



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

Appeal Number: IA/12139/2014

THE IMMIGRATION ACTS

**Heard at Manchester
On 20 January 2015**

**Decision & Reasons
Promulgated
On 4 February 2015**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**SULLEMANA ABUBAKARI
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr McVeety, a Senior Home Office Presenting Officer

For the Respondent: Not present or represented

DECISION AND REASONS

1. The respondent, Sullemana Abubakari, was born on 22 June 1980 and is a male citizen of Ghana. The respondent was refused a residence card as confirmation of a right to reside in the United Kingdom under Regulation 17 of the Immigration (European Economic Area) Regulations 2006 by a decision dated 24 February 2014. He appealed that decision at the First-tier Tribunal (Judge McGinty) which, in a determination promulgated on 11 August 2014, allowed the appeal. The Secretary of State now appeals,

with permission, to the Upper Tribunal. I shall hereafter refer to the appellant as the respondent and to the respondent as the appellant (as they appeared respectively before the First-tier Tribunal).

2. This is a proxy marriage case, the appellant having claimed to marry a Portuguese national. Judge McGinty found that the appellant had produced a marriage certificate issued by a competent authority and that the marriage certificate had been issued in accordance with the registration rules of Ghana where the marriage had taken place. The grounds of appeal rely on *Kareem (Proxy marriages - EU law)* [2014] UKUT 24 and also *TA and Others (Kareem explained) Ghana* [2014] UKUT 00316 (IAC). The respondent asserts that the Tribunal was obliged to consider Portuguese law in order to determine whether this proxy marriage would be treated as valid and legal in that EU state. By failing to consider whether the marriage was valid under Portuguese law, the judge had erred in law.
3. The appellant did not attend the hearing in Manchester on 20 January 2015. I am satisfied that he was aware of the date and place of the hearing. Indeed, on 19 January 2015 I had refused an application by him for an adjournment. The appellant wished to submit his marriage certificate to the Portuguese Embassy in London in order that it might be “verified” by the embassy. It is not clear what such a procedure would achieve; it was clear that the appellant had not previously sought to adduce any evidence from the Portuguese Embassy or, indeed, as regards to the status of proxy marriages in Portuguese law when he had appealed to the First-tier Tribunal. In the absence of any such evidence, it was not possible for the First-tier Tribunal to allow the appeal without erring in law, as the grounds assert. Judge McGinty has dealt thoroughly with this proxy marriage in terms of its legality in Ghana; however, he says nothing in his determination regarding its status in Portuguese law. That failure leads me to set aside his determination and to remake the decision. The appellant’s appeal against the respondent’s decision refusing him a residence card is dismissed.

DECISION

The determination of the First-tier Tribunal promulgated on 11 August 2014 is set aside. I have remade the decision. The appellant’s appeal against the respondent’s decision dated 24 February 2014 is dismissed.

Signed

Date 2 February 2015

Upper Tribunal Judge Clive Lane