



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

Appeal Number: IA/11363/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 15 April 2015**

**Decision & Reasons Promulgated  
On 21 April 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DAVID TAYLOR**

**Between**

**MR AHMED OUHIDA  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr E Nicholson of Counsel

For the Respondent: Mr L Tarlow, Home Office Presenting Officer

**DECISION AND REASONS**

1. Although the Secretary of State is strictly the appellant to this appeal I have, for the sake of consistency, continued to call the parties by their original designations in the First-tier Tribunal. The Secretary of State thus continues to be called the respondent.
2. The Secretary of State has appealed, with permission, against the decision of First-tier Tribunal Judge Lal promulgated on 23 December 2014 wherein he allowed the appellant's appeal against the respondent's refusal to grant him a residence card as the spouse of an EEA national exercising

treaty rights in the UK. The appellant's wife is his sponsor, Ugne Jakiene, who is a Lithuanian national and it would appear that they went through a marriage ceremony, by proxy, in Lithuania on 16 April 2012.

3. At the hearing in the First-tier Tribunal Judge Lal heard oral evidence from the appellant and from Ms Jakiene, as well as from a friend who knew them both. The judge at [15] "found their evidence to be clear, consistent and given without hesitation and overall the Tribunal found them to be credible and compelling as witnesses". At [17] he found the relationship to be a durable one and allowed the appeal.
4. Permission to appeal was granted on 9 February 2015 primarily on the basis that the judge had failed to consider, in relation to the proxy marriage, the Tribunal decisions in **Kareem (Proxy marriages - EU law) [2014] UKUT 24** and **TA and Others (Kareem explained) Ghana [2014] UKUT 00316** which has held that the recognition of a proxy marriage rests upon recognition of the marriage by the Member State of the EU national, in this case Lithuania. No evidence of Lithuanian law had been produced in the First-tier Tribunal.
5. In his submissions before me, Mr Tarlow referred to the cases of **Kareem** and **TA**. The judge should have taken account of them. There is no reference in his decision to Lithuanian law, nor was there any evidence of Lithuanian law before the First-tier Tribunal. Although the appellant, in his Rule 24 reply, claimed that the proxy marriage issue was raised too late by the respondent, the Tribunal was bound to take account of established law in making its decision.
6. Mr Tarlow, however, made it clear that the respondent made no challenge to the judge's finding that the appellant and Ms Jakiene were in a durable relationship. That is not in issue.
7. In reply Mr Nicholson argued that **Kareem** and **TA** does not require expert evidence to be produced as to the law of the EU country. I asked whether there was any expert report today in relation to Lithuanian law and he told me that there was none. I was referred to a document in the appellant's bundle (page A11) which was a translation of the Moroccan marriage certificate which had been endorsed by the Lithuanian Embassy in London stating that "this document has been legalised". Precisely what that expression means was not explained but Mr Nicholson submitted that it was an indication that the Lithuanian Embassy accepted the existence of the marriage.
8. Having reserved my decision and having reviewed all the documents and submissions I have formed the view that the First-tier Tribunal decision did contain an error of law such that its conclusion must be set aside.
9. I cannot accept the submission of Mr Nicholson that **Kareem** does not require production of expert evidence as to the law of the Member State. Paragraph 68(g) of the decision in **Kareem** provides as follows:

“It should be assumed that, without 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, the Tribunal is likely to be unable to find that sufficient evidence has been provided to discharge the burden of proof. Mere production of legal materials from the EEA country or country where the marriage took place will be insufficient evidence because they will rarely show how such law is understood or applied in those countries. Mere assertions as to the effect of such laws will, for similar reasons, carry no weight.”

10. In my judgment, the mere fact that the copy marriage certificate has been “legalised” by the London Embassy of Lithuania does not begin to approach the standard of evidence required by **Kareem**. The First-tier Tribunal decision must accordingly be set aside in its entirety with but one exception.
11. That exception is the finding by the First-tier Tribunal Judge at [15] and [17] that the relationship between the appellant and Ms Jakiene is a durable one and that the evidence that they gave in the first Tribunal was consistent, clear and credible. That evidence is preserved. These findings were accepted by the respondent.
12. In light of the above I must re-make the decision on the evidence, by holding that the appellant’s appeal against the decision to refuse to recognise him as a family member under Regulation 7 of the 2006 Regulations must be dismissed.
13. Regrettably the Secretary of State in her Reasons for Refusal Letter did not consider whether or not the appellant qualified as an extended family member under Regulation 8(5) of the 2006 Regulations. There is now a finding that the appellant and Ms Jakiene are in a durable relationship but there remains a discretion on the part of the Secretary of State under Regulation 8 and the application must therefore be remitted to the Secretary of State for a lawful decision under Regulation 8.

### **Notice of Decision**

14. The First-tier Tribunal decision contained an error of law and is set aside in its entirety (save as to paragraph 11 above). I re-make the decision by dismissing the appellant’s appeal in relation to Regulation 7 but the application is remitted to the Secretary of State for a lawful decision to be made in relation to Regulation 8(5).
15. No anonymity direction has been requested and none is made.

Designated Judge David Taylor  
Deputy Upper Tribunal Judge  
20 April 2015