



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

Appeal Number: EA/04359/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 16 September 2020**

**Decision & Reasons Promulgated
On 05 October 2020**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

ISAAC AMPONSAH
(anonymity direction not made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Malik of Counsel, instructed by Direct Access
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by a citizen of Ghana against a decision of the First-tier Tribunal dismissing his appeal against a decision of the Secretary of State to refuse him a residence card as a family member of an EEA national.

2. The fundamental issue in the case was whether the appellant was in fact lawfully married and the First-tier Tribunal decided that he was not. The appellant relied on a proxy marriage which, following the decision of this Tribunal in **NA (Customary marriage and divorce - evidence) Ghana [2009] UKAIT 00009** which decided that customary marriages of the kind that occurred here were not valid marriages for the purposes of the relevant law.

3. Mr Tufan was very prompt to draw to my attention that although **NA** is a reported decision of the Tribunal it has been considered and decidedly not followed in several cases in the Upper Tribunal because it is inconsistent with the decision of the Court of Appeal in the case of **Awuku v Secretary of State for the Home Department [2017] EWCA Civ 178.**

4. The short point is that Mr Tufan accepted that the disputed marriage was a valid marriage. That does not necessarily dispose of the appeal but Mr Tufan considered his position carefully and decided that although reservations were expressed there was nothing he could properly rely on to say that the necessary evidence had not been provided and he accepted that the appeal had to be allowed outright.

5. I therefore set aside the decision of the First-tier Tribunal for error of law and substitute the decision allowing the appeal of the appellant against the Secretary of State's decision. In the circumstances Mr Malik, realistically, said nothing whatsoever. His work had already been done.

Notice of Decision

6. The First-tier Tribunal erred in law. I set aside its decision and I substitute a decision allowing the appellant's appeal.

Jonathan Perkins
Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 29 September 2020