



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

Appeal Number: IA/50435/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 16<sup>th</sup> July 2014**

**Determination**

**Promulgated**

**On 21<sup>st</sup> July 2014**

**Before**

**UPPER TRIBUNAL JUDGE POOLE**

**Between**

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

Appellant

**and**

**JULIANA STELLA QAUINOO  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr P Deller, Home Office Presenting Officer

For the Respondent: Mr B Owusu, Solicitor

**DETERMINATION AND REASONS**

1. In this determination I will refer to the parties in the order and by the description adopted in the First-Tier Tribunal.

2. The appellant, Juliana Stella Qauinoo is a citizen of Ghana born 2 August 1961. She made application to the respondent for a Residence Card as the wife of an EEA national exercising treaty rights in the United Kingdom. That application was refused on 26 November 2013.
3. The appellant appealed that decision and her appeal came before Judge of the First-Tier Tribunal Simpson sitting at Taylor House on 24 March 2014. There was an oral hearing and each party was represented (the appellant by Mr Owusu).
4. In a determination dated 24 March 2014 Judge Simpson allowed the appeal having found that the appellant's marriage by proxy was valid both in the appellant's home country and in the Netherlands. That being the country of nationality of her spouse.
5. The respondent appealed that decision. The ground for seeking leave was that the judge had misdirected himself with regard to the Upper Tribunal decision in the case of **Kareem (Proxy Marriages - EU Law) [2014] UKUT 00024 (IAC)**. It was alleged that the judge had concluded that this case was authority for the recognition of proxy marriages under Dutch Law so long as it is a valid marriage in the country in which it was contracted. In this case Ghana.
6. The application for leave came before Designated Judge McClure who granted leave and gave as reasons the following:

"1. By determination promulgated on 31 March 2014 First-Tier Judge J Simpson allowed the appellant's appeal against the decision of the respondent to refuse her an EEA Residence Card enabling her to remain in the United Kingdom as a family member of an EEA qualified person.

2. The grounds of the application seeking permission assert that:
  - a) The judge has erred in law by not properly applying the legal principles in the case of **Kareem (Proxy Marriages - EU Law) [2014] UKUT 00024 (IAC)**.
  - b) The judge interpreted the case law to the effect that, if the marriage was lawful in Ghana, it was lawful in the Netherlands. **Kareem** requires that evidence of the law of the Netherlands be produced in order to prove the validity of the marriage under that law.
3. It is arguable that the case law requires the appellant not only to produce evidence that the proxy marriage was legal in Ghana but evidence also that in the country of the EEA national the marriage would be recognised and lawful. There was no evidence as to the law of the Netherlands. **Kareem** as identified in the grounds does not make any finding on the validity of proxy marriages according to the

law of the Netherlands. It is arguable that the judge has failed to follow **Kareem**. Leave is granted”.

7. Hence the matter comes before me in the Upper Tribunal. I noted that the appellant’s solicitors had produced a Rule 24 response wherein they asserted that Judge Simpson had correctly applied the decision in **Kareem** but in the alternative that the appellant had provided independent evidence from Dutch sources to the effect that a Ghanaian customary marriage would be recognised.
8. Mr Deller drew my attention to and produced a copy of the Upper Tribunal case of **TA & Others (Kareem explained) Ghana [2014] UKUT 316 (IAC)** which gave authority to the concept that an appellant “must always” have a claimed marital relationship examined in accordance with the laws of the Member State from which the union citizen obtains nationality.
9. There ensued a discussion upon the effect of **TA** and the case of **Kareem**. This discussion included evidence obtained by Mr Owusu from Holland and Ghana with regard to the question of recognition of a marriage by proxy. At this stage I indicated that my preliminary view was that there was an error of law in Judge Simpson’s determination in that **Kareem** was not authority to say that the Kingdom of Netherlands recognised proxy marriages. Whereas the correct reading of **Kareem** was that in such a situation evidence must be adduced by the appellant to show that such a marriage was recognised by the Member State and that only then could an application succeed. This must always be based upon the premise that the proxy marriage was recognised by the country in which it was conducted. Neither representative objected to this preliminary view.
10. At this stage I retired to enable Mr Deller to consider evidence adduced at the hearing with regard to the position of the Netherlands with regard to proxy marriages. This was evidence not available before. Mr Deller very reasonably did not object to its production and I consider it appropriate for that evidence to be admitted, read and considered.
11. Upon my return to court Mr Deller indicated that his view was that the appellant now satisfied the requirements as set out in **Kareem**. I agree with that proposition.
12. I find that Judge Simpson did err in law by way of his misinterpretation of the effect of **Kareem**. There was evidence before the judge with regard to the recognition or otherwise by the Netherlands but that was outweighed by the judge’s view on the effect of **Kareem**. But for that error the outcome might have been different at that stage and I therefore consider the error to be material and should be set aside.

13. I find that I am able to remake the decision preserving the findings made by Judge Simpson. He had expert evidence that the marriage by proxy was recognised in Ghana. There was evidence before the judge then with regard to whether or not the marriage would be recognised in the Netherlands. The judge had already found that the appellant's spouse was a national of the Netherlands. There are available two letters from a Dutch Advocate specialising in International Family Law together with a letter from the Kingdom of the Netherlands Embassy in Ghana and extracts from the Dutch Civil Code. Reference is made by the Kingdom of the Netherlands to paragraphs 27 and 28 of the case of **Kareem**. To quote from the Advocate's letter "according to Article 10:31 from the Dutch Civil Code an outer the Netherlands closed marriage that is legally follow the law the state where the marriage took place will be recognised as such (sic)". He goes on to suggest that a valid foreign proxy marriage is probably not against Dutch Public Order and this would not be a bar against recognition.
14. In all the circumstances I find that the appellant's marriage to her spouse is valid within Ghana (the evidence of Professor Woodman) and the appellant has produced evidence that her marriage would be recognised by the Dutch Authorities.
15. Having set aside Judge Simpson's decision I remake it allowing the appellant's appeal.
16. No application has been made before me for anonymity. Judge Simpson made a fee award and I have no cause to overturn that part of his decision.

### **Decision**

17. The appeal of the original appellant Juliana Stella Quinoo is allowed.

Signed

Date

Upper Tribunal Judge Poole