



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

Appeal Number: IA/09291/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Oral determination  
Hearing  
On 12 August 2014**

**given**

**following**

**Determination  
Promulgated**

**On 15<sup>th</sup> Aug 2014**

**Before**

**UPPER TRIBUNAL JUDGE KOPIECZEK**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**and**

**KELVIN OKYERE DARKU**

Appellant

Respondent

**Representation:**

For the Appellant: Mr C Avery, Home Office Presenting Officer

For the Respondent: Mr D Balroop, Counsel instructed by Shan & Co Solicitors

**DETERMINATION AND REASONS**

1. The appellant is the Secretary of State, however I refer to the parties as they were before the First-tier Tribunal. Thus the appellant is a citizen of Ghana born on 7 February 1979. On 17 September 2013 he made an application for a residence card on the basis of marriage to a German national, Miss Juliette Koch-Manzan. That application was refused in a

decision dated 28 January 2014. The appeal against that decision came before First-tier Tribunal Camp on 9 May 2014 whereby he allowed the appeal.

2. The decision in relation to the refusal to issue a residence card was on two bases being alternatives to each other. The first is that the appellant had failed to produce a valid marriage certificate as evidence that he is related to the EEA national. Secondly, in the alternative, it was said that in any case he had failed to establish that he was in a durable relationship within the meaning of Regulation 8 of the Immigration (European Economic Area) Regulations 2006. Being in a durable relationship would have allowed the appellant a residence card provided he qualified, he being an extended family member. That would be subject to the residual discretion of the Secretary of State under the EEA Regulations.
3. In allowing the appeal the judge concluded that the appellant had contracted a valid proxy marriage with the sponsor. The simple ground of appeal before me today argues that the judge was not entitled to come to that view having regard to the decision in Kareem (Proxy marriages - EU law) Nigeria [2014] UKUT 24. The effect of that decision is that in summary, in order to establish entitlement to a residence card on the basis of a proxy marriage, being marriage to an EEA national, the appellant must establish that the marriage is valid in the state from which the sponsor or spouse comes, in this case that is Germany.
4. Mr Balroop on behalf of the appellant told me that the case of Kareem was referred to before the First-tier Tribunal and Mr Avery agrees that that was so. In those circumstances it does seem to me to be surprising that the First-tier Tribunal Judge did not refer to it in the determination or indeed in the manuscript record of proceedings. I am satisfied that the matter was canvassed before him and it ought to have been reflected in his determination. In either case whether by not referring to it or indeed having considered it but not made any conclusion in relation to it, it is plain that there was an error of law on the part of the First-tier Tribunal. The case of Kareem was explained in the decision in TA & Others (Kareem explained) Ghana [2014] UKUT 00316 (IAC). The essence of the decision in TA & Others was that following the decision in Kareem the determination of whether there is a marital relationship for the purposes of the EEA Regulations must always be examined in accordance with the laws of the member state from which the union citizen obtained nationality.
5. Mr Balroop realistically was unable to make any persuasive submissions in relation to the point raised on behalf of the Secretary of State except to say that the matter was not raised in the refusal letter. He was right to say that but that does not absolve the First-tier Tribunal Judge from considering a matter that was of significance in determining the validity of the marriage. The fact that the case was canvassed before the First-tier Tribunal Judge reinforces that point. I am satisfied in these circumstances that there was an error of law in the decision of the First-tier Tribunal such

as to require the decision to be set aside. I canvassed with the parties the question of the next steps in the progress of this appeal.

6. An issue that was left unresolved by the First-tier Tribunal unsurprisingly in the light of his conclusions was the alternative proposition that the parties are in a durable relationship within the meaning of the EEA Regulations. Ultimately both parties agreed that it was and is appropriate for that matter to be determined by the First-tier Tribunal, being a matter that has been left untouched by the determination of the First-tier Tribunal Judge. It seems to me that that is a factual issue which is best resolved by the First-tier Tribunal and in accordance with the Practice Statement at paragraph 6.2 this appeal is remitted to the First-tier Tribunal for the question of durable relationship to be assessed.
7. Mr Avery did not disagree with my tentative suggestion that if in the meantime the appellant is able to produce evidence that the marriage is valid in Germany that that evidence could be advanced before the First-tier Tribunal in the re-making of the decision. To that effect there is a letter dated 6 August 2014 from the appellant's solicitors setting out in summary the steps that have been taken to confirm the validity of the marriage through the German Embassy in the first instance. Mr Balroop informs me as does the letter that there is an appointment in September, I think at the German Embassy for these matters to be considered further. It does seem to me to be appropriate in those circumstances for the hearing in the First-tier Tribunal to take place at a date which allows the formalities in that regard to be completed.

#### DIRECTIONS

- (1) This appeal is remitted to the First-tier Tribunal for consideration by a judge other than First-tier Tribunal Judge Camp.
- (2) The hearing is to consider the issue of whether the appellant and the sponsor are in a durable relationship.
- (3) Subject to any submissions by either party there is no reason why evidence of the validity of the marriage if it is obtained in time for the hearing before the First-tier Tribunal cannot be put before the First-tier Tribunal Judge sufficient to establish that the marriage is valid within German law.

Signed

Date

Upper Tribunal Judge Kopieczek