



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

Appeal Number: IA/49924/2013

THE IMMIGRATION ACTS

Heard at Field House

On 20 August 2014

Determination

Promulgated

On 1 September 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**ERIC ASIEDU-OFEI
(Anonymity Direction not made)**

Respondent

Representation:

For the Appellant: Mr Walker (Senior Home Office Presenting Officer)

For the Respondent: Mr B Owusu (Solicitor)

DETERMINATION AND REASONS

1. It will be convenient to refer to the parties as they appeared before the First-tier Tribunal. The appellant is Mr Eric Asiedu-Ofei and the respondent is the Secretary of State. The appellant's appeal against a decision to refuse to issue him with a residence card was allowed by First-tier Tribunal Judge Metzger ("the judge") in a determination promulgated on 6 June 2014. The appellant relied upon his customary marriage to a Dutch

citizen, conducted in Ghana in the autumn of 2012 and registered in that country on 8 November that year.

2. The judge heard oral evidence from the appellant and from his wife and took into account a report prepared by Professor Woodman regarding the formalities of Ghanaian customary marriages. He also had before him evidence from the Embassy of the Netherlands and a letter from a Dutch lawyer, regarding recognition of customary marriages in Dutch law. The judge found that the evidence showed that a valid customary marriage had taken place, which fell to be recognised as a legal marriage. He found it unnecessary to make findings regarding whether or not the appellant and his wife were in a durable relationship but concluded that the evidence showed that the relationship between the two was serious and committed and that they had resided together since August 2012.
3. The Secretary of State applied for permission to appeal. There were two grounds. In the first, it was contended that the judge did not properly apply guidance given in Kareem [2014] UKUT 00024. The relevant EEA law was the law of the Netherlands and the judge had failed to make proper findings in this context. In a second ground, it was contended that there was procedural irregularity capable of making a material difference. The Presenting Officer's minute, recording the proceedings, showed that the judge appeared to be rushed. Evidence was given by the appellant while his wife was present in court. The Presenting Officer wished to ask questions but concluded that it was too late to do so, once the appellant had given his evidence. This was unfair to the Secretary of State. The Presenting Officer assumed that the lady at the back of court was a party or witness in another case.
4. Permission to appeal was granted on 26 June 2014.
5. In a Rule 24 response from the appellant's solicitors, the appeal was opposed. The judge correctly applied guidance given in Kareem, and his approach was also fully consistent with TA and Others (Kareem explained) [2014] UKUT 316. So far as the hearing was concerned, it was made clear on the appellant's behalf at the outset that the Tribunal was concerned with legal matters, best dealt with in submissions. It was only after the appellant gave his evidence that the Presenting Officer indicated that she would have wanted to call his wife. There was no unfairness.

Submissions on Error of Law

6. Mr Walker said that there was no reference to Kareem in the body of the determination or to the Dutch Civil Code. The Secretary of State had properly focused on Kareem. It was clear, however, that the decision in that case was before the judge and he mentioned it in paragraph 12 of the determination. The judge also failed to expressly mention evidence in the appellant's supplementary bundle, from Holland. So far as the second ground was concerned, the appellant's wife was present in court.

7. Mr Owusu said that there was no procedural irregularity. The Rule 24 response set out the appellant's stance that the judge properly and fairly determined the appeal, largely on the basis of the documentary evidence and submissions on the law. So far as Kareem was concerned, the judge did not err. He clearly had in mind paragraphs 27 to 31 of Kareem, in which the relevant parts of the Dutch Civil Code were set out. It was fair to observe that the judge might have set things out more fully but it was implicitly in paragraphs 12 to 14 that he also had in mind paragraph 68 of Kareem. Even if the judge did err, in failing to set things out fully, the error was not material. At paragraph 14, the judge found that he was not required to make an express finding on durable relationship but he concluded, in any event, that the relationship was well-founded and serious.
8. In a brief response, Mr Walker said that the decision in VHR from the Upper Tribunal on unmeritorious grounds might fall to be considered. It was accepted that the judge was not required to go through absolutely everything. Paragraph 13 contained a brief summary of the evidence and that paragraph, when read carefully, showed that the judge took into account both the evidence regarding the customary marriage in Ghana, in the light of the report from the expert, and came to a conclusion that the marriage was a recognised one and therefore "legal".

Conclusion on Error of Law

9. So far as the second of the Secretary of State's grounds are concerned, I find that no material error has been shown. I have read the minute from the Presenting Officer carefully. The proceedings may have appeared rushed, as is sometimes unfortunately the case. Having read the determination, it is apparent that the judge made findings of fact that were open to him on the evidence, regarding the relationship between the appellant and his wife. Much of the case was borne by the documentary evidence, particularly relating to the customary marriage in Ghana and the Dutch Civil Code. The Rule 24 response contains an appropriate observation that the appellant's case was advanced from the outset on the basis that the documentary evidence and submissions would lie at the heart of the case and be sufficient to determine the appeal. The Presenting Officer was given an opportunity to put questions to the appellant's wife and although best practice of course would have required her to remain outside court during the appellant's evidence, in the particular circumstances I find that no material error has been shown.
10. So far as the first ground is concerned, the judge had before him evidence from a Dutch lawyer and from the Embassy of the Netherlands. In the latter, attention is drawn to the provisions of the Dutch Civil Code which were set out in Kareem. So long as there is nothing incompatible with Dutch public order, a valid marriage under the law of the state where it took place is recognised in the Netherlands as a valid marriage. The letter

from the Dutch lawyer is, perhaps, couched in rather cautious terms but he concludes that there is nothing incompatible with Dutch public order in the appellant's customary marriage in Ghana.

11. That evidence was before the judge and the weight to be given to it was a matter for him. Both representatives suggested that the judge's reasoning was rather brief, or perhaps compressed, but paragraphs 12 to 14 do set out some clear conclusions. In the light of the evidence, I find that he was entitled to conclude as he did that a valid marriage had been conducted between the appellant and his wife and, so far as Kareem is concerned, that it was a marriage recognised in Dutch law.
12. This case is similar in some respects to that of the appellant in TA and Others. In that case, the Upper Tribunal Judge found, in remaking the decision of the First-tier Tribunal, that the evidence did not show recognition of the marriage in Dutch law (the sponsor in that case was also a Dutch citizen). The Upper Tribunal Judge went on to find, however, that the evidence did show a durable relationship between the appellant and his sponsor and so it fell to the Secretary of State to exercise discretion under Regulation 17(4) of the 2006 Regulations. In the present appeal, even if a material error were shown, the judge's findings of fact that the relationship between the appellant and his sponsor was serious and committed and that they had cohabited since August 2012 would have led to a similar conclusion. In the event, this is unnecessary.
13. In summary, I conclude that no material error of law has been shown and the decision of the First-tier Tribunal shall stand. Part of that decision is the fee award which followed the appeal being allowed. The fee award, of course, also stands.

DECISION

14. The decision of the First-tier Tribunal, containing no material error of law, shall stand.

Anonymity: There has been no application for anonymity in these proceedings and I make no direction on this occasion.

Signed

Date 22 August 2014

Deputy Upper Tribunal Judge R C Campbell