



IAC-AH-SC-V1

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

Appeal Number: IA/22104/2014

THE IMMIGRATION ACTS

**Heard at Taylor House
On 29 September 2014**

**Decision & Reasons
Promulgated
On 27 October 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

MRS ELIZABETH AFIA FRIMPONG

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No attendance

For the Respondent: Mr Diwncyz, a Home Office Presenting Officer

DECISION AND REASONS FOR FINDING NO MATERIAL ERROR OF LAW

Introduction

1. The present appeal is by the respondent but I will continue to refer to the parties by their designation at the First-tier Tribunal.
2. The appellant is a citizen of Ghana who was born on 25 September 1989.

3. On 19 February 2013 the appellant applied for a residence card as the spouse of a Dutch national, Seth Acheampong. The application was refused by the respondent who decided that she could not be satisfied that the appellant had entered a customary marriage under Ghanaian law as required by the legislation in that country. On 13 March 2014 the appellant applied for a residence card for a second time but an official considered that application also to be unfounded.
4. The appellant appealed that refusal to the First-tier Tribunal by a notice of appeal dated 19 May 2014.
5. First-tier Tribunal Judge Mrs M Gurung-Thapa (“the Immigration Judge”) decided that the appellant had satisfied the requirements of the Immigration (European Economic Area) Regulations 2006 (“the 2006 Regulations”) as a member of Mr Acheampong’s household who was in a durable relationship with him. Accordingly, the Immigration Judge allowed the appeal.

Proceedings Before the Upper Tribunal

6. The respondent applied for permission to appeal to the Upper Tribunal from the decision of the First-tier Tribunal. Her grounds were served on 4 August 2014. Those grounds allege that there was an absence of evidence as to the validity of the proxy marriage entered into between the appellant and Mr Acheampong.
7. Judge of the First-tier Tribunal d’Imecourt gave permission to the respondent to appeal to the Upper Tribunal because it appeared that the Immigration Judge may have misdirected herself on the law and, in particular, the case of **TA and Others (Kareem and Others) Ghana [2014] UKUT 00316 (IAC)**. On 19 August standard directions were issued. On 27 August 2014 (according to the fax header) the appellant responded to the respondent’s grounds of appeal. The response states that the marriage certificate had been issued by a competent authority according to the laws of Ghana and the Immigration Judge had correctly concluded that the appellant was lawfully married to Mr Acheampong. Subsequently, on 15 September 2014 the appellant’s representatives wrote to the Upper Tribunal informing it that they were not in possession of sufficient funds to appear at the hearing. Those representatives asked that the appeal be determined on the papers without an oral hearing. However, that application was rejected by the Tribunal. The appellant’s representatives were therefore informed on 19 September 2014 that the case remained in the list for an oral hearing on Monday 29 September 2014 and that if the appellant failed to attend the Tribunal the appeal would be determined having regard to the written submissions made in accordance with the directions which had been issued.

8. At the hearing, not unexpectedly, the appellant failed to attend but the respondent attended through Mr Diwncyz, a Home Office Presenting Officer. He relied on the case law referred to in the grounds which comprehensively set out the respondent's position and did not need any expansion upon. Accordingly I reserved my decision as to whether there was a material error of law in the decision of the First-tier Tribunal.

Discussion

9. The case of **TA and Others (Kareem explained) Ghana [2014] UKUT 00316 (IAC)** found that the question of whether there was a marital relationship for the purposes of the 2006 Regulations must always be examined in accordance with the laws of the member state from which the union citizen obtains nationality. In this case that would be the Netherlands.
10. The respondent contends that the Immigration Judge failed to make a proper assessment of whether the appellant satisfied the marriage laws of Mr Acheampong's country of nationality, i.e. the Netherlands. The appellant contends in response that the customary marriage between the appellant and Mr Acheampong was recognised under the laws of Ghana. Secondly, because the respondent had not raised any doubt over the appellant's marriage certificate, there was no need to show that the marriage between the appellant and the qualified person (i.e. Mr Acheampong) had been contracted according to the national law of his EEA country (i.e. the Netherlands). It was submitted in all the circumstances that adequate documentary evidence had been supplied and the Immigration Judge should have decided the case in the appellant's favour. Therefore, the Immigration Judge's decision was sustainable.
11. The first issue is whether the requirements of **JA and Others (Kareem) [2014] UKUT 00024** were satisfied. The requirements are that the EEA national must show that his marriage to the appellant was recognised according to the laws of his own EEA country (the Netherlands).
12. With respect, the Immigration Judge does not appear to have grappled with this point under the section of his determination headed "consideration and reasons". Instead, he analysed the requirements of Ghanaian national law, for example in paragraph 31. As the respondent points out in her grounds of appeal, it was incumbent upon the Immigration Judge to make clear findings on validity of that marriage under EEA law. This is a material error of law so that part of the determination has to be set aside.
13. The remainder of the determination, and in particular the conclusion that the appellant is in a durable relationship with the sponsor, should stand. The respondent suggests in her grounds that it is appropriate to "remit for the exercise of the discretion under Regulation 17(4)". Presumably this is a reference to paragraph 17(4) of the Immigration (European Economic

Area) Regulations 2006. It is open to the respondent to reconsider the application at any stage and exercise her discretion in the appellant's favour. However it is not appropriate for the Upper Tribunal to force her to do so or to "remit the matter" for that purpose.

14. The appropriate remedy before this Tribunal is to find that the requirements of the EEA Regulations were not met and therefore the respondent's decision to refuse to issue a residence card was in accordance with the law.

Decision

The decision of the First-tier Tribunal contains a material error of law. Accordingly, that decision must be set aside. I substitute the decision of the Upper Tribunal that the appellant's appeal against the decision of the respondent to refuse to issue a residence card is dismissed.

Signed

Date

Deputy Upper Tribunal Judge Hanbury

29 September 2014