



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

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 5 August 2014**

**Determination  
Promulgated  
On 8 August 2014**

**Before**

**UPPER TRIBUNAL JUDGE WARR**

**Between**

**SECRETARY OF STATE**

**and**

**MONSURAT ADUKE ADELEKE**

Appellant

Respondent

**Representation:**

For the Appellant: Mr N Bramble  
For the Respondent: Mr T Ogunnubi (TM Legal Services)

**DETERMINATION AND REASONS**

1. This is the appeal of the Secretary of State but I will refer to the original appellant, a citizen of Nigeria born on 26 May, 1983, as the appellant herein.

2. The appellant applied on 20 September, 2013 for a residence card as the spouse of a Portuguese national following a Nigerian proxy marriage on 5 February, 2013. The application was refused on 30 January, 2014. The appellant appealed against the refusal and her appeal came before a First-tier Judge as a paper case on 9 May 2014.
3. In the grounds of appeal against the decision it was pointed out that the appellant's husband had travelled to Nigeria for the marriage although the appellant had not. The respondent had taken issue with the marriage certificate provided which did not it was said contain all the necessary details. However it was submitted the Home Office should have requested further information if required.
4. It was submitted that the documents provided to the judge showed that the marriage was validly registered and it was submitted that the appellant was entitled to a residence card as a family member of her husband, an EEA national exercising Treaty rights.
5. The judge accepted the submissions and found that the marriage had been properly and appropriately registered and was valid and accordingly allowed the appeal.
6. The Secretary of State appealed on the basis that the First-tier Judge had failed to consider the case of Kareem (Proxy Marriages- EU Law) Nigeria [2014] UKUT 24 with reference in particular to what was stated at paragraph 68(e) of that case: "the starting point will be to decide whether a marriage was contracted between the appellant and the qualifying person according to the national law of the EEA country of the qualified person's nationality." It was further submitted with reference to paragraph 68(g) that "without independent and reliable evidence about the recognition of the marriage under the laws of the EEA country and/or the country where the marriage took place, the tribunal is likely to be unable to find sufficient evidence has been provided to discharge the burden of proof. Mere production of legal materials from the EEA country or country where the marriage took place will be insufficient evidence because they will rarely show how such law is understood or applied in those countries. Mere assertions as to the effect of such law will, for similar reasons, carry no weight."
7. It was submitted that the judge had erred in failing to approach matters in the light of this guidance.
8. At the hearing before me Mr Bramble relied on the grounds and submitted there was a single issue. He referred to the case of TA (Kareem explained) Ghana [2014] UKUT 00316 which confirmed that the issue of whether the marriage was valid had to be assessed by reference to the laws of the legal system of the nationality of the relevant union

citizen (paragraph 20). It would be open to the applicant to make a fresh application.

9. Mr Ogunnubi submitted the First-tier Judge had directed himself appropriately in relation to the marriage certificate and the case of TA (Ghana) had been decided after the First-tier Judge had dealt with the case. Neither side had made submissions in relation to Karreem and the parties had been content to have the matter determined on the documents. No false evidence had been submitted. He accepted that no further evidence had been lodged and there had been no reply to the grounds of appeal lodged by the respondent.
10. I reserved my determination.
11. It is quite clear that the judge failed to have regard to the case of Kareem which had been reported on 16 January 2014 prior to the appeal being launched and several months before the matter was determined on the papers. The judge did not direct himself by reference to that case and this is clearly a material error of law whether or not the parties referred him to it. The case has subsequently been confirmed in TA (Ghana).
12. Of course it would have been open to the appellant to file a reply and further evidence as required by Kareem. However that has not been done. It is as Mr Bramble accepted open to the parties to make a fresh application buttressed with the appropriate evidence as required by Kareem.
13. I find the decision of the First-tier Judge was materially flawed in law. I re-make it. As I was not invited to uphold the decision on any other basis and in the absence of further evidence the appeal of the Secretary of State is allowed.
14. The decision of the First-tier Judge is reversed. Mr Adeleke's appeal is accordingly dismissed.

Signed

Upper Tribunal Judge Warr

6 August 2014