



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

Appeal Number: IA/33396/2013

THE IMMIGRATION ACTS

Heard at Field House

On 29 July 2014

**Determination
Promulgated**

On 1st Aug 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVID TAYLOR

Between

**EMMANUEL OWUSU GYAPONG
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Reinhold of Counsel

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

DETERMINATION AND REASONS

1. The Secretary of State is the appellant to this appeal but for the sake of convenience and consistency I refer to her as the respondent and to the original appellant as such.
2. The appellant is a 49 year old citizen of Ghana. In a determination promulgated on 23 May 2014 in the First-tier Tribunal, Judge Morgan allowed his appeal against the

respondent's refusal to recognise the validity of his marriage to Ms Gladys Donkor who is a Dutch national exercising treaty rights in the UK. She is of Ghanaian parentage and she and the appellant were married, by proxy in their absence, in Ghana on 13th July 2012.

3. In allowing the appeal, Judge Morgan accepted that the parties were in a durable relationship and were living together. In respect of the validity of the marriage he relied upon the Upper Tribunal decision in **NA Ghana [2009] UKAIT 00009**.
4. In seeking permission to appeal, the Secretary of State submitted that the judge erred in failing to take account of the Upper Tribunal decision in **Kareem (Proxy marriages - EU law) [2014] UKUT 00024** which held that it is for the appellant to prove that the issue is not whether the UK recognises the proxy marriage in Ghana but whether the Member State of the EEA spouse recognises the marriage. Permission to appeal on that ground was granted by Designated Judge Phillips on 16 June 2014.
5. Before the commencement of the appeal hearing before me Ms Reinhold submitted documentary evidence from the Netherlands to the effect that Dutch law will recognise Ghanaian marriages by proxy provided that all the correct formalities have been applied in Ghana. Mr Deller considered that evidence and went on to confirm to me that, from his own experience in previous similar cases, he was able to concede that the marriage in this case is recognised under Dutch law.
6. The only other potential issue was the genuineness and subsistence of the marriage. Ms Reinhold, who had appeared at the First-tier Tribunal hearing, told me that the genuineness of the relationship had been conceded by the Presenting Officer on behalf of the respondent at the hearing in the First-tier Tribunal. That was why the judge, in his determination, had been able to find, without detailed reasoning, that the appellant and his wife are in a genuine and durable relationship and that they have lived together as husband and wife since their marriage in 2012.
7. On this basis Mr Deller was content to consent that the determination should be set aside (for failing to consider **Kareem**) and that the decision should be remade allowing the appeal on the basis of the additional evidence that had been submitted for the hearing before me. I agreed and indicated that I would make a decision in those terms.

Decision

The determination of the First-tier Tribunal contained a material error of law (in failing to refer to and take account of the decision in Kareem) and is accordingly set aside. I remake the decision by allowing the appeal of the appellant Emmanuel Owusu Gyapong.

No anonymity direction has been sought and none is made.

Deputy Upper Tribunal Judge David Taylor
1 August 2014

Fee Award

The original fee award made in the First-tier Tribunal is set aside (with the determination). Although I have allowed this appeal I have decided not to make a fee award in favour of the appellant because the evidence as to Dutch law, which should have been put before the First-tier Tribunal, was not submitted until the hearing before me.

Deputy Upper Tribunal Judge David Taylor
1 August 2014