



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/05007/2016

THE IMMIGRATION ACTS

Heard at Birmingham Employment Tribunal
On 26 June 2018

Decision & Reasons Promulgated
On 27 June 2018

Before

UPPER TRIBUNAL JUDGE HANSON

Between

AARON MENSAH
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Awal, solicitor, with St Paul's Law Chambers

For the Respondent: Mr C Howells Senior Home Office Presenting Officer

ERROR OF LAW FINDING AND REASONS

1. The appellant appeals with permission against a decision of First-tier Tribunal Judge Pooler promulgated on 9 May 2017 in which the Judge dismissed the appellant's appeal on EEA grounds against the refusal to issue a residence card as the family member (spouse) of an EEA national.
2. The applicant is a national of Ghana born on 11 November 1967 who claimed to have married his wife, also a Ghanaian national, in a proxy marriage. The respondent did not accept the proxy marriage was valid and accordingly refused to issue a residence card on this basis. The respondent considered, in the alternative, that if the applicant was not married the application should be considered as one made by a partner but concluded the appellant had not proved

he was in a durable relationship with his partner; leading to a refusal to issue a residence card as an extended family member on this basis.

3. The Judge's core findings are set out at [16 - 19] of the decision under challenge in the following terms:

16. The appellant relies on certain documentary evidence. There is a copy of his wife's Ghanaian passport which expired on 3 November 2009; a copy of the marriage certificate; a copy of a statutory declaration by the representatives at the marriage; and a certificate signed on behalf of the Ghanaian High Commissioner in London confirming signatures on the statutory declaration, the marriage certificate and other documents were genuine, that the marriage had been contracted in compliance with Ghanaian customary law and that the certificate had been issued by the Registrar who was the Competent Authority with legal powers to issue the marriage certificate.

17. I returned to the summary provided in *Kareem* and repeated in *Cudjoe*. The Tribunal must decide as a question of fact whether the parties were validly married under Ghanaian law. The Upper Tribunal indicated clearly that without independent and reliable evidence about the recognition of a marriage under the laws of the country where it took place, this Tribunal was likely to be unable to find sufficient evidence had been provided to discharge the burden of proof. To repeat what was said;

"Mere production of legal materials from the EEA country or country where the marriage took place will be insufficient evidence because they will rarely show how such law is understood or applied in those countries. Mere assertions as to the effect of such laws will, for similar reasons, carry no weight."

18. The appellant asserts, on the basis of the documents provided, that his marriage was contracted and registered in compliance with Ghanaian law. There is however no independent and reliable evidence to support this assertion. In my judgment the burden of proof has not been discharged and I am unable to find the parties were married as claimed.

19. The appellant has accordingly failed to prove that his marriage is recognised as valid in Ghana and that he was the spouse and thus the family member of an EEA national. His appeal must therefore fail.

4. The appellant applied for permission to appeal which was granted by another judge of the First-tier Tribunal. The operative part of the grant being in the following terms:

2. There is some arguable merit in relation to the grounds at para 8 because the marriage certificate was provided, as with the documents set out at [16] and it is not clear from the decision, what findings of fact were made in relation to this documentation with reference to paragraphs (b) and (c) of the extract from ***Kareem (Proxy Marriages - EU law)* [2014] UKUT 00024 (IAC)** set out by the Judge in his decision at [11].

3. There is less arguable merit in the grounds at paragraphs 1 - 7 because the Judge was aware that ***Kareem*** had been overturned by the Court of Appeal in ***Awuku* [2017] EWCA Civ 178**. The only part of ***Kareem*** overturned by the Court of Appeal was that there was no need to provide reliable independent evidence about the recognition of the marriage under the laws of the EEA country in which the Appellants spouse is a national. However, as permission to appeal is granted in relation to para 7 of the grounds, the Appellant is not precluded from relying on paras 1-7.

5. There is no challenge to the documentation provided from the Ghana High Commission based in London or any suggestion that any of the documents are

forged and cannot be relied upon. The Judge was not satisfied that the material before him discharged the necessary burden of proof.

- 6. Although this is a challenge to the findings at [18] and the weight the Judge gave to the evidence, when most such challenges rarely succeed, it was accepted on the respondent’s behalf that the findings of the Judge are arguably irrational and contrary to the weight of evidence provided. It is not disputed that a proxy marriage is acceptable in Ghana the question being whether the particular proxy marriage concerned is recognised as being valid. The evidence before the Judge supported the finding that the marriage certificate had been issued by a Competent Authority, that the customary marriage had been registered supported by the necessary evidence, that both parties were Ghanaian citizens, and that the marriage had been contracted in compliance with Ghanaian customary law and that the marriage is legally valid in Ghana. On this basis Mr Howells accepted that the Judge had erred in law in making the findings that the necessary burden had not been discharged.
- 7. I set aside the decision of the Judge made on the basis the findings set out above, particularly those in [18 – 19], which are contrary to the evidence.
- 8. I substitute a decision to allow the appeal against the respondent’s refusal to issue a residence card to the appellant as the family member of an EEA national exercising treaty rights in the United Kingdom.

Decision

- 9. **The First-tier Tribunal Judge materially erred in law. I set aside the decision of the original Judge. I remake the decision as follows. This appeal is allowed.**

Anonymity.

- 10. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 26 June 2018