



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

Appeal Number: IA/03779/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 19th August 2014**

**Determination
Promulgated
On 21st August 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SHARIFA YUSSIF

Respondent

Representation:

For the Appellant: In person

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

DETERMINATION AND REASONS

1. This is the Respondent's appeal but for the sake of convenience I shall refer to the parties as they were known in the First-tier Tribunal.

Background

2. This Appellant appealed a decision of the Respondent refusing to issue her with a residence card as confirmation of a right of residence under European Community Law as a spouse of a French national exercising EEA treaty rights in the United Kingdom. That decision is dated 3rd January 2014. The Appellant appealed to the First-tier Tribunal, and the appeal was heard by Judge of the First-tier Tribunal Cohen, who, in a determination

promulgated on 9th June 2014, allowed the Appellant's appeal. The judge did so for reasons which are set out at paragraphs 14, 15 and 16 to the point that the marriage, conducted by proxy, was valid in Ghana. There seems to be a typographical error at paragraph 16 where the judge states that they are *not* satisfied that the Appellant is a family member, but it is clear from the preceding paragraph that the judge in fact intended to say that judge was so satisfied.

3. The Respondent has been granted permission to appeal on the basis that in reaching the conclusions set out in those paragraphs the judge has failed to take into account the case of **Kareem (Proxy marriage - EU law) Nigeria [2014] UKUT 24**.
4. In **Kareem** the Tribunal decided that when looking at the validity of a proxy marriage, regardless of the country in which the marriage was conducted, there were two points that the court needed to decide. The first point was whether or not the marriage was valid in accordance of the law of the country where it took place and the second point was whether or not the marriage was recognised or treated as being valid in the country of the EEA national.
5. I am satisfied that the judge in this case failed to consider the position in respect of French national law regarding Ghanaian proxy marriages, and for that reason the judge fell into material error such that I am satisfied that it is right to set the decision aside and re-make it.
6. There was no evidence before the First-tier Tribunal as to the position under French law and indeed that remains the position before me today. In those circumstances the Appellant cannot discharge the burden of showing that the marriage is recognised in accordance with the laws of France. No other ground of appeal was raised and accordingly that finding is sufficient to dispose of the appeal before me.
7. I allow the Respondent's appeal to the Upper-tier and set aside the decision of the First-tier Tribunal. I remake it dismissing the Appellant's appeal.

Signed

Date

Deputy Upper Tribunal Judge Davidge