



**Upper Tribunal
(Immigration and Asylum Chamber)**
IA/32008/2013

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Stoke on Trent
Reasons Promulgated
On 20th March 2015
2015**

**Decision and
On 26th June**

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

MR KENNEDY ASUMADU

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Basiri-Desfouli

For the Respondent: Miss Johnstone, a Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant appeals to the Upper Tribunal with the permission of FTTJ Chohas who thought that the FTTJ who heard this appeal, FTTJ Williams, had arguably failed to consider the case of **Kareem (Proxy Marriages - EU Law) [2014] UKUT 00024**.

2. The case was listed before me on 18th December 2014 following which I decided that there had been a material error of law in the decision of the FTT but I directed a further hearing at which the parties were given the opportunity to adduce updated evidence to deal with the validity of the marriage between the sponsor, a Dutch citizen born on 15 July 1959, and the appellant, a Ghanaian citizen born on 2 March 1968.

The adjourned hearing

3. At the adjourned hearing Ms Basiri-Desfouli applied for an adjournment on the basis that she said her client wanted to adduce fresh evidence from a Dutch lawyer that she had come across in a different case who would be able to confirm that the marriage between the appellant and the sponsor was indeed recognised in Dutch law.
4. I reminded to Ms Basiri-Desfouli that her client had been legally represented throughout the appeal but she explained that her client's legal advisers had not discharged their duty to their client. In particular they had not obtained the documents needed to advance her client's appeal.
5. I considered the situation to be highly regrettable, but applying the overriding objective of trying cases fairly and allocating appropriate resources to the appellant's case, I decided to refuse that application. In making this decision I took into account the fact that Ms Basiri-Desfouli was unable to produce a copy of the lawyer's letter and even if she could it had not been filed in compliance with directions.
6. I then proceeded to hear the case. Miss Basiri-Desfouli said that despite the lengthy adjournment no additional steps had been taken on the appellant's behalf since the previous hearing. She said this was the fault of her instructing solicitor.
7. Ms Basiri-Desfouli then said she had a case report on which she wished to rely and this dealt with the issue of proxy marriages in the Netherlands. Miss Johnstone said that she objected to that late evidence which she had no proper time to consider and which did not even relate to the case before the Tribunal. She also pointed out that very little weight could attach to that document as it had been prepared for a different case.
8. The application to adjourn having failed, I proceeded to hear submissions by both representatives. Ms Basiri-Desfouli considered that there was additional evidence which may have been placed before the Tribunal and in particular evidence relating to the expert evidence of a general nature (not yet available in this case) relating to the recognition by the Dutch authorities of this marriage. By implication she accepted that without that evidence her client faced difficulty in advancing her appeal further.
9. Miss Johnstone, on the other hand, pointed out that the case of **Kareem** had not been properly considered by the FTT and were it to be considered it would have shown that this appellant did not qualify for a residence card because there was no durable relationship between the appellant and Ms

Acheampong. Furthermore, she submitted, the appellant had put no evidence of a durable relationship before the respondent so that she had not had an opportunity to consider it. In such circumstances before the Upper Tribunal would be able to consider the existence of a durable relationship this would need to be considered by the respondent.

10. I then heard further argument from Ms Basiri-Desfouli who submitted that the requirements of Dutch law were in fact clearly set out in the case of **Kareem**. In particular I was referred to paragraphs 26 - 29 in which the Upper Tribunal state that Dutch law only refuses to recognise proxy marriages where they are contrary to public order. That would not be the case here. Having established a durable relationship I should therefore allow the appeal.

Conclusions

11. I am not satisfied that the quoting of reports or evidence in different cases or the assertion that the appellant and the sponsor are in a durable relationship is sufficient to justify finding that the conclusion of the FTT was erroneous. It is clear based on the case of **Kareem** that a dual test must be satisfied before the spouse of an EEA national is entitled to a residence card. In particular, before he qualifies for residence and free movement rights in the EEA the applicant must show that his marriage to the EEA national is recognised both in the country where it was celebrated and also in the country of the EEA member who is the other partner in that relationship.
12. The appellant has failed to establish that he qualifies for residence as the spouse of an EEA national because he has not satisfied me to the required standard that his marriage was conducted in accordance with Ghanian law and was recognised in Holland, the country of the sponsor's nationality. Accordingly I am not satisfied to the required standard (that of a balance of probabilities) that the appellant qualifies under regulation 7 of the EEA Regulations for a residence card. He has failed to prove that he is family member of an EEA national.
13. Having found a material error of law in the decision of the First-tier Tribunal I am not satisfied that the appellant qualified for a residence card on the basis on which he had sought one.

Notice of Decision

The appeal is dismissed and the decision of the FTT to allow the appeal against the respondent's decision is hereby set aside. The Upper Tribunal re-makes the decisions which is to dismiss the appeal against the respondent's decision. Accordingly the respondent's decision to refuse a residence card stands.

No anonymity direction was made by the FTT and I make no such direction.

The FTT made no fee award and I have not been invited to interfere with that decision.

Signed

Date

Deputy Upper Tribunal Judge