



IAC-AH-DN-V1

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

Appeal Number: IA/00046/2014

THE IMMIGRATION ACTS

Heard at Field House

On 7 October 2014

**Decision & Reasons
Promulgated**

On 24 October 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

**MR ERIC ARMAHKODWO ASSABIEH
(NO ANONYMITY ORDER MADE)**

Appellant

Claimant

Representation:

For the Appellant: Mr S Kandola (Home Office Presenting Officer)

For the Claimant: Ms D Ofei-Kwatia (Counsel instructed by Danbar Solicitors)

DECISION AND REASONS

1. This matter comes before me for consideration as to whether or not there is a material error of law in the determination before First-tier Tribunal (Judge Woolley) promulgated on 9 December 2013. The Tribunal determined the appeal on the papers and allowed the appeal against a refusal of a residence card as an EEA national.

2. For ease of reference I shall refer to the parties as follows – to the appellant as the Secretary of State and to the respondent, Eric Assabieh, as “the claimant”.
3. The claimant’s date of birth is 4 November 1972 and is a citizen of Ghana.

Background

4. The Secretary of State refused the appellant’s application as a family member of an EEA national applying for a residence card, Regulation 17(1) (b) of the Immigration (European Economic Area) Regulations 2006. This was on the grounds that the claimant failed to show that he was a “spouse” as defined in Regulation 7 (EEA) Regulations. The claimant provided a marriage certificate dated 13 June 2013 as evidence of his marriage on 16 May 2013 in Accra, Ghana. In addition he produced a Ghanaian passport and ID card covering the period from 2006 to the present date. No stamps were shown in the passport for entry or exit from Ghana or from the UK consistent with a visit to Ghana at the time of the marriage. The Secretary of State considered the marriage to have taken place by proxy. There was no evidence that the spouse was of Ghanaian descent. The Secretary of State was not satisfied that the marriage had been properly executed to satisfy the law of the country in which it took place.
5. Consideration was given to Regulation 8(5) and the Secretary of State found no evidence to show a durable relationship.
6. In a determination [18] the Tribunal accepted the parties married by way of a customary marriage and that it was valid according to Ghanaian law. The Tribunal did not consider it necessary to go further to consider the French law to determine whether or not the marriage was legally recognised in France, the relevant EU State pursuant to guidance in **Kareem (proxy marriages - EU law) [2014] UKUT 24**. At [20] the Tribunal also considered it unnecessary to consider if the claimant could show that he was an extended family member under Regulation 8(5)(EEA Regulations 2006).

Grounds for Permission

7. The Secretary of State maintained that the determination showed a fundamental misunderstanding of the Upper Tribunal decision of **Kareem**. This amounted to an error of law.

Permission to Appeal

8. Permission to appeal was renewed before Upper Tribunal Judge Craig who granted permission for the following reasons:

“It is arguable that in the light of the Tribunal decision in **Kareem (proxy marriages - EU law) [2014] UKUT 24**, as subsequently explained in **TA and Others (Kareem explained) Ghana [2014] UKUT 316**, it was incumbent on the appellant in this case to establish that his marriage would be regarded as valid in France and that accordingly it was a material error of law for the judge to consider (at paragraph 18) that ‘I do not need, under **Kareem**, ... to examine French law to determine if the marriage was conducted according to French law’.”

Hearing re Error of Law

9. I heard submissions from Mr Kandola and Ms Ofei-Kwatia. At the end of the hearing I announced my decision that there was a material error of law by the Tribunal’s failure to correctly interpret the principles established in **Kareem**.
10. I am satisfied that in determining the appeal the Tribunal limited its focus to the validity and lawfulness of the marriage in Ghana and did not go on to consider whether or not the marriage was legally recognised in France. The guidance in **Kareem** establishes that it is always necessary for the appellant to establish that the marriage is lawful in the EU Member State, in this instance, France. This approach has been confirmed by the Upper Tribunal in **TA and Others (Kareem explained) Ghana [2014] UKUT 00316 (IAC)**.

Submissions - re making the decision

11. Ms Ofei-Kwatia submitted that the claimant was seeking further evidence from the French Embassy in order to satisfy the requirements under **Kareem**. In the event of an error of law being found she argued that the claimant required the opportunity for consideration of the issue of a durable relationship under Regulation 8(5) .
12. Mr Kandola submitted that the claimant had had every opportunity in which to prepare for the hearing today and provide the necessary evidence. There was no evidence relied on and it was apparent that following standard directions the Tribunal would proceed to remake the decision. Further the claimant had requested a paper case.

Notice of Decision

13. **I find a material error of law in the judge’s decision.
I set aside the determination.**

Re making decision

14. There was no evidence before me to show that the marriage was recognised as lawful in France following **Kareem** or that the parties were in a durable relationship. The claimant requested a determination of the

appeal on papers at the First-tier Tribunal. The claimant was aware that the Upper Tribunal would proceed to remake the decision. He did not attend. The claimant was aware that in the event of the Upper Tribunal deciding to set aside the First-tier Tribunal determination any further evidence including supplementary or oral evidence that needed to be considered to remake the appeal should be available for the present hearing.

15. **I remake the decision by substituting a decision to dismiss the appeal on immigration grounds.**

No request for or order for anonymity was made.

Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Signed

Date 22.10.2014

Deputy Upper Tribunal Judge G A Black

TO THE RESPONDENT
FEE AWARD

As I have dismissed the appeal there is no fee award.

Signed

Date 22.10.2014

Deputy Upper Tribunal Judge G A Black