



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

Appeal Number: IA/06638/2013

THE IMMIGRATION ACTS

Heard at Manchester

**On 25th July, 2014
Signed 4th August 2014**

**Determination
Promulgated
On 6th August 2014**

Before

Upper Tribunal Judge Chalkley

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

MR KALU UKA IRO

Appellant

Respondent

Representation:

For the Appellant: In person
For the Respondent: Mr Harrison

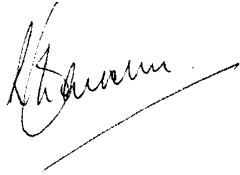
DETERMINATION AND REASONS

1. The appellant in this appeal is the Secretary of State for the Home Department to whom I shall refer as "the claimant". The respondent is a citizen of Nigeria who was born on 19th December, 1979. He entered the

United Kingdom on 22nd August, 2011 on a visit visa accompanying school children from Nigeria. The visa was valid until 10th February, 2012 and he chose to overstay his right to remain in the United Kingdom.

2. On 10th November, 2012 he made application for a residence card under the Immigration (European Economic Area) Regulations 2006. On 6th February, 2013 the claimant refused the respondent leave to remain and the respondent appealed to the First-tier Tribunal. His appeal was heard at Taylor House on 7th May this year by First-tier Tribunal Judge Majid.
3. The respondent married a Romanian citizen by proxy. At the time of the marriage neither the respondent nor his bride were in Nigeria. First-tier Tribunal Judge Majid allowed the appeal under the Immigration (European Economic Area) Regulations 2006 and under Article 8 of the ECHR.
4. The respondent challenged the decision on the basis that the judge failed to consider and apply *Karim* and consider whether the respondent's spouse was validly married as an EU citizen.
5. Before me today the appellant appeared in person. I explained to him the purpose of the hearing. I told him also that I had read the determination and grounds of appeal and that it appeared to me that the First-tier Tribunal Judge had erred in law. It now transpires that the respondent has taken steps to contact the Romanian Embassy and is in the process of ensuring that the proxy marriage with his wife is properly recognised under Romanian law.
6. Mr Harrison for the claimant pointed out that there was no evidence before the judge which could have satisfied him that the respondent's spouse was validly married as an EU citizen. Given that the judge had failed to consider and apply *Karim* he invited me to set the decision aside and remake it dismissing the appeal.
7. Unfortunately First-tier Tribunal Judge Majid failed to consider and apply *Karim (Proxy marriages - EU law)* [2014] UKUT 00024 IAC. Had he done so he would have realised that there was no evidence before him which could satisfy him that the respondent's wife as an EU citizen was validly married to the respondent. In allowing the appeal under Article 8 he failed to apply the Immigration Rules and whilst he acknowledged the decision in *Nagre, R (on the application of) v Secretary of State for the Home Department* [2013] EWHC 720 (Admin) he failed to apply the decision in *Nagre* and in *Gulshan (Article 8 - new Rules - correct approach)* [2013] UKUT 00640 (IAC) .
8. I have concluded that I must set aside the determination. The Immigration Judge has failed to consider whether the respondent's wife is validly married under EU law and as such his decision cannot stand. I set aside his decision. There was no evidence before the judge which would have enabled him to have found properly applying *Karim* that the respondent

and his wife were validly married and I have concluded that given the judge failed to properly apply Appendix FM of the Immigration Rules and consider whether they were satisfied. I set aside the decision under the human rights appeal. My decision is that the respondent's appeal shall be dismissed.

A handwritten signature in black ink, appearing to read 'Chalkley', with a long horizontal stroke extending to the right.

Upper Tribunal Judge Chalkley