



**Upper Tribunal  
(Immigration and Asylum Chamber)  
EA/11391/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 26 October 2017**

**Decision & Reasons  
Promulgated  
On 11 January 2018**

**Before**

**UPPER TRIBUNAL JUDGE KOPIECZEK**

**Between**

**MARK KWAME BOADU**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: No appearance and not represented

For the Respondent: Ms H Aboni, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Ghana born in 1967. He appealed to the First-tier Tribunal ("FtT") against two decisions of the respondent, being decisions on 20 July 2015 to remove him pursuant to regulation 19(3) of the Immigration (European Economic Area) Regulations 2006 ("the EEA Regulations"), and 5 September 2016, being a decision to refuse a residence card on the basis of retained rights of residence.

2. His appeal came before First-tier Tribunal Judge Hussain (“the Ftj”) at a hearing on 4 November 2016, following which the Ftj dismissed the appeal in relation to both decisions.
3. The central issue in the appeal was whether the appellant’s marriage, upon which he based the claim to entitlement to a retained right of residence, was a marriage of convenience, as asserted by the respondent. The Ftj concluded that it was.
4. At the hearing before me there was no appearance by or on behalf of the appellant. By letter dated 25 October 2017, his legal representatives informed the Tribunal that the appellant was in Ghana, and did not have entry clearance to attend the hearing. They were however instructed that the appellant wanted the appeal to proceed, although the letter stated that no legal representative would attend on his behalf.
5. I considered whether, given that the appellant had left the UK, his appeal was to be treated as abandoned. Ms Aboni suggested not, on the basis that the appellant’s appeal against the EEA decisions was non-suspensive. Having considered the matter, I agree with her. It is not necessary for me to set out in detail the reasons for my having come to that conclusion. Suffice to say, I am satisfied that the combined effect of reg 26 and schedule 1 of the EEA Regulations, and s.92(1) and (8) of the Nationality, Immigration and Asylum Act 2002, mean that the abandonment provisions do not apply to this appellant’s appeal.
6. The grounds of appeal in relation to the Ftj’s decision contend that the Ftj’s assessment of whether the marriage was one of convenience was flawed. It is said that the Ftj had failed to consider that the appellant attended the first marriage interview at Liverpool and that the only reason why the sponsor, his wife, did not attend was because of the problems they were having in their marriage. Furthermore, the Ftj had failed to take into account the appellant’s explanation of the circumstances surrounding an immigration officers’ visit to the home address.
7. It is further contended that the Ftj was wrong to fail to consider oral evidence from a witness, Mr Adu-Ansere, who had written a letter in support of the appellant’s appeal. The Ftj had wrongly limited his findings to the letter written by that witness, whereas the witness was at the hearing and ready to give evidence.
8. The grounds also raise an issue in relation to the Ftj’s conclusion that the appellant’s proxy marriage needed to have been recognised in an EEA State.

#### *The Ftj’s Decision*

9. The Ftj referred to the appellant’s immigration history, which in summary is that he lived in Ghana until he travelled to Holland in January 1999, where he met a woman, JA, a Dutch national. They came to the UK and married on 5 December 2002. The appellant made an application for a residence card as a result of that marriage, and a residence card was

issued on 17 February 2003, valid until 17 February 2008. However, the relationship broke down and they divorced on 5 November 2009.

10. On 5 December 2010 he met MN at a party. She was also a Dutch national of Ghanaian parentage. On 14 May 2011 they married under Ghanaian customary law and the marriage was registered on 8 February 2013. On 13 March 2013 he made an application for a residence card on the basis of the marriage to MN. The application was refused, but after the appellant appealed the respondent withdrew the decision.
11. On 12 August 2014 the appellant and MN were invited to attend an interview on 10 September 2014. However, MN refused to attend as they were apparently having domestic problems. A further invitation on 15 September 2014 to attend an interview resulted in neither of them attending. Their differences were said to have been unresolved at that time.
12. That marriage also broke down and on 20 September 2015 he instituted divorce proceedings which were finalised on 20 January 2016. It was on 8 March 2016 that the appellant applied for a residence card on the basis of the retained right of residence.
13. In relation to the decision refusing a residence card, the Ftj considered the issue of the Ghanaian proxy marriage. He noted the respondent's assessment of that issue, and the validity of customary marriages in Ghana. However, he concluded that it was not necessary for him to examine the question of whether the appellant's marriage was recognised in Ghanaian law because the appellant in addition had to prove that the marriage was recognised in the EEA State of the EEA spouse, citing the decision in *Kareem (Proxy marriages - EU law)* [2014] UKUT 24 (IAC). He concluded that the appellant had not shown that the proxy marriage is recognised as valid in Holland.
14. He then went on to consider the issue of whether the marriage was one of convenience. He noted that the respondent carried an evidential burden of justifying a suspicion that the marriage was one of convenience. Thereafter, the burden, he said, shifted to the appellant to demonstrate that the marriage was not one of convenience.
15. There was evidence before the Ftj of a visit by immigration officers on 3 September 2013 to the appellant's address. Immigration officers first spoke to a female via the intercom who said that the appellant did not live at the address and that she had never heard of him. She gave her name as MN. The immigration officer told her that she was the sponsor for the appellant whereupon she said that he had gone to work. After she allowed the immigration officers entry, they encountered a female who gave her name as DA but the immigration officer recognised her voice from the intercom as the person identifying herself as MN. A second female at the address attempted to pass herself off as MN, but was warned by the immigration officer about misidentifying herself.

16. The Ftj referred to the immigration officer's opinion that there was no validity to the EEA residency application because the appellant was clearly not living at the address and the occupier was using two names for identification.
17. The Ftj at [29] then referred to the appellant on 20 July 2015 having been "encountered" and asked about the whereabouts of his EEA national sponsor. He said that she was travelling to Holland. In relation to the interview that was supposed to take place on 10 September 2014, the appellant said that he had a row with his sponsor the night before and that she had left the family home and he was unable to contact her. In relation to a second interview arranged for 15 September 2014 at Liverpool, the appellant failed to attend.
18. In the light of all that evidence, the Ftj concluded that the respondent was justified in being suspicious about the marriage being one of convenience.
19. In relation to the failure of his spouse to attend the first marriage interview, he referred to the appellant's explanation for that fact. He noted a number of bank statements, payslips and other items in the names of the appellant and his wife in the appellant's bundle. He concluded however, that those were not sufficient to discharge the burden on him of demonstrating that the marriage was not one of convenience, particularly in the light of the findings of the immigration officers.
20. In relation to the evidence of Mr Adu-Ansere, he noted that the letter from him confirmed that the appellant married MN in 2011 and that they live together as husband and wife. However, he said that the letter was very brief in its detail and set against the totality of the evidence he found that his testimony was not sufficient to allay his concerns in relation to the marriage being one of convenience. As to the removal decision under reg 19(3), he concluded that the respondent had been wrong to exercise the power to remove the appellant under that regulation. He therefore concluded that the decision to remove was unlawful, and thus invalid. He found that in consequence of an invalid decision, any appeal must also be invalid. He concluded by dismissing the appeals in relation to each decision.

### *Submissions*

21. On behalf of the appellant, there being no appearance, I have considered the grounds in support of the appeal.
22. Ms Aboni submitted that even if the Ftj was incorrect in his conclusions relying on the decision in *Kareem*, any error of law in that respect was not material because the main issue related to whether the marriage was one of convenience. The appellant could not therefore acquire any retained rights.
23. She submitted that it was probably wrong for the Ftj to say that there was no valid appeal, but again, there was no materiality in any error of law in that respect.

### Conclusions

24. There is no merit in the complaint about the Ftj's assessment of the issue of whether the marriage was one of convenience. The Ftj was fully aware of the fact that the appellant attended the first marriage interview at Liverpool. He also noted the reason given for the failure of his wife to attend, said to be because of the problems they were having in the marriage. In any event, that hardly supports the contention that the marriage was a genuine one.
25. The grounds suggest that the Ftj failed to take into account the appellant's explanation of the circumstances surrounding the immigration officers' visit to his home address, and that he failed to consider "the credibility of the individual and or the reliability of her statement". However, all that the appellant says about this in his witness statement dated 1 November 2016 is that he believes that DA gave her name as MN because she did not have leave to be in the UK and she feared being arrested. The statement also says that he does not know why she had his ex-wife's card. It then states that Deborah (DA) is a family member and Mary (MN) and he were living under one roof.
26. However, the appellant's speculation as to why the person named as DA would give her name as MN, is just that; speculation. It confirms that a false name was given, and that knowledge of the appellant was denied. The Ftj was perfectly entitled to take that evidence into account and attach what weight he considered appropriate to it.
27. In relation to the evidence of Mr Adu-Ansere, the Ftj said that he gave that evidence "some weight". He noted the import of the letter. It was for the appellant and his representatives to put forward evidence in support of his appeal and it was not for the Ftj to subject the witness to detailed questioning. If it was thought necessary on behalf of the appellant for anything other than a very brief letter to have been provided by this witness, it was for the appellant and his representatives to provide it. It was a matter for the Ftj as to what weight he attached to that evidence. Furthermore, he was entitled to conclude that notwithstanding what that witness had said, the evidence in its totality did not support the conclusion that the marriage was anything other than one of convenience.
28. I am not satisfied that there is any error of law in the Ftj's assessment of the marriage being one of convenience.
29. I am satisfied that the Ftj erred in law in his reliance on the decision in *Kareem*. *Kareem* has now been overruled by the Court of Appeal in *Awuku v Secretary of State for the Home Department* [2017] EWCA Civ 178, in relation to the need for a proxy marriage to be recognised as valid in an EEA State. Although the Ftj very properly relied on the law as it was then thought to be, obviously not being aware of the decision in *Awuku* which came after the hearing before him, he did nevertheless err in law in that

respect. However, it is not an error of law that is material given the FtJ's sustainable conclusions in relation to the marriage of convenience point.

30. I do also consider that the FtJ erred in law in concluding that because the respondent was not entitled to make a removal decision under reg 19 of the EEA Regulations, that the appeal was invalid, following an invalid decision. In that respect, it seems to me that the FtJ ought to have allowed the appeal, but only in respect of that decision. Again, that error of law is not material however, given that he concluded that the appellant was not entitled to a residence card on the basis of being a person with a retained right of residence.
31. In conclusion therefore, I am not satisfied that the errors of law to which I have referred are material to the outcome of the appeal. The appellant is not entitled to a residence card on the basis of a retained right of residence, because he had no right of residence in the first place, being a party to a marriage of convenience.

### *Decision*

The decision of the First-tier Tribunal did not involve the making of an error on a point of law such as to require its decision to be set aside. The FtJ's decision to dismiss the appeal therefore stands.

Upper Tribunal Judge Kopieczek

10/01/18