



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/49880/2013**

**Appeal Numbers:
and IA/49881/2013**

THE IMMIGRATION ACTS

**Heard at Field House
On 12 November 2014**

**Determination
Promulgated
17 November 2014**
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Before

Deputy Upper Tribunal Judge MANUELL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT
and Appellant

(1) MRS MARIAN AMIORKOR SARPEI
(2) MASTER TYRONE KELVIN BAAH JONES
Respondents

Representation:

For the Appellant: Ms S Skreemian, Home Office Presenting Officer

For the Respondents: Ms R Spio-Aidoo, Solicitor (R Spio & Co)

DETERMINATION AND REASONS

1. The Appellant (the Secretary of State) appealed with permission granted on 18 July 2014 by First-tier Tribunal Judge Parkes against the determination of First-tier Tribunal Judge PJM Hollingworth allowing the Respondents' linked appeals seeking

the issue of residence cards under regulation 7, alternatively regulation 8, of the Immigration (European Economic Area) Regulations 2006 (as amended) (“the EEA Regulations”). The determination was promulgated on 25 June 2014.

2. The Respondents are nationals of Ghana, mother and son, respectively born on 14 May 1975 and 20 April 2007. The First Respondent claimed that she was married by proxy to an EEA national exercising free movement rights in the United Kingdom. Neither Respondent claimed any other basis of entry or stay in the United Kingdom.
3. Permission for the onwards appeals was granted by Judge Parkes because he considered it arguable that the judge had erred by failing to apply Kareem (Proxy marriages – EU law) [2014] UKUT 00024 (IAC) and TA and Others (Kareem explained) Ghana [2014] UKUT 00316 (IAC).
4. By notice under rule 24 of the Upper Tribunal Procedure Rules, the Respondents indicated that they opposed the application for permission to appeal.
5. Ms Skreemian for the Appellant submitted that the judge had manifestly failed to apply Kareem (Proxy marriages – EU law) [2014] UKUT 00024 (IAC) and TA and Others (above). The validity of the proxy marriage relied on by the Respondents depended on the marriage laws of the home state of the EEA national sponsor. There was no finding on that central issue.
6. Ms Spio-Aidoo was unable to resist those submissions but pointed out that the judge had effectively found in the Respondents’ favour on the regulation 8(5) issue, the durable relationship between the EEA sponsor and the First Respondent. The maternal relationship between the First and Second the Respondent had not been doubted.
7. The tribunal indicated at this point that it was unable to uphold the judge’s findings on the validity of the proxy marriage relied on by the Respondents. The judge had not had the benefit of TA and Others, which had clarified the need for evidence from the sponsor’s EEA state as to the recognition and status of the proxy marriage. There was an inadvertent material error of law in the judge’s approach to the issue of recognition of the marriage in question. That part of his determination would be set aside and remade. The appeals so far as they were based on the claimed marriage would be dismissed.
8. It was accepted by both representatives that the tribunal should adopt the same approach as was taken in TA and Others and remit the remaining part of the case to the Secretary of

State so that the discretion under regulation 17(4) could be exercised.

9. The tribunal finds that the judge found that there was a durable relationship akin to marriage between the first Respondent and her EEA national sponsor, a finding which is accordingly preserved. There was no indication that regulation 17(4) had been considered by the Secretary of State, because she had denied that a durable relationship existed. The Respondents' applications must accordingly be returned to the Secretary of State for that discretion to be exercised.
10. No application was made to the tribunal for an anonymity direction and the tribunal can see no need for any such order.

DECISION

There was a material error of law in part of the First-tier Tribunal's determination, which is set aside to the extent that the original Appellants' appeals under regulation 8 of the Immigration (European Economic Area) Regulations 2006 were not finally determined. The following decision is substituted:

The original Appellants' appeals under regulation 7 are dismissed

No anonymity direction is made

The original Appellants' appeals under regulation 8 are allowed to the limited extent that the Secretary of State's mandatory discretion under regulation 17(4) has not yet been exercised. The original applications are accordingly returned to the Secretary of State for regulation 17(4) to be applied in the light of the findings in this determination.

Signed

Dated 14 November 2014

Deputy Upper Tribunal Judge Manuell

TO THE SECRETARY OF STATE **FEE AWARDS**

Although the original Appellants' appeals have succeeded in part, the Appellants were responsible for the difficulties with their applications to the Secretary of State. There are accordingly no fee awards.

Signed

Dated 14 November 2014

Deputy Upper Tribunal Judge Manuell