



IAC-AH-PC-V1

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

Appeal Number: IA/53578/2013

**THE IMMIGRATION ACTS**

**Heard at Birmingham**

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

**Determination  
Promulgated**

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

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**MR PAA KWESI BAFFOUR DAVIES  
(ANONYMITY ORDER NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: No appearance

For the Respondent: Mr N Smart (HOPO)

**DECISION AND REASONS**

1. The Appellant is a citizen of Ghana who was born on 2<sup>nd</sup> June 1974. He appeals under the provisions of Section 82 of the Nationality, Immigration and Asylum Act 2002 against the decision of the Respondent dated 5<sup>th</sup> December 2013 refusing his application for an EEA residence card as the spouse of a German national, who is present in the UK exercising treaty rights, by the name of Serwaa Akosua Geb Fiend. I had the bundle submitted for the Appellant.

2. The refusal notice refers to the fact that the Appellant underwent a Ghana proxy marriage, and that there was a marriage certificate dated 17<sup>th</sup> August 2012. There was also a statutory declaration dated 15<sup>th</sup> August 2012. There was the certification letter from the Second Deputy Judicial Secretary dated 14<sup>th</sup> August 2012.
3. Furthermore, there was one certification letter from the Legal Counsellor Bureau, Ministry of Foreign Affairs and Mutual Integration dated 20<sup>th</sup> September 2012. There was a further letter from the Ghana High Commission dated 2<sup>nd</sup> October 2012. However, the refusal letter of 5<sup>th</sup> December 2013 stated that on the basis of established legal authorities the Appellant could not succeed.
4. The matter was heard by First-tier Tribunal Judge G J Napthine on 28<sup>th</sup> July 2014. He promulgated his determination on 6<sup>th</sup> August 2014. In the determination, he dismissed the Appellant's appeal. The Appellant subsequently applied for, and was granted permission to appeal to the Upper Tribunal, and thus the matter comes before me.

### **The Judge's Findings**

5. The judge found that the Appellant had a complete lack of knowledge of the Sponsor's seven siblings and this "makes his claim to be in a relation with her not credible. It is not credible that a person could be in a durable relationship for some two and a half years since the marriage and for one year before the marriage without knowing anything of her seven siblings" (paragraph 23). The Appellant could not therefore succeed on the basis of a "durable relationship".
6. With respect to the marriage itself, the judge found that the applicable authority was **Kareem (Proxy marriages - EU law) [2014] UKUT 24**. This was confirmed in the case of **TA and Others [2014] UKUT 00316**. The judge held that, "there is no evidence before me to show that Germany recognises proxy marriages. Therefore, I find that the Appellant has failed to prove that he has contracted a valid marriage so he cannot satisfy the requirements of Regulation 7(1). (See paragraph 13).

### **Grounds of Application**

7. The grounds of application state that there was evidence before the judge to show that Germany recognised a marriage of this type and that the judge acted unfairly in finding that there had been a sham marriage because that issue had never been raised.
8. Included in the Appellant's bundle was a printout, taken from the internet, and headed "Federal Foreign Office", which indicated that Germany regarded a marriage entered into abroad as valid if the legal provisions relating to the marriage of the foreign State where the marriage was entered into were abided by.

9. On 19<sup>th</sup> September 2014, permission to appeal was granted on the basis that there was a difference between a sham marriage and a durable relationship. There was nothing to show that the Respondent Secretary of State had argued that the marriage was a sham marriage (provided it was a valid marriage). It was unclear whether the judge had actually raised this issue specifically with the Appellant at the hearing.

### **Submissions**

10. At the hearing before me on 9<sup>th</sup> January 2015, the Appellant was unrepresented. There was a letter sent by fax on the day of the hearing from Lawrencia & Co (Solicitors) to the effect that “Our client and Sponsor are unable to attend because of financial reasons. We have been instructed to request that the appeal should be dealt with on the papers”.
11. On behalf of the Respondent Secretary of State, Mr Smart submitted that even if one applied the laws of the relevant European country in question, there was no evidence submitted in actual fact by the Appellant at the hearing, that demonstrated that the laws of that particular country did allow for proxy marriages to take place.
12. On the other hand, the judge had specifically applied **Kareem** and cited the stricture that,

“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 EEA country or country where the marriage took place will be insufficient evidence because they will rarely show how such a law is understood or applied ...” (see paragraph 11).

### **No Error of Law**

13. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision and remake the decision. This is a case where the judge applied the applicable legal authority in the form of the cases of **Kareem** and **TA**. The Appellant’s appeal failed at this first hurdle. Any alleged errors could not have been material thereafter.
14. But in any event, however, the judge considered the question that, “even if the appellant had contracted a valid marriage I would be bound to find, on the basis of the conflicts in the evidence he and his ‘wife’ gave, that such a marriage was a marriage of convenience” (see paragraph 14). The judge gave his reasons for this (from paragraphs 17 to 27).
15. There was in fact, no celebration of the wedding and there was no blessing at the church and the judge observed that “that is not credible for committed church attendees who had had a proxy marriage in Ghana”

(see paragraph 28). These findings are plainly open to the judge and were in no way unreasonable.

**Notice of Decision**

There is no material error of law in the original judge's decision. The determination shall stand.

No anonymity order is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

21<sup>st</sup> January 2015