



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal nos: **IA 00607, 19, 30, 38-14**

THE IMMIGRATION ACTS

At **Field House** Decision signed:
on **09.06.2014** **18.06.2014**
sent out: **25.06.2014**

Before:

Upper Tribunal Judge
John FREEMAN

Between:

Margaret BOATENG & 3 others

appellants

and

Secretary of State for the Home Department

respondent

Representation:

For the appellants: *Olumuyiwa Jibowu* (counsel instructed by MJ Solomon & Partners)

For the respondent: Mr Ian Jarvis

DETERMINATION AND REASONS

This is an appeal, by the appellant, against the decision of the First-tier Tribunal (Judge Surinder Singh Chohan), sitting at Birmingham without a hearing (the (main) appellant not having asked for one) on 1 April 2014, to dismiss an EEA appeal by a citizen of Ghana, born 26 April 1963, and her dependent children. The appellant was married to a Belgian citizen in Ghana by proxy, and she was refused a residence card, because the Home Office were not satisfied that marriage was valid. The judge found on the facts that the appellant was validly married; but he took an additional point, about there being no evidence that the sponsor was here as a 'qualified person'; but Mr Jarvis conceded that he had been wrong to do so, without giving the appellant notice that it was in issue. So the only question on this appeal was whether the appellant's marriage was valid in law or not.

2. On that question, I drew Mr Jibowu's attention to the decision of the Tribunal in *Kareem* (Proxy marriages - EU law) Nigeria [2014] UKUT 24 (IAC) (16 January 2014). While the fact that those representing the

appellant had chosen to have her appeal decided without a hearing had deprived the judge of any assistance he might have had on the law, this decision was declaratory of the EU/EEA law on the point, and it was clearly an error of law not to apply it, if relevant.

3. After a little time for consideration, Mr Jibowu conceded that *Kareem* would have been decisive of the present case, and that the appeal must be dismissed. As I pointed out, the appellant will be able to re-apply for a residence card, once she has the evidence required by *Kareem* ; and, when she does, the person dealing with her application should be well aware that there is no valid judicial decision against her on the issue of whether the sponsor was or is a 'qualified person'.
4. However, since immediately after the present case I was to hear another very similar appeal in which counsel did *not* concede that *Kareem* had been relevant, I held back this decision, in case after hearing that argument, I should decide that my provisional view of the law, and Mr Jibowu's concession in this case, had both been wrong. As it turned out, I reached the conclusion that Mr Jibowu had been right, and counsel in that case wrong.
5. I shall summarize my decision in the other case (*Boakye* IA 50026-13) for Mr Jibowu's benefit: Mr Jarvis will have it in any event. Briefly, the argument was that paragraphs e - g of the guidance in *Kareem* only apply in cases where there was no marriage certificate, or doubt as to whether the marriage certificate had been issued by a competent authority. However, the panel held that the governing law for recognition of marriages for EEA purposes was the law of the EEA spouse's nationality, and this in my view was why they required 'independent and reliable evidence' as to the relevant law. In *Kareem*, as in *Boakye*, that was Dutch law; in this case Belgian, but the principle is of course the same.

Appeal dismissed

A handwritten signature in black ink, appearing to be 'JLR', with a horizontal line extending to the right.

(a judge of the Upper
Tribunal)