



allowed under Regulation 7 of the Immigration (European Economic Area) Regulations 2006 (“the EEA Regulations”) by First-tier Tribunal Judge Trevaskis in a decision promulgated on 28 July 2016.

2. The Secretary of State sought permission to appeal against that decision and First-tier Tribunal Judge Adio granted permission to appeal on decision on 1 November 2016. Permission was granted on the grounds that there was an arguable error of law in failing to consider Portuguese law in determining the validity of the marriage.
3. The Secretary of State argues in the grounds seeking permission to appeal that the First-tier Tribunal failed to have regard to two Upper Tribunal decisions, namely **Kareem (Proxy marriages - EU law)** [2014] UKUT 21, and **TA and Others (Kareem explained) Ghana** [2014] UKUT 00316. The Secretary of State argues that the Judge ought to have considered whether the Claimant’s proxy marriage was valid under Portuguese law, the country of her EEA sponsor’s nationality.
4. I heard from Mr Diwnycz who conceded that the Secretary of State’s position as set out in the grounds of appeal could not be maintained in view of the decision of the Court of Appeal in **Albert Awuku v SSHD** [2017] EWCA Civ 178.

## Discussion

5. In the case of **Awuku** the Court of Appeal held that nationality and marital status are clearly distinguishable. Marital status and its recognition in any given case are matters in respect of which Directive 2004/38/EC (“ the Citizens Directive”) contemplates that the Member States may take different views. As a result, there is no need to defer to the law of the State of nationality of the EU national when determining the marital status of his or her spouse or partner for the purposes of the Citizens Directive. The Tribunal in **Kareem** had created a new rule of private international law requiring reference to the law of the State of the EU national.
6. The Claimant and her EEA spouse contracted a customary marriage. The Secretary of State did not dispute the validity of that marriage and Judge Trevaskis found that the marriage met the requirements for recognition in **CB (validity of marriage; proxy marriage) Brazil** [2008] UKIAT 00080. The Secretary of State’s case was the marriage was one of convenience. Judge Trevaskis found that the marriage was not one of convenience and was a genuine one. No issue was taken in with those findings the grounds seeking permission to appeal.
7. The law of England and Wales recognises proxy marriage if valid by the *lex loci celebrationis*. As there was no issue in this appeal regarding the validity of the Claimant’s marriage and in light of the Court of Appeal authority I dismiss the Secretary of State’s appeal.

**Notice of Decision**

The decision of the First-tier Tribunal did not involve the making of a material error of law and I do not set it aside.

I dismiss the Secretary of State's appeal.

No anonymity direction is made.

Signed

Dated 31 May 2017

Deputy Upper Tribunal Judge L J Murray