



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

Appeal Number: EA/01278/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 11 December 2017**

**Decision & Reasons Promulgated
On 18 January 2018**

Before

UPPER TRIBUNAL JUDGE PITT

Between

**WILLIAM KWESI APPIAH
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Durojaiye, instructed by Moorehouse Solicitors
For the Respondent: Mr N Bramble, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision dated 24 March 2017 of First-tier Tribunal Judge Monson.
2. The appellant is a citizen of Ghana, born on 19 July 1981. On 21 April 2015 he made an application for an EEA residence card recognising his status as the spouse of a French national exercising treaty rights. The application was refused by the respondent on 15 September 2015. The respondent found that the appellant's proxy marriage conducted in Ghana was not recognised as valid in France and so fell foul of **Kareem (proxy marriages - EU law) [2014] UKUT 0024 (IAC)**. The respondent also

did not find that the appellant could succeed under Regulation 8(5) on the basis of being in a durable relationship with an EEA national.


3. The appeal came before First-tier Tribunal Monson on 16 March 2017 and he heard evidence from the appellant and his EEA partner, Ms Akoto. The judge found at [15] that:

“Having reviewed the totality of the evidence, both documentary and oral, I am satisfied that the appellant is in a durable relationship with Ms Akoto, and that they have been living together in a relationship akin to marriage for at least 2 years.”

4. However, the judge agreed with the respondent regarding the application of **Kareem** as the customary marriage by proxy had not been shown to have been recognised in French law.
5. The judge also indicated at [17] that even if the appellant was found to be in a relationship akin to marriage for two years and therefore in a durable relationship for the purposes of Regulation 8(5) an appeal on that basis could not be allowed as there was no jurisdiction following the case of **Sala (EFMs: Right of Appeal) [2016] UKUT 411 (IAC)**.
6. The First-tier Tribunal Judge therefore refused the appeal on all grounds.
7. Before me, the parties were in agreement that as of the date of promulgation of the decision on 24 March 2017 the case of **Awuku (Ghana) v SSHD [2017] EWCA Civ 1303** had been promulgated, overturning **Kareem** and indicating that there is no requirement for a proxy marriage such as this to be shown to be acceptable as valid in the EEA country of the sponsor. It was considered for the respondent that this meant that this part of the decision of the First-tier Tribunal had to be set aside for material error of law. It remained the case that the respondent wished to dispute the validity of the proxy marriage because of some of the documents provided.
8. Further, the parties were also in agreement that the case of **Sala** has been superseded by **Khan v SSHD [2017] EWCA Civ 1755** which found that appeal rights did arise for potential extended family members. The parties agreed that this gave rise to another material error in the decision of the First-tier Tribunal.
9. The parties also submitted that given the incorrect approach to jurisdiction on the durable relationship point, the error concerning the application of **Kareem** and the outstanding dispute concerning the applicant's proxy marriage, the decision should be set aside and remade in the First-tier Tribunal.
10. For all of these reasons, I found that the decision of the First-tier Tribunal disclosed an error on a point of law such that it had to be set aside to be remade and that the appropriate forum for the remaking was the First-tier Tribunal.

Notice of Decision

The decision of the First-tier Tribunal discloses an error on a point of law and is set aside to be remade de novo in the First-tier Tribunal.

Signed: 

Date: 16 January 2018

Upper Tribunal Judge Pitt