



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

Appeal Number: IA/31043/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 27 May 2014**

**Determination Prepared 27 May 2014**

**Determination**

**Promulgated**

**On 1 July 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DAVEY**

**Between**

**KWAKU KWAKYE  
(NO ANONYMITY ORDER)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: None

For the Respondent: Mr S Whitwell, Senior Presenting Officer

**DETERMINATION AND REASONS**

1. The Appellant, a national of Ghana, date of birth 7 June 1979 appealed against the Respondent's decision, dated 3 April 2013, to issue a refusal for a residence card under Regulations 6 and 7 of the Immigration (European Economic Area) Regulations 2006 as amended.

2. In the Reasons for Refusal Letter is dated 3 July 2013, the bases of refusal were that first the Appellant had not adduced evidence to show that he was a family member of a qualified person under the 2006 Regulations because of an absence of evidence of the same. Secondly, the Appellant had not adduced evidence to show a proper marriage by proxy of the Appellant and the EEA national, a French national, with the necessary statutory declaration that met the requirements of the Ghanaian Customary Marriage and Divorce (Registration) Law 1985. The appeal against that decision came before First-tier Tribunal Judge N Manuel who, on 29 January 2014, in a decision on the papers dismissed the Appellant's appeal under the EEA Regulations and human rights grounds.
3. Before Judge N Manuel the Appellant was to produce a key document being an amended statutory declaration of marriage, presumably to show it met the requirements of the registration law of 1985. But the same was not produced nor was there evidence sufficient to show that the EEA national, the qualified person, was employed as claimed or otherwise met the requirements of Regulation 6 of the 2006 Rules.
4. The judge also found that the Appellant, who had not argued to the contrary, did not meet the requirements of paragraph 276ADE or Appendix FM of the Immigration Rules. The judge found there was no evidence to support any conclusions concerning the claimed relationship, when they had met, when the relationship had begun and to show that the Respondent's decision was a disproportionate interference. In those circumstances it was completely unsurprising that the appeal on Article 8 private/family life grounds was dismissed.
5. The application to the First-tier Tribunal, which was refused on 2 April 2014 by First-tier Tribunal Judge Davidge, alleged that the Tribunal had failed to take into account a revised statutory declaration. However, in the papers accompanying that application, it was noted by the judge that no such document had been provided. Further, when a renewed application

to the Upper Tribunal was made and considered by Upper Tribunal Judge Macleman. An incomplete bundle, sent in after the date of First-tier Tribunal Judge Davidge's decision on 2 April 2014 did not contain the claimed revised or amended statutory declaration concerning the claimed proxy marriage. Permission to appeal was granted by Upper Tribunal Macleman, on 28 April 2014, who noted the absence of the amended statutory declaration before the judge on 29 January 2014. It is clear that the bundle before Upper Tribunal Judge Macleman did not contain the revised /amended statutory declaration item 16 at pp.55-56) as he may have thought.

6. At the hearing on 27 May 2014 there was no attendance by the Appellant nor his representatives. A letter from KA & Co Law Practice stated ' We write that we have been instructed by our Client that due to financial reasons they are unable to attend the hearing scheduled for 27 May 2014 and ask that the Tribunal determine the appeal in their absence'.
6. A incomplete bundle, with an index which purported to be dated 28 November 2013, was sent to the First- tier Tribunal by KA & Co Law Practice, by fax under cover of a letter of 5 April 2014, was received on 7 April 2014. The letter, accompanying further documents, purported to contain documentation previously provided to the First-tier Tribunal under cover of a letter of 28 November 2013. The eccentrically numbered bundle did not contain pages 32-33, 35-36, 37-39, 40-47, 48-56 or a complete EEA2 form . Page 34 was only part of the first statutory declaration. There was no additional letter from the Appellant's wife concerning continued employment (page 48), no recent payslips (pages 49 to 52), no Companies House printouts (pages 53 and 54) and no copy of the revised statutory declaration (pages 55 to 56) included in the bundle sent on 5 April 2014.
7. There is no evidence which suggested that that bundle was ever sent to the First-tier Tribunal on about 28 November 2013.

8. There is nothing on the case file to show that a bundle or cover letter of 28 November 2013 was ever sent to the Tribunal or received by it: A matter noted by Upper Tribunal Judge Macleman. There is nothing by way of Post Office registered delivery receipt or recorded delivery record or track and trace or indeed a post book from KA & Co Law Practice confirming the sending of that document on the claimed date.
9. It was for the Appellant to show there was a procedural irregularity as was pointed out in the permission given on 28 April 2014. In the circumstances there is no evidence to show any procedural error of law or unfairness in relation to the claimed amended statutory declaration or indeed evidence concerning the qualified person meeting the requirements of Regulation 6 of the 2006 Regulations.
10. It is clear also that the Appellant had not shown the customary requirements for a proxy marriage in Ghana had been met. There was no alternative basis upon which the Appellant succeeded upon under UK domestic law on the basis of the claimed proxy marriage. Applying NA (customary marriage and divorce evidence) Ghana [2009] UKAIT 00009 and Kareem (proxy marriage - EU law) [2014] UKUT 00024 (IAC) there was no evidence that the marriage between a French national and a Ghanaian national was recognised under the laws of France.
11. There was no evidence provided to discharge the burden of proof to show that there was such a valid marriage and nor was there evidence showing that such a marriage would be recognised in France nor does any general assertion in the grounds carry any weight in support of the claim there was a valid marriage. Finally, the Appellant still has failed to adduce the evidence to show in the required period the qualified person met the requirements of the 2006 Regulations. Thus In the light of the decision in Kareem it is difficult to see how any failure to consider the documents, if

they had been provided, would have made any difference to the outcome of the appeal.

12. The Original Tribunal made no error of law. The Original Tribunal decision stands.
13. The appeal grounds did not address Article 8 ECHR in the original grounds to the Tribunal dated 20 July 2013.
14. There was no attendance at the hearing of the appeal, I find the likelihood is that any such Article 8 claim has been abandoned. Again no claim was made in the grounds to the First-tier Tribunal seeking permission nor in the grounds to the Upper Tribunal alleging the judge's failed to properly address Article 8 of the ECHR.
15. The appeal on Article 8 ECHR grounds was properly dismissed.
16. The Original Tribunal made no error of law. The Original Tribunal's decision stands.

Signed

Date 24 June 2014

Deputy Upper Tribunal Judge Davey

**ANONYMITY ORDER**

No anonymity order was requested nor was one appropriate or necessary.

Signed

Date 24 June 2014

Deputy Upper Tribunal Judge Davey