Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/07391/2015

THE IMMIGRATION ACTS

Heard at Birmingham	**Decision & Reasons Promulgated**
On 15th December 2015	**On 4th January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE FRENCH

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SOPHIA GHARTEY
(ANONYMITY ORDER NOT MADE)

Respondent

Representation:

For the Appellant: Mr D Mills, Senior Home Office Presenting Officer
For the Respondent: Mr N Garrod instructed by Tamsons Legal Services

DECISION AND REASONS

1. Sophia Ghartey, whom I shall refer to as "the Claimant", sought from the Secretary of State a residence card under the Immigration (European Economic Area) Regulations 2006, as the spouse of the Sponsor, Joseph Agyei, who is a citizen of The Netherlands. The couple claimed to have been married by proxy in Ghana.

2. The application was refused by the Secretary of State on 9th February 2015. In the explanatory reasons letter it was contended that the Claimant had failed to establish that the Ghanaian marriage certificate provided had been duly registered in accordance with the Customary Marriage and Divorce (Registration) Law 1985. Following the case of **NA (Customary marriage and divorce – evidence) Ghana [2009] UKAIT 00009** it was considered that the conditions essential to the validity of the marriage in accordance with customary law had not been demonstrated. In addition Ghanaian birth certificates for both parties to the marriage had not been produced. A letter from the Ghanaian High Commission did not, it was said, establish that the marriage was valid. The decision letter went on to state that it had not been established that the parties were in a durable relationship.

3. The Claimant's appeal against that decision was heard before First-tier Tribunal Judge J S Law on 24th June 2015. By the time of that hearing some further documentation had been submitted, notably a letter from the Ghanaian High Commission in London which confirmed that the marriage between the Claimant and sponsor was legally valid in Ghana and a report from Dr Ian Curry-Sumner, who is qualified in Dutch law, in which he confirmed that the marriage would be regarded as a valid marriage according to Dutch law. The judge heard oral evidence from the Claimant and from the Sponsor. He found that the marriage by proxy had been compliant with Regulations in Ghana and that based on the expert report from the Dutch lawyer he accepted that the marriage was accepted as valid in the Netherlands. The Claimant's position therefore met the requirements in **Kareem (Proxy marriages – EU law) [2014] UKUT 00024 (IAC)**. The Claimant was thus entitled to a residence card and her appeal succeeded. The judge went on (at paragraph 18 of his decision) to state that whilst no reference had been made to Appendix FM of the Immigration Rules or paragraph 276ADE he found that the Appellant had established a private and family life within the United Kingdom and that requesting removal would be a breach of her human rights. He therefore also allowed the appeal under Appendix FM and 276ADE of the Rules and Article 8 ECHR. No anonymity direction was made and he made no fee award, giving reasons for his decision in that respect also.

4. The Secretary of State sought permission to appeal, contending that the judge had erred in considering that the marriage was valid under Ghanaian law, which cast doubt on its validity under Dutch law. The initial declaration submitted, it was said, had been insufficient and that could not be rectified by a subsequent statutory declaration lodged with the Ghanaian authorities. It was also said that the judge had misdirected himself in allowing the appeal under Appendix FM, paragraph 276ADE and Article 8 as it was recorded that no submissions had been made by either party in that regard and they had not been raised in the Grounds of Appeal. Permission was granted on 13th October 2015. In a detailed response under Upper Tribunal Procedure Rule 24 it was contended that the First-tier Tribunal had correctly applied the law and properly interpreted both Ghanaian and Dutch law.

5. At the hearing before me Mr Mills said that the case was a little out of the ordinary as there had been a report from a Dutch lawyer. It was clear from **Kareem** that mere assertions as to the law in an EEA country would not be enough. The Secretary of State's position was that what was required was a statement from the state authorities in the relevant country but he accepted that that was not clear from **Kareem**. He said the question was whether the marriage was valid under Ghanaian law and was the judge entitled to find that it was. The only real complaint was that the judge had not dealt with the point that the Claimant had produced a statutory declaration with regard to the original registration with the Ghanaian authorities and then a subsequent declaration, which had given further information.

6. Mr Mills accepted that registration of a customary marriage under Ghanaian law was now optional but if registration was pursued it was necessary, he said, to follow the correct process. The statutory declaration in support was required to show the names of the parties to the marriage, the place of residence of the parties at the time of the marriage and that the conditions essential to the validity of the marriage in accordance with the applicable customary law had been complied with. The marriage was required to be shown to be supported by the parents of the spouses. He said that the original statutory declaration did not have all of these elements. Consequently a second statutory declaration was required, subsequent to the application. The issue was whether if the marriage was registered on the basis of a defective statutory declaration it had been properly registered. The First-tier Tribunal Judge found that the letter from the High Commission could paper over the cracks and his decision was predicated on the marriage being lawful in Ghana.

7. In response Mr Garrod referred to the Rule 24 response. He said that the statutory declaration of 8th October 2013, made by the respective fathers of the parties to the marriage, did meet the requirements of Ghanaian law. In any event he said that the marriage certificate was conclusive. That appeared to be clear from Section 13 of the Customary Marriage and Divorce (Registration) Law 1985 in force in Ghana.

8. Mr Garrod went on to refer to the reported decision in **NA (Customary marriage and divorce – evidence) Ghana [2009] UKAIT 00009**. At paragraph 18 of that decision was reported the guidance of the Home Office's own website to the effect that non- compliance with the requirements for registration in the 1985 Ghanaian law was punishable by fine or imprisonment but the marriage would still be regarded as valid. Thus he said that even if there had been a failure to comply with the Regulations, which he did not accept, the marriage would still have been valid. He accepted that the judge might have erred in going on to consider the Immigration Rules and Article 8 ECHR when they had not been in issue but that did not affect the outcome. Mr Mills did not wish to respond at that point.

9. Having considered the documentation and those submissions I came to the view that there had been no material error of law in the decision of

First-tier Tribunal Judge Law. The judge had before him not only evidence from the two parties to the marriage and the documentation previously before the Secretary of State but he also had the letter from the High Commission in London (pages E1 to E3 of the Claimant's bundle) in which the Counsellor for Consular Affairs confirmed that the marriage of the Claimant and Sponsor was legally valid in Ghana. Furthermore the judge had the specialist report of Dr Curry-Sumner (pages E5 to E11 of the bundle) which confirmed that the marriage was valid in Dutch law. It has not been demonstrated to me that the judge erred in his assessment of the evidence, given in particular those two documents. He was justified in finding that in the particular circumstances of this couple the marriage was valid both in Ghanaian and in Dutch law and thus the Claimant was entitled to a residence card.

10. Having regard to the recent reported decision of **Amirteymour and Others (EEA appeals; human rights) [2015] UKUT 00466 (IAC)** and the judgment of the Court of Appeal in **TY (Sri Lanka) v SSHD [2015] EWCA Civ 1233** it is arguable that the judge should not have considered matters under the Immigration Rules or Article 8 ECHR, the more so as these issues had not been pleaded in the Grounds of Appeal. However that point is not relevant as to whether there was a material error of law.

Notice of Decision

There was no material error of law in the decision of the First-tier Tribunal which shall stand.

No application was made for an anonymity order and none is made.

Signed Date 02 January 2016

Deputy Upper Tribunal Judge French