



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

Appeal Number: EA/07445/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 20 September 2018**

**Decision & Reasons
Promulgated
On 10 October 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

**MISS BEATRICE BOATENG
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Malik (Counsel)

For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. The appellant is a citizen of Ghana born on 10 October 1969. She appealed to the First-tier Tribunal against the decision of the respondent dated 14 July 2017 who refused the appellant a permanent residence card under the Immigration (European Economic Area) Regulations 2016. In a decision promulgated on 16 April 2018 Judge of the First-tier Tribunal Grimmett dismissed the appellant's appeal.

2. The appellant appeals with permission on the grounds that the Judge of the First-tier Tribunal had applied the decision in **Karim (proxy marriages - EU law) [2014] UKUT 0024** rather than **Awuku v SSHD [2017] EWCA Civ 178**.
3. The Secretary of State conceded that the EU law approach taken by the Upper Tribunal in **Karim** and later by reference to **Cudjoe (proxy marriages: burden of proof) [2016] UKUT 188 (IAC)** is no longer good law in that there is no longer a need for an assessment of the requirements of the law of the spouse's EU State. It was properly conceded therefore by Mr Jarvis, that the First-tier Tribunal erred in its reliance on this line of case law.
4. Such error is material as the First-tier Tribunal ought to have considered whether there was reason to doubt the genuineness of the Ghanaian marriage certificate (which had been relied upon by the appellant). There were no adequate findings on this point, relevant to whether or not the appellant in question was a family member who had been divorced in accordance with Ghanaian law, for the purposes of retained rights of residence under the EEA Regulations. Mr Jarvis conceded that this was the case.
5. Rule 40(3)(a) of the Tribunal Procedure (Upper Tribunal) Rules 2008 applies as the decision to set aside and remit the appeal was made with the consent of the parties.
6. The decision of the First-tier Tribunal contains an error of law such that it falls to be set aside. The appeal is remitted to the First-tier Tribunal to be heard de novo by any First-tier Tribunal Judge other than Judge Grimmett.

No anonymity direction was sought or is required.

Signed
2017

Date 02 October

Deputy Upper Tribunal Judge Hutchinson