



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

Appeal Number: IA/40197/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 8 June 2015**

**Decision & Reasons Promulgated
On 15 June 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVID TAYLOR

Between

**MR JODY OPARE MENSHA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr I Palmer of Counsel

For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. Although the appellant to this appeal is, strictly, the Secretary of State I have for the sake of consistency continued to refer to the parties by their original First-tier Tribunal designations. Thus, the Secretary of State continues to be described as “the respondent”.
2. The appellant is a 33 year old citizen of Ghana (born 25 August 1981) who appealed against the respondent’s decision dated 23 September 2014 refusing his application for an EEA residence card as the spouse of an EEA national. The appellant’s sponsor is Ms Evelyn Kwarteng, a German

national of Ghanaian origin, who has been in the UK since July 2012 working here and exercising treaty rights.

3. The appellant and Ms Kwarteng went through a ceremony of proxy marriage in Ghana on 21 December 2013 at which neither of them was present and which was conducted there by members of their families. They claim to have been living together since April 2013, about six months after they first met. The respondent's reasons for refusal letter of 23 September 2014 did not accept that the marriage was valid or accepted under Ghanaian law. Nor was there any evidence that such a marriage was recognised by German law, the nationality of the sponsor, as required by **Kareem [2014] UKUT 00024**. The refusal letter went on to consider whether the parties were in a durable relationship for the purposes of regulation 8(5) of the 2006 EEA Regulations but as the parties had not lived together permanently for two years the respondent was not prepared to accept the durability of the relationship.
4. The appellant appealed. The appeal came before First-tier Tribunal Judge Coffey (who has signed the Decision) sitting as a Panel with Designated Judge Woodcraft. The Panel allowed the appeal finding that the Ghanaian Proxy Marriage was valid under Ghana law and that it would be accepted under German law [74].
5. The respondent sought permission to appeal and permission was granted on 9 April 2015 by Designated Judge Coates. In essence, permission was granted on the basis that the Panel "appear to have overlooked the fact that the response from the German Embassy indicates that the marriage would not be accepted as valid in the eyes of German law".
6. On behalf of the respondent, Mr Tufan submitted that, following **Kareem**, the main issue in this case was whether there was adequate evidence that this marriage would be recognised as lawful under German law. The evidence was such that the Panel could not reasonably have reached that conclusion. Indeed, at [74] of the judge's decision it was indicated "that the German authorities, like this Tribunal, would be unlikely to accept the marriage certificate as proof of a valid marriage".
7. In reply Mr Palmer relied only on the appellant's Rule 24 notice dated 5 June 2015 which essentially argued that the Panel was entitled to come to its conclusions.
8. Having read carefully, before the commencement of the appeal hearing, the correspondence from the German Embassy I indicated that I was satisfied that the Panel erred in concluding, even on the balance of probabilities, that the German authorities would accept this marriage as being valid under German law. The letter of 21 March 2014 from the German Embassy in Accra (at page 146 of the appellant's bundle in the First-tier Tribunal) concludes at page 149 and makes it clear that German courts would decide on the issue in their discretion and based on the evidence before them. It goes on to state that:

“The German Embassy in Accra has refrained from authenticating Ghanaian civil marriage registration certificates since the year 2000 due to the unreliability of the Ghanaian civil marriage registration process. Therefore it may be concluded that a Ghanaian customary marriage registration certificate is of even less evidentiary value”. *[my underlining]*

9. More than that, at the very end of the same document at page 149 the embassy official concludes as follows:

“According to the non-codified Ghanaian customary law it is mandatory that (1) both spouses are Ghanaian nationals and (2) both spouses live in Ghana. In light of these considerations the existence of customary law of a specific tribe granting the possibility to conclude a valid customary marriage between a Ghanaian and a non-Ghanaian who does live in Ghana appears to be highly improbable.”

10. In a further letter from the embassy of Germany in London the letter concludes (at page 152):

“The uncodified Ghanaian common law as a requirement for an effective marriage among other things requires that both marital partners are Ghanaian nationals and reside in Ghana. The eligibility of a marriage concluded under one of the circumstances mentioned by you in accordance with Articles 11 and 13 of the Introductory Act of the German Civil Code is therefore questionable.” *[my underlining]*

11. For all these reasons I am not satisfied, even on the balance of probabilities, that the evidence is such that it establishes that German law would recognise the marriage between the appellant and Ms Kwarteng in the circumstances outlined in the First-tier Tribunal decision.
12. The decision must therefore be set aside. It is somewhat regrettable that the Panel did not go on to consider whether, in any event, there was a durable relationship between the parties such that the appellant would qualify under Regulation 8(5) of the 2006 Regulations. The appeal must therefore be remitted to the First-tier Tribunal when all issues will be at large. None of the findings of the First-tier Tribunal are to be retained.

Notice of Decision

The First-tier Tribunal decision contained an error of law and the decision is accordingly set aside in its entirety. The appeal is to be remitted to the First-tier Tribunal for a full rehearing on all issues.

Designated Judge David Taylor
Deputy Upper Tribunal Judge
12 June 2015