



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/34018/2013

**THE IMMIGRATION ACTS**

Heard at Bennett House, Stoke  
On 24<sup>th</sup> July 2014

Determination Promulgated  
On 28<sup>th</sup> August 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE GARRATT

Between

PAUL YEBOAH  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: No appearance

For the Respondent: Mr J Harrison, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. Before the Upper Tribunal the Secretary of State becomes the appellant. However, for the avoidance of confusion I shall continue to refer to the parties as they were before the First-tier Tribunal.

2. At the first hearing of this appeal in the Upper Tribunal on 9<sup>th</sup> May 2014 I reached the conclusion that the determination of Judge of the First-tier Tribunal Hindson contained an error on a point of law for the reasons which follow:
  - “2. On 21<sup>st</sup> March 2013 Designated Judge of the First-tier Tribunal Macdonald gave permission to the respondent to appeal against the determination of Judge of the First-tier Tribunal Hindson in which he allowed the appeal against the decision of the respondent to refuse a residence card as a family member in accordance with the provisions of paragraph 17 of the Immigration (European Economic Area) Regulations 2006.
  3. Designated Judge Macdonald noted that the rounds of application stated that the judge had failed to make findings as to whether the type of marriage entered into by the appellant, a citizen of Ghana, was recognised by the EEA state of the sponsor, namely the Czech Republic, in accordance with the conclusions of the Upper Tribunal in *Kareem (Proxy marriage – EU law)* [2014] UKUT 00024 (IAC). Noting that Judge Hindson had concluded that the couple were validly married in Ghana but the determination did not consider the recognition of the marriage in the Czech Republic. Designated Judge Macdonald thought the grounds gave rise to an arguable error on a point of law.
  4. At the hearing before me Ms Hashmi conceded that it would be difficult for her to argue that the determination did not contain an error as outlined in the permission. She also noted that the determination (paragraph 10) simply concluded that if the Ghanaian authorities were sufficiently satisfied by documents provided to register the marriage in Ghana then it was valid without consideration of the formalities required under Ghanaian law for such a marriage to be recognised.
  5. Mr Harrison contended that there was a clear error of law in the determination as set out in the grounds.
  6. After considering the matter for a few moments, I announced that I was satisfied that the determination showed error on a point of law for the reasons which now follow.
  7. The respondent refused the application for a residence card as a family member because the copy of the Ghanaian statutory declaration provided did not follow the provisions of paragraph 3(1) of part 1 of the Ghanaian Customary Marriage and Divorce (Registration) Law 1985. In the brief determination the judge did not deal adequately with this issue reaching the contradictory decision that, although the statutory declaration did not contain the right information, the Ghanaian authorities accepted it and so the marriage was valid in Ghana. This was even though Ghanaian legislation would suggest otherwise. Additionally, the judge failed to consider the validity of the proxy marriage for the purpose of the 2006 Regulations which, following *Kareem*, required the appellant to prove that the marriage would have been valid in the Czech Republic. On this basis the determination should be re-made.”

3. I was unable to proceed to immediately re-make the appeal after I had made the above decision because neither representative had a complete set of documents in the case and, in particular, Ms Hashmi had not received full instructions from the appellant's representatives.
4. At the resumed hearing before me on 24<sup>th</sup> July 2014 neither the appellant nor his representatives, Michael & Co Legal Services, attended. Having noted that both the appellant and his representatives had been given notice of the hearing by post on 20<sup>th</sup> June 2014 at the last recorded address on the Tribunal file and that neither notice had been returned in the post, I was satisfied that it was in the interests of justice to proceed with the hearing. In doing so I applied the provisions of paragraph 38 of the Tribunal Procedure (Upper Tribunal) Rules 2008.
5. No further information has been received from either the appellant or his representatives in relation to the salient point in this appeal, namely, whether or not the appellant's claimed Ghanaian marriage had been recognised by the EEA state of the sponsor, the Czech Republic, in accordance with the conclusions of the Upper Tribunal in *Kareem (Proxy marriage – EU law)* [2014] UKUT 00024 (IAC).
6. Mr Harrison briefly submitted that, as there was no evidence of a valid marriage or partnership under paragraph 8(5) of the 2006 Regulations, the appeal had to be dismissed.
7. I announced that I would dismiss the appeal and now give my brief reasons for doing so.
8. The legal position set out in *Kareem* has now been confirmed by the Upper Tribunal in *TA and Others (Kareem explained) Ghana* [2014] UKUT 00316 (IAC). The determination of whether there is 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. This has not happened in this appeal and so it must be dismissed.
9. I should also point out that in my error of law decision I also concluded that the determination showed a further error in relation to the judge's conclusion that the Ghanaian marriage in this case was valid even though it did not comply with the Ghanaian Customary Marriage and Divorce (Registration) Law 1985. This is further reason for dismissing the appeal on the basis that the parties had not shown that they were validly married under Ghanaian law.
10. I also dismiss the appeal on human rights grounds on the basis that the parties have not shown that they are married nor did either or both of them attend the appeal before me to produce evidence to show the existence of family life under Article 8.

**DECISION**

The decision of the First-tier Tribunal involved the making of an error on a point of law. I set aside that decision and re-make it by dismissing the appeal on all grounds.

**Anonymity**

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Signed

Date

Deputy Upper Tribunal Judge Garratt

**TO THE RESPONDENT**  
**FEE AWARD**

As I have dismissed this appeal there can be no fee award.

Signed

Date

Deputy Upper Tribunal Judge