



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/28900/2015**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 19 September 2017**

**Decision & Reasons Promulgated
On 25 September 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

**MS DORA ASIEDU FARKYE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr H Kannangara of Counsel instructed by Jade Law
For the Respondent: Ms J Isherwood, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Miles promulgated on 10 January 2017, brought with the permission of First-tier Tribunal Judge Ford granted on 24 July 2017.
2. The Appellant is a citizen of Ghana born on 23 November 1976. She first entered the United Kingdom in April 2004 with leave as a visitor. She overstayed her leave, and seemingly did nothing to regularise her immigration position until she made an application for a Residence Card as the family member of an EEA national on 30 September 2009. The application was based on her marriage to Mr Jedson Joel Dos Santos Carvalho, a national of Portugal. The Appellant was issued with a Residence Card on 10 March 2010 valid for five years until 10 March 2015.

The marital relationship broke down, and the marriage was dissolved on 20 May 2013. In October 2013 the Appellant applied for right of residence following the dissolution of the marriage which was refused. However, on 11 March 2015 the Appellant applied for permanent residence as a family member with a retained right of residence pursuant to regulation 10(5) of the Immigration (European Economic Area) Regulations 2006. The Respondent refused the application by decision dated 12 August 2015.

3. The Appellant appealed to the IAC.
4. At the commencement of the appeal process there was only one outstanding issue: the sufficiency of the evidence provided to establish that Mr Carvalho was exercising Treaty rights at the date of the dissolution of the marital relationship. This issue was dealt with by way of Directions issued by the Tribunal at an adjourned hearing on 17 August 2016: as may be seen at paragraphs 10-13 of the Decision of Judge Miles the materials obtained from HMRC in consequence of those Directions were sufficient to meet the outstanding concern that had been raised by the Respondent. Judge Miles expressed himself to be so satisfied at paragraph 13.
5. Accordingly it may be seen that the Appellant had met the case raised against her by the Respondent. However Judge Miles raised a further point not relied upon by the Respondent in relation to the status of the marriage between the Appellant and Mr Carvalho.
6. It was apparent that the marriage had been what is sometimes called a 'proxy' marriage contracted in Ghana in the absence of both of the parties to the marriage. Judge Miles raised this issue with Counsel appearing for the Appellant on that occasion. (It is to be noted that there was no representative for the Respondent before the First-tier Tribunal.) Indeed Judge Miles went on to determine the case adversely for the Appellant by reference in particular to the case of **TA and Others (Kareem explained) Ghana [2014] UKUT 00316**. In essence Judge Miles identified that there was no evidence to show that the proxy marriage contracted in Ghana had been recognised by the Portuguese authorities, or was otherwise recognised as valid under Portuguese law – Portugal, of course, being the country of nationality of Mr Carvalho. The appeal was dismissed on that sole basis.
7. The Appellant made an application for permission to appeal which was granted by First-tier Tribunal Judge Ford on 24 July 2017. Judge Ford recognised that the line of authority in **Kareem** and **TA** had been overtaken by the Court of Appeal decision in **Awuku v Secretary of State for the Home Department [2017] EWCA Civ 178**, and granted permission to appeal on the basis that this indicated an arguable material error of law.

8. In a Rule 24 response dated 10 August 2017 the Respondent acknowledged the effect of **Awuku**, stated that the Respondent did not oppose the Appellant's application for permission to appeal, and invited the Tribunal to consider the case by applying the ratio in **Awuku**.
9. I note that the case of **Awuku** was heard on 28 February 2017, and the judgment of the Court of Appeal handed down on 23 March 2017. To that extent it postdated the hearing before Judge Miles which took place on 3 January 2017. However it is also to be noted that at paragraph 2 of the decision in **Awuku** it is recorded that at an earlier hearing in proceedings before the Court of Appeal, on 6 December 2016, the Secretary of State had notified the court that she had changed her position and invited the court to allow the appeal on the basis that the decisions in **Kareem** and **TA** were wrongly decided. It may be a matter of speculation, but perhaps if there had been a Presenting Officer attending before Judge Miles, upon the Judge raising the **Kareem** issue the Presenting Officer may have been able to indicate that the Secretary of State had conceded this line of authority before the Court of Appeal.
10. Be that as it may, the Court of Appeal necessarily has overturned the line of authority applied by Judge Miles. In those circumstances I have no hesitation in concluding that Judge Miles' Decision must be set aside for error of law.
11. It follows that the decision in the appeal requires to be remade.
12. The effect of the decision in **Awuku** is that an evaluation of the validity of a marriage is to be assessed by reference to the *lex loci*, that is to say by reference to the law of the country in which the marriage took place and not by reference to the law of some other EEA state. In other words if domestically this country acknowledges the validity of a proxy marriage in Ghana, then that is sufficient to establish a marriage for the purposes of the EEA Regulations. In the context of this case, this is precisely what the Secretary of State had previously done in granting a Residence Card to the Appellant in 2010: the marriage to Mr Carvalho was accepted to be a marriage for the purposes of the Regulations because it was a valid marriage in Ghana. Consistent with her position in 2010, the Respondent did not raise any issue in respect of the validity of the marriage in the context of the current decision letter. Ms Isherwood today does not indicate any document or any other material in which any question as to the validity of the Appellant's marriage has been raised or articulated by the Secretary of State, nor is there anything apparent in the case of **Awuku** that would suggest - notwithstanding the overturning of the **Kareem** and **TA** line of authority - there might be some other reason for

doubting the validity of this marriage, previously recognised by the Secretary of State.

13. In all those circumstances I find that the Appellant has, by way of the materials presented from HMRC pursuant to the Directions before the First-tier Tribunal, satisfactorily addressed the one issue that was standing in her way of obtaining a Permanent Residence Card. The appeal is allowed accordingly.

Notice of Decision

14. The Decision of the First-tier Tribunal contained a material error of law and is set aside.

15. I remake the decision in the appeal. The appeal is allowed.

16. No anonymity direction is sought or made.

The above represents a corrected transcript of ex tempore reasons given at the conclusion of the hearing.

Signed:

Date: 24 September 2017

Deputy Upper Tribunal Judge I A Lewis

TO THE RESPONDENT **FEE AWARD**

I have allowed the appeal and in all of the circumstances make a full fee award in favour of the Appellant.

Signed:

Date: 24 September 2017

Deputy Upper Tribunal Judge I A Lewis
(*qua* a Judge of the First-tier Tribunal)