applied so that Ghanaian customary marriages are recognised in the Netherlands. In those circumstances I do not consider it necessary to wait for the formal process of registration discussed by Mr Mungroop to be completed. All of the evidence before me indicates that Mr Dwuma's marriage to Mrs Prempeh is recognised according to the law of The Netherlands: she has discharged the burden of proof.

Decisions

10. The determination of the First-tier Tribunal does contain an error of law and it is set aside.

11. I remake the decision in the appeal as follows:

"the appeal is allowed".

Deputy Upper Tribunal Judge Bruce

8th January 2015