



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

Appeal Number: IA/15937/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 3 December 2014
Extempore**

**Decision & Reasons
Promulgated
On 8 December 2014**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR EMMANUEL KOJO ESHUN
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr T Melvin, Home Office Presenting Officer
For the Respondent: Mr N Garrod, Counsel instructed by Justice and Law Solicitors

DECISION AND REASONS

1. The Secretary of State appeals with permission against the determination of First-tier Tribunal Judge Rowlands promulgated on 19 September 2014 in which he allowed the appeal of Mr Emmanuel Kojo Eshun, whom I refer

to as the claimant, against the decision of the Secretary of State made on 26 March 2014 to refuse to issue him a residence card as confirmation of a right of residence under Community law as the spouse of an EEA national exercising treaty rights in the United Kingdom.

2. The claimant entered into a customary marriage by proxy with a citizen of Italy. The ceremony took place in Ghana. It is not disputed that the sole issue in this case is a narrow one and it is this: was there sufficient material before Judge Rowlands which constituted independent and reliable evidence about the recognition of the marriage under the laws of Italy? That is the sole issue which is challenged by the Secretary of State in the appeal.
3. Judge Rowlands had before him two documents which appear at pages 221 and 223 of the claimant's bundle. The first is a letter sent by the claimant's solicitors to the Italian Embassy in respect of another couple who it is said were Ghanaian and Italian and who like the couple in this case were married under Ghanaian customary law. The marriage was by proxy and the documents were executed by their respective representatives. The letter asks the Italian Embassy whether they would confirm whether such a marriage is recognised under Italian law. The response from the Consulate General in Italy states, without any reservation or caveat, that Italian law recognises Ghanaian customary marriages.
4. Mr Melvin for the Secretary of State submits that this is not sufficient material on which the judge could have come to the conclusion which following **Kareem** Proxy marriages - EU law) [2014] UKUT 24(IAC) he must reach which is to answer the question as to whether there is:

“independent and reliable evidence about the recognition of the marriage under the laws of the EEA country and/or the country where the marriage took place.”

Relying on **Kareem** he submitted that the mere production of legal materials of the EEA country where the marriage took place will be insufficient and mere assertions as to the effect of such laws will for similar reasons carry no weight.

5. The material on which the judge relied in this appeal is of a different character from that produced in **Kareem**. It is not just legal materials; it is a letter from Consulate General of Italy in the United Kingdom, the official representative of that state. Further, as Mr Melvin accepts, there was no challenge made in the First-tier Tribunal to the material but he submits that it is just simply insufficient, firstly because it does not actually relate to this couple and second because it does not mention whether proxy marriages are recognised.
6. Mr Garrod submitted that this material is sufficient relying in addition on the fact that this evidence was not challenged.

7. In considering the evidence I note that the letter from the Italian Embassy clearly relates to the questions put by the claimant's solicitors in another matter. The issue of marriage by proxy was raised in that and it is I consider a reasonable inference that that matter was considered by the official who put forward the opinion that customary marriages. Whilst I note that there is no reference made to statute or other provisions of Italian law I note equally that it is difficult to consider that the Italian Consulate General who is charged with such matters could be anything other than an independent or reliable source as to the recognition of marriages by the Republic of Italy.
8. Given that this evidence was not challenged and given its provenance and given that there appears to have been no challenge made in the First-tier that this was unreliable because it is a copy, I am satisfied that firstly Judge Rowlands did direct himself properly with respect to **Kareem** and I am satisfied also that he was entitled to find on the facts of this case that there was sufficient material before him having had regard to **Kareem** to discharge the burden of proof on the claimant to show that his sponsor did have capacity to enter into the marriage by proxy in Ghana and that the marriage would be valid for the purposes of Italian law. Accordingly for those reasons I uphold the First-tier decision as there is no material error of law within the decision of Judge Rowlands.

SUMMARY OF CONCLUSIONS

- 1 The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it.

Signed

Date

Upper Tribunal Judge Rintoul