



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

Appeal Number: IA/05588/2014

THE IMMIGRATION ACTS

Heard at Field House

On 10 February 2015

**Decision & Reasons
Promulgated
17 February 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

**MONICA TANDOCH
(ANONYMITY DIRECTION NOT MADE)**

Appellant

Claimant

Representation:

For the Appellant: Mr J Parkinson, Home Office Presenting Officer
For the Respondent: Ms C Boaitay, Counsel instructed by Phil Solicitors

DECISION AND REASONS

1. For ease of reference I shall refer to the parties as the "Secretary of State" who is the Appellant in this matter and to the "Claimant". This is an appeal by the Secretary of State in respect of a determination by First-tier Tribunal (Judge Tipping) promulgated on 24 October 2014 in which he allowed an appeal against the refusal to grant a residence card as a spouse under Regulation 7 of the EEA Regulations 2006.

2. In a Reasons for Refusal Letter the Claimant applied for a residence card as the spouse of an EEA national under Regulation 17 Immigration (EEA) Regulations 2006. The Secretary of State rejected the application on the grounds that she failed to show that she was lawfully married by proxy in accordance with Ghanaian law. Further the Secretary of State considered that the Claimant failed to meet the requirements under Regulation 8(5); there was insufficient evidence of a durable relationship.

Decision of the First -tier Tribunal

3. In a decision and reasons Judge Tipping found that the marriage entered into was lawful according to Ghanaian law [11] and further found legal recognition of the marriage in Portugal [13]. The Tribunal reserved its decision and subsequently had regard to further evidence of a photocopy of a letter from the Portuguese Embassy dated 8 August 2014 that was served on the Tribunal Judge after the hearing by way of a letter dated 11 September 2014 and an amended skeleton argument from Counsel instructed by the Claimant. The Tribunal forwarded the same to the Home Office who made no response. The Tribunal took into account the further evidence in reaching its decision. It is unclear if the original letter from the Portuguese Embassy was produced. I have only seen a copy.

Grounds of appeal

4. The Secretary of State submitted grounds of appeal and relied on **Kareem (proxy marriage -EU law) Nigeria [2014] UKUT 24(IAC)** and **TA and Others (Kareem explained)[2014] UKUT 316**, arguing that there needed to be evidence to show that the proxy marriage was legally recognised in the member EU state. The reference by the Tribunal to a generic letter from Portuguese authorities not specific to the appeal and was not sufficient evidence.
5. The Secretary of State argued that the Tribunal erred; there was no independent and/or reliable evidence of recognition of the marriage in Portugal. Mere production of legal materials was insufficient.
6. Permission was granted by First-tier Tribunal Judge Foudy on the basis that it was arguable that the Tribunal erred in finding that Ghanaian proxy marriages were valid in Portugal.

Error of law hearing

7. The matter came before me this afternoon to consider whether or not there exists a material error of law in the Tribunal's decision and reasons.
8. I heard submissions from Mr Parkinson, who in essence relied on **Kareem** and **TA and Others** submitting that the evidence relied on by the Tribunal, namely a copy letter from the Portuguese Embassy, was insufficient to establish that proxy marriages were legally recognised in Portugal.

9. Ms Boaithey produced a lengthy skeleton argument. She submits in short that the evidence is sufficient to meet the requirements as set out in **Kareem** and/or **TA**.

Discussion and decision

10. I am satisfied that there was a material error of law in the determination insofar as the Tribunal took into account evidence of a letter purporting to be from the Portuguese Embassy and which made no reference whatsoever to any legal statute or legal provisions to support the contention that this proxy marriage is legally recognised in Portugal. I find that the Tribunal failed to take proper account of **Kareem** and **TA** in relying on evidence that was wholly inadequate and insufficient to establish a material fact and thereafter in allowing the appeal. The Tribunal failed to find that the proxy marriage was lawful in Ghana and also legally recognised in Portugal. It was not sufficient to rely in the evidence of lawfulness in Ghana. The Tribunal further erred in failing to consider whether there was evidence to show a durable relationship under Regulation 8(5).

Decision re error of law

11. There is a material error of law in the decision .
Accordingly I set aside the determination.

Remaking the decision

12. The Claimant was unable to establish that she was a spouse under Regulation 7. The only outstanding issue is the consideration of Regulation 8(5). I heard further submissions on the evidence that was before the First-tier Tribunal and concluded that the Claimant failed to show that she was in a durable relationship. There was no evidence to show that the couple lived together prior to the marriage. There was no evidence save bank statements, pay slips and utility bills in the name of the EU national giving his address. I find the evidence was insufficient to verify that the relationship was durable. There was no evidence to establish that the parties were living together.

Notice of Decision

I substitute a decision that the appeal is dismissed on immigration grounds under Regulations 7, 8(5) and 17 of the Immigration (EEA) Regulations 2006.

No anonymity direction is made.

Signed

Date 16.2.2015

Deputy Upper Tribunal Judge G A Black

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 16.2.2015

Deputy Upper Tribunal Judge G A Black