



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

**Appeal Number: IA/45807/2014**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons**

**On 9<sup>th</sup> December 2015**

**Promulgated**

**On 22<sup>nd</sup> December 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE RAMSHAW**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MR ALEXANDER ANTWI  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr K Norton, a Home Office Presenting Officer

For the Respondent: No appearance

**DECISION AND REASONS**

**Introduction**

1. This is a resumed hearing to consider a single issue, namely whether or not Mr Antwi is in a durable relationship with Ms Lisa Omorogbe ('the sponsor'), a citizen of Belgium.

**The History of the appeal**

2. The Secretary of State appealed against the decision of the First-tier Tribunal (Judge Fowell) allowing the appeal of Mr Alexander Antwi ('the claimant') against a decision made on 23 October 2014 refusing the claimant's application for a residence card as confirmation of a right of

residence in the United Kingdom under European Community Law as a family member of a European Economic Area ('EEA') national exercising treaty rights.

3. The application was rejected by the Secretary of State for a number of reasons. The Secretary of State did not accept that the marriage was a validly constituted marriage deciding that the claimant did not satisfy Regulation 7 of the Immigration (European Economic Area) Regulations 2006 (as amended) (the 'EEA Regulations') as a spouse. The Secretary of State also decided that the claimant and the sponsor were not in a durable relationship and therefore he did not qualify as an extended family member as defined in Regulation 8 of the EEA Regulations.
4. The claimant appealed to the First-tier Tribunal against the decision of the Secretary of State. In a determination promulgated on 25 February 2015, the First-tier Tribunal allowed the claimant's appeal on the basis that the proxy marriage was validly constituted in Ghana and therefore the claimant satisfied Regulation 7 of the EEA Regulations.
5. The Secretary of State sought permission to appeal against the decision of the First-tier Tribunal. On 28 April 2015 First-tier Tribunal Judge Brunnen granted permission to appeal.
6. There was one principal ground of appeal. It was submitted by the Secretary of State that the Immigration Judge materially erred in law by failing to take into account the requirements set out in the case of Kareem (proxy marriage – EU law) Nigeria [2014] UKUT 24 (IAC).
7. A hearing of the Secretary of State's appeal against the decision of the First-tier Tribunal was listed on 3 September 2015 before me in this Tribunal. The claimant did not appear at that hearing and neither did his representative. An application for an adjournment had been made on the day before the hearing on the grounds of the claimant's ill health. I decided at that hearing that it was in the interests of justice to proceed in the absence of the claimant and his representative to consider the error of law issue regarding the validity of the claimant's marriage and to re-make the decision on that issue. However, I decided that it was in the interests of justice to grant an adjournment but only with regard to whether or not the claimant is in a durable relationship. This aspect of the appeal against the Secretary of State's decision was not dealt with by the First-tier Tribunal.
8. I made my decision and provided my reasons in writing on the validity of the claimant's marriage on 11 September 2015. The parties were provided with a copy of my decision which was that:

'I have no evidence before me that according to the legal system in Belgium the claimant's marriage is a valid marriage. The burden of proving that fact is on the claimant. The claimant requested that the First-tier Tribunal consider the matters on the papers. No evidence was submitted, in relation to the legal position in Belgium, to the First-tier Tribunal and none has been

submitted in relation to the appeal to this Tribunal in accordance with Rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008. No Rule 24 response was made to the Secretary of State's grounds of appeal (which clearly set out this issue). As there is no evidence of the validity of the marriage in Belgium I find that the claimant is not to be treated as being married for the purposes of Regulation 7 of the EEA Regulations.

However, that is not the end of the matter. Regulation 8 of the 2006 Regulations regulates those persons who can be considered to be extended family members. The First-tier Tribunal did not consider this matter as the judge had found the marriage to be valid. The Secretary of State, when making her decision, did not consider that the claimant had submitted sufficient evidence to establish that the sponsor and claimant were in a durable relationship. In the interests of justice I do not consider that I can re-make the decision on this matter in the absence of the appellant and/or his representative.'

9. Directions to the parties were also given including the following direction:

'The appellant and sponsor should attend the next hearing - unless they attend it is very unlikely that in their absence there will be sufficient evidence to conclude that they are in a durable relationship'.

### **Attendance at the hearing on 9<sup>th</sup> December 2015**

10. The day before the hearing, at 18.55, the claimant's representative faxed a letter to the Upper Tribunal<sup>1</sup> which asked for the appeal to be decided on the documentary evidence which was before the First-tier Tribunal. It was said in the letter that 'We are unable to attend the hearing due to costs'. I proceeded to hear the appeal in the claimant and his representative's absence.
11. The facts of the case are set out in my 11 September 2015 decision. I do not need to rehearse them.
12. Regulation 8(5) of the 2006 Regulations provides that: '

'A person satisfies the condition in this paragraph if the person is the partner of an EEA national (other than a civil partner) and can prove to the decision maker that he is in a durable relationship with the EEA national.'

### **Summary of the Submissions**

13. Mr Norton submitted that the claimant was in difficulties given the clear direction that in the absence of the attendance of the claimant and the sponsor it was very unlikely that there would be found to be sufficient evidence that they were in a durable relationship. They were on notice that the documentary evidence was insufficient. The only

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<sup>1</sup> This letter was not brought to my attention until after I had proceeded in the absence of the appellant to hear the appeal.

limited evidence available was not backed up by anything further, e.g. no witness statements.

14. I referred Mr Norton to the only two items of evidence in joint names that I had identified that may have been intended to support the claim, namely a joint tenancy agreement for a double room in a shared house and a letter from Legal and General regarding life assurance. Mr Norton submitted that these were merely evidence of entering into contractual agreements. More was needed to show that the parties were in a durable relationship. Mr Norton pointed out that the tenancy agreement was for a limited period of 12 months expiring in March 2015. No further evidence had been submitted. Mr Norton submitted that he had very little to respond to.

### **Decision and Reasons**

15. There is scant evidence before me from which it could be inferred that the claimant is in a durable relationship with the sponsor. The claimant was advised that the evidence before the Tribunal was not likely to be sufficient. The hearing was adjourned to enable the claimant to attend and provide evidence of the relationship. He did not do so. The claimant has not discharged the burden of proof that is upon him to satisfy me that he is in a durable relationship with the sponsor.

### **Notice of Decision**

16. The claimant's appeal against the Secretary of State's decision to refuse to issue a residence permit is dismissed. The Secretary of State's decision stands.

Signed P M Ramshaw

Date 13 December 2015

Deputy Upper Tribunal Judge Ramshaw