



Upper Tribunal
(Immigration and Asylum)
Appeal Number: IA/01545/2014

Chamber)

THE IMMIGRATION ACTS

Heard at: Field House
On: 18 September 2014
Prepared: 11 October 2014

Determination Promulgated
On 17 October 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR EBENEZER KWAME DANNING
(NO ANONYMITY DIRECTION MADE)**

Respondent

Representation

For the Appellant: Mr N Bramble, Senior Home Office Presenting Officer
For the Respondent: Ms L Appiah, of counsel (instructed by Kilic and Kilic Solicitors)

DETERMINATION AND REASONS

1. For the sake of convenience I shall refer to the appellant as the secretary of state and the respondent as the claimant.
2. The claimant is a national of Ghana, born on 28th September 1973. He appealed before the First-tier Tribunal against the decision of the secretary of state refusing his application made on 7th July 2013 for a residence card pursuant to Regulation 17 of the Immigration (EEA) Regulations 2006 ("the 2006 Regulations"). His application was based on his proxy/customary marriage in Ghana to Ms Anais

Hofe, a French national exercising Treaty rights in the UK. He was represented at the hearing by Ms Appiah. The respondent was also represented.

3. The respondent was not satisfied that his claimed proxy marriage had been properly executed so as to satisfy the requirements of the law of Ghana.
4. His application was also refused under Regulation 8(5) of the 2006 Regulations. At page 7 of the reasons for refusal, the secretary of state contended that due consideration to this claim had been given "as an alternative." The claimant had provided no evidence that he resided together as a couple at the same address prior to the date of the alleged customary marriage certificate. Nor was there evidence that they even knew each other or had met prior to the date of the customary marriage being issued abroad.
5. Documents such as a tenancy agreement, utility bills and bank statements were produced. The bills and bank statements were addressed to the EEA National sponsor and did not demonstrate a genuine and subsisting relationship between the parties. No joint council tax bills, joint utility bills, joint bank statements or any other relevant documents "that are acceptable proof of address" were produced.
6. Accordingly, the secretary of state concluded that the claimant had not provided sufficient evidence "to suggest" that he is in a durable relationship.
7. The grounds of appeal before the First-tier Tribunal are at pages 12-23 of the claimant's bundle. The "legal basis for appeal" is set out from paragraph 3 onwards. The remaining paragraphs contained detailed submissions regarding the validity of the marriage in Ghana.
8. At paragraph 4 of the grounds, at page 23, there is a contention that the claimant continues to live with his spouse who works as a cleaner. Apart from that assertion however, there is no specific ground relating to the refusal of his claim pursuant to Regulation 8(2) of the 2006 Regulations.
9. At the date of the hearing before the First-tier Tribunal, counsel on his behalf made an application to adjourn the hearing as the claimant's partner was abroad. However, the Judge stated at paragraph 15 that on the basis of information submitted to him "the application did not reach the level required in Rule 21 of the 2005 Procedure Rules". He states that "that was accepted". The hearing proceeded.
10. At paragraph 2 of the determination, the Judge noted the secretary of state's contentions relating to the lack of adequate evidence to show that the parties resided together as a couple and that there were doubts as to whether they had ever met prior to the customary marriage certificate which was issued in Ghana.
11. The Judge had regard to the submissions made on behalf of the secretary of state, and in particular at paragraph 23 to the effect that with regard to the durable relationship, there was little evidence of their life together except for the tenancy

agreement. It was noteworthy that the claimant did not know exactly where his wife lived in France.

12. Ms Appiah, who represented the claimant before the first-tier Tribunal relied on the skeleton argument in the claimant's bundle. Submissions were made as to the claimant's relationship with his wife. She referred to evidence of the photographs of the parties together, utility bills in the name of the sponsor, the tenancy agreement in joint names and the wife's payslips. She had also stood surety for the claimant when he was in immigration detention.
13. The Judge's findings and conclusions were set out from paragraphs 27 to 34. At paragraph 32, he found on the evidence that the claimant's proxy marriage to his French national wife in Ghana was valid in Ghana and hence valid in the UK. He therefore satisfied Regulation 17(1) of the 2006 Regulations. He was accordingly entitled to a residence card under Regulation 17.
14. The Judge did not go on to consider the appeal pursuant to the alternative submission relating to Regulation 8(5) of the 2006 Regulations.
15. On 1st August 2014, First-tier Tribunal Judge Fisher granted the secretary of state permission to appeal against the determination promulgated on 3rd June 2014. The grounds seeking permission asserted that the Judge erred in law by failing to apply the decision in **Kareem (Proxy Marriages – EU Law) [2014] UKUT 0024 (IAC)**. Nor did the Judge give reasons for concluding that the proxy marriage was valid in Ghana and therefore in the UK.
16. Judge Fisher noted that the Judge had made no reference to **Kareem** in which it was held that the starting point was to decide whether a marriage was contracted between the claimant and the qualified person according to the national law of the EEA country, in this case France. The decision in **Kareem** was confirmed in **TA and Others (Kareem explained) Ghana [2014] UKUT 00316 (IAC)**.
17. Moreover, the Judge gave no reason for concluding that the claimant's proxy marriage to his French national wife in Ghana was valid in that country and hence in the UK. Nor did he consider whether the marriage would be valid under French law.
18. Mr Bramble on behalf of the secretary of state relied on the reasons for refusal.
19. On behalf of the claimant, Ms Appiah relied on the Rule 24 response. She submitted that the Judge made no material misdirections of law.
20. Ms Appiah accepted that **Kareem**, supra, is “good law. She submitted that the Judge took into consideration “the good law” at both the date of the hearing and the date of his determination. He made a finding of fact as to whether the marriage certificate produced was issued by a competent authority following the principles in **Kareem**. She submitted that the decision in **TA**, supra, was promulgated on 18th

June 2014 which was several weeks after the date of the determination of the First-tier Tribunal Judge Thanki. She submitted that prior to **TA** the Judge was within his powers to interpret the guidance in **Kareem** in the “two step” fashion that he did. She therefore submitted that **TA** cannot be applied retrospectively.

21. Ms Appiah very properly informed me that French law does not recognise the relevant proxy marriage. Accordingly, French law would not have helped.
22. Further, Ms Appiah accepted that the grounds of appeal barely mentioned the appeal against the respondent's conclusion that the parties were not in a durable relationship. She accepted that the grounds did not adequately address it.
23. She also accepted that the claimant had not sought to lodge a counter appeal in this matter. Ms Appiah stated that she only received the papers relatively recently. She appreciated that the claimant would be well out of time. Moreover, although she faintly suggested that I should allow the claimant to do so at this stage, Mr Bramble pointed out that pursuant to the 2005 Procedure Rules, a claimant must make a written application for permission to appeal. That had not been done. Accordingly, Mr Bramble opposed any attempt to formally introduce the cross appeal.
24. Ms Appiah did not seek to adjourn the hearing on the basis that the claimant would seek to apply for permission out of time to lodge a counter appeal.
25. I did not consider that it is appropriate to allow the claimant to introduce a counter appeal at this stage.

Assessment

26. I find that the First-tier Tribunal did not consider the decision in **Kareem**. Ms Appiah submitted however that the decision in **TA**, supra, had not been promulgated at the date of the Judge's determination. Accordingly there was no error of law regarding the state of law that applied at the date of Judge Thanki's determination.
27. However, **TA** did not make any “new law” relating to the issue of proxy marriages in the context of an application for a residence card pursuant to the 2006 Regulations. What the Tribunal did was to analyse the decision in **Kareem**, and in particular the suggestion that there is a two stage process in the determination of whether a marriage can be considered to be valid for the purpose of the 2006 Regulations.
28. However, after a thorough analysis of **Kareem**, the Tribunal found that the determination of whether there is a marital relationship for the purpose of the 2006 Regulations should always be examined in accordance with the laws of the member state from which the union citizen obtains nationality.

29. In the circumstances, having regard to Ms Appiah's concession that the laws of France would not recognise this proxy marriage, I find that the claimant has not proved that his marriage is a valid one for the purpose of the 2006 Regulations.
30. Accordingly, the claimant cannot establish that he is the family member for the purposes of Regulation 7 of the Regulations.
31. As indicated, there is no appeal by the claimant against the First-tier Tribunal Judge's failure to make a decision relating to Regulation 8(5) of the 2006 Regulations.
32. The secretary of state has considered the application under Regulation 8(5) and has set out in some detail the basis upon which she concluded that the claimant had not provided sufficient evidence suggesting that they are in a durable relationship.
33. The submissions contained in the Rule 24 response on behalf of the claimant were confined to upholding the First-tier Tribunal Judge's findings concerning the validity of the marriage in Ghana.

Decisions

The First-tier Tribunal's determination contained an error on a point of law and is set aside.

The decision I substitute is to dismiss the claimant's appeal.

Signed

Date 11/10/2014

C R Mailer
Deputy Upper Tribunal Judge