



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

**Appeal
Number**

IA/00819/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 27 June 2014 at On 30 June 2014
Determination
promulgated**

Before

Deputy Judge of the Upper Tribunal I. A. Lewis

Between

Secretary of State for the Home Department

Appellant

and

**Albert Adjei Sarpong
(Anonymity direction not made)**

Respondent

Representation

For the Appellant: Mr. P. Nath, Home Office Presenting Officer.
For the Respondent: No appearance.

DETERMINATION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Aziz promulgated on 23 April 2014, allowing Mr Sarpong's appeal against the Secretary of State's decision dated 5 December 2013 to refuse to issue a residence card under the Immigration (European Economic Area) Regulations 2006.

2. Although before me the Secretary of State is the appellant and Mr Sarpong is the respondent, for the sake of consistency with the proceedings before the First-tier Tribunal I shall hereafter refer to Mr Sarpong as the Appellant and the Secretary of State as the Respondent.

Background

3. The Appellant is a national of Ghana born on 28 October 1973. On 21 June 2013 an application for a residence card as confirmation of a right to reside in the United Kingdom was made on his behalf. The application was based on a Ghanaian customary marriage by proxy to Ms Ama Gyamfua, a Belgian national, said to have taken place in Ghana, in the absence of the parties to the marriage, on 22 March 2013.

4. The Appellant's application was refused for reasons set out in a 'reasons for refusal' letter dated 5 December 2013, and a Notice of Immigration Decision was issued on the same date. The Respondent was not satisfied that the marriage was valid, and was not otherwise satisfied that the Appellant was in a 'durable relationship'.

5. The Appellant appealed to the IAC. He requested that his appeal be dealt with 'on the papers'. The First-tier Tribunal Judge allowed the Appellant's appeal without a hearing for reasons set out in his determination.

6. The Respondent sought permission to appeal which was granted by First-tier Tribunal Judge Colyer on 13 May 2014.

No appearance

7. There was no appearance by or on behalf of the Appellant.

8. I note that an application for an adjournment was made by the Appellant's representatives by letter dated 26 June 2014 on the basis that the Appellant was feeling dizzy and tired. The application was rejected for want of supporting medical evidence, and because in any event, the error of law issue could be resolved in the Appellant's absence. The application was refused on the same date

and the decision communicated by facsimile transmission to the Appellant's representative. As of the date of hearing, there is no supporting medical evidence to suggest that the Appellant is unfit to attend the hearing; moreover, there is no explanation before the Tribunal as to why either or both the Appellant's representative or spouse is not in attendance.

9. I am satisfied that there has been due service of Notice of Hearing: indeed as much is acknowledged in the adjournment application. I am satisfied that the Appellant has had an opportunity to attend the hearing of the appeal, either in person or by way of a representative, and I am not satisfied that any adequate explanation has been advanced for his non-attendance. I am also satisfied that he has had the opportunity to send to the Tribunal any materials upon which he wishes to rely, including written submissions. Indeed, his representatives have taken advantage of this opportunity and forwarded a bundle of documents under cover of letter dated 25 June 2014, which includes a document headed 'Appellant's Detailed Grounds of Resistance to Respondent's Application' which seeks to address the substance of the Respondent's challenge to the decision of the First-tier Tribunal Judge, and also seeks to engage with the reasons given by Judge Colyer for granting permission to appeal.

10. In all the circumstances I am satisfied that it is appropriate to proceed with the appeal in the Appellant's absence.

Consideration

11. The First-tier Tribunal Judge allowed the Appellant's appeal on the basis that he was satisfied that the Appellant's marriage was duly registered and valid.

12. The Respondent's grounds of appeal seek to challenge that conclusion with particular reference to the decision in **Kareem (Proxy marriages - EU law) [2014] UKUT 00024 (IAC)** - promulgated on 16 January 2014, and therefore before the First-tier Tribunal's consideration of this appeal. It is pleaded that the Judge erred in not having regard to **Kareem**. Moreover it is pleaded that if **Kareem** had been applied, the First-tier Tribunal would have been bound to dismiss the appeal.

13. I accept the substance of the Respondent's challenge. The First-tier Tribunal Judge misdirected himself by not having regard to

the relevant case law, pursuant to which he should have considered as a starting point the question of whether a marriage was contracted between the Appellant and Ms Gyamfua according to the national law of Belgium. The Judge did not do so. Because the Judge disregarded the relevant case law, he wrongly identified the central issue in the appeal at paragraph 22 of his determination as being whether a valid proxy Ghanaian marriage had been conducted and properly registered. The Judge focused on a consideration of the validity of the marriage in UK law, to the exclusion of a consideration of its validity in Belgian law.

14. There is nothing in the written submission by way of the 'Appellant's Detailed Grounds of Resistance to Respondent's Application' that addresses the substance of the Respondent's challenge, or addresses Judge Colyer's observations in granting permission to appeal in respect of considering whether the marriage was "*compliant with Belgian matrimonial law*". Nor is there anything in the supporting evidence filed in the Upper Tribunal or filed before the First-tier Tribunal that is on point.

15. In all such circumstances I find that the decision of the First-tier Tribunal Judge was flawed for material error of law and I set it aside.

16. The decision in the appeal accordingly needs to be remade.

17. Although the Appellant is not present, essentially for the reasons given at paragraphs 8 and 9 above, I am satisfied that he has had the opportunity to attend either in person or by way of representative, has not offered any adequate explanation for his non-attendance, and has had the opportunity of filing any further relevant evidence with the Tribunal. In this latter regard standard directions were issued to the Appellant requiring him to prepare for today's hearing on the basis that if the decision of the First-tier Tribunal was set aside the Upper Tribunal might proceed to remake the decision at the hearing without further adjournment. Accordingly, I consider it appropriate to proceed to remake the decision in the Appellant's absence.

18. No relevant material has been provided, and no submission made, in respect of the validity of the Appellant's marriage under Belgian law. The written submissions fail to address this key point. In such circumstances I find that the Appellant has failed to

discharge the burden of proof in establishing that he has contracted a marriage with Ms Gyamfua in accordance with the law of Belgium.

19. Moreover, no material has been filed either before the First-tier Tribunal or the Upper Tribunal to demonstrate that the Appellant is in a durable relationship with Ms Gyamfua.

20. Accordingly I remake the decision by dismissing the appeal.

Decision

21. The decision of the First-tier Tribunal Judge contained a material error of law and is set aside.

22. I remake the decision in the appeal. The appeal is dismissed.

Deputy Judge of the Upper Tribunal I. A. Lewis 27 June 2014