



IAC-PE-SW-V1

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

Appeal Number: IA/03772/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 10th December 2015**

**Decision & Reasons Promulgated
On 26th January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE BAIRD

Between

**MS REBECCA EFFAH
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Bajwa - Legal Representative
For the Respondent: Ms G Savage - Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the determination of First-tier Tribunal Judge N M K Lawrence issued on 15th July 2014 allowing under the Immigration Rules the Appellant's appeal against the decision of the Respondent made on 20th December 2013 to refuse to grant a residence card under the Immigration (European Economic Area) Regulations 2006 as the spouse of Paul Mensah, a citizen of Germany. The application was refused under Regulation 7 of the Regulations because the Secretary of State considered that the Appellant had not

provided a valid marriage certificate in support of her application and she was not satisfied that the parties are in a durable relationship akin to marriage.

2. In the grounds seeking permission to appeal it is stated:

- “1. There is an error of law in this determination such that it should be set aside. The Respondent Secretary of State for the Home Department invites the Upper Tribunal (Immigration and Asylum Chamber) to set it aside and remit the matter to the First-tier Tribunal (Immigration and Asylum Chamber).
2. Recent case law (**Kareem, TA**) make it clear beyond peradventure that it is a requirement of Judges to consider the validity of the marriage in light of the marriage laws of the EEA national’s country of EEA nationality, in cases such as this.
3. This assessment is absent in Judge Lawrence’s determination.
4. Thus, it is inadequately reasoned and/or contains a misdirection in law.
5. For the avoidance of doubt if the matter is reheard by the Immigration and Asylum Chamber the Respondent Secretary of State for the Home Department continues to rely upon the refusal letter of 20th December 2013. She further observes that this letter does not demonstrate the exercise of the discretion to issue a residence permit to an extended family member under Regulation 17(4) of the EEA Regulations 2006. It is submitted that if the Tribunal later find this Appellant is in a durable relationship with an EEA national then the matter should be remitted by the Respondent for consideration of the exercise of the discretion to issue a residence permit to an extended family member under Regulation 17(4) of the EEA Regulations 2006.”

3. Permission to appeal was granted by First-tier Tribunal Judge Davies. The grant of permission is undated. He said:

“The grounds in the determination do disclose an arguable error of law. The Judge should have considered the validity of the Appellant’s marriage on the basis as to whether the marriage was valid in Germany, the country of which the Appellant’s Sponsor was a national.”

4. The Judge in his determination relied on **CB (validity of marriage: proxy marriage) Brazil [2008] UKAIT 00080** and on **NA Ghana [2009] UKAIT 00009**. He found that the Appellant and her spouse had demonstrated that they are validly married in accordance with the proxy marriage laws of Ghana. He therefore found the marriage was valid and allowed the appeal. He failed to consider either **Kareem (Proxy marriages - EU law) Nigeria [2014] UKUT 00024 (IAC)** or **TA and Others (Kareem explained) [2014] UKUT 316**.

5. It was agreed by the parties that this appeal should be remitted to the First-tier Tribunal for a hearing *de novo* as the Judge clearly failed to deal properly with the issues before him.

Notice of Decision

The decision of the First-tier Tribunal contains a material error of law and the appeal is remitted to the First-tier Tribunal to be heard *de novo* by a Judge other than Judge N M K Lawrence.

No anonymity direction is made.

Signed

Date: 22nd January 2016

N A Baird
Deputy Judge of the Upper Tribunal