



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/12055/2013

THE IMMIGRATION ACTS

Heard at : Field House
On : 25 February 2014

Determination Promulgated
On : 04 March 2014

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SEGUN JEREMIAH ADEKOYA

Respondent

Representation:

For the Appellant: Mr C Avery, Senior Home Office Presenting Officer
For the Respondent: In Person

DETERMINATION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department against the decision of the First-tier Tribunal allowing Mr Adekoya's appeal against a decision to refuse to issue him with a residence card as the family member of an EEA national, under the Immigration (European Economic Area) Regulations 2006 ("the EEA Regulations").

For the purposes of this decision, I shall refer to the Secretary of State as the respondent and Mr Adekoya as the appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal.

2. The appellant is a citizen of Nigeria, born on 4 July 1974. On 13 September 2012 he made an application for a residence card as the spouse of an EEA national who was exercising treaty rights in the United Kingdom. He claimed to be the spouse of a French national, Sonia Almeida, whom he had married on 9 June 2012.

3. The appellant's application was refused on 7 April 2013. The respondent, in refusing the application, noted that as evidence that he was related to an EEA national he had provided a certificate of registration of marriage dated 11 June 2012 that stated that he married the EEA national on 9 June 2012. However the respondent's records showed that he had submitted a marriage certificate alongside previous applications stating that he was married to his EEA national spouse on 17 February 2011. The date of his marriage was therefore unclear. The respondent did not, in any event, accept that the marriage was valid since there was no evidence to show that either party had travelled to Nigeria to attend the wedding and it was not accepted that customary marriage via proxy was considered to be valid. Furthermore, it was considered that the various conditions which needed to be fulfilled for a customary marriage to be valid in Nigeria had not been fulfilled, such as the need for consent and for a dowry.

4. The appellant's grounds of appeal before the First-tier Tribunal asserted that the marriage was valid in the United Kingdom because it was valid in the place where it was celebrated, namely Nigeria. References were made to the Nigerian Marriage Act and codes of Nigerian law which made provision for customary marriages and which recognised proxy marriages. The grounds also raised Article 8 of the ECHR.

5. At the appellant's request, his appeal was determined by a First-tier Tribunal Judge on the papers, without an oral hearing. First-tier Maxwell allowed the appeal in a determination issued on 11 November 2013, finding that the appellant's marriage was valid. His reason for so concluding was that the respondent was wrong to consider that proxy marriages were not valid and ought to have relied upon a letter of 1 February 2013 from HM Foreign and Commonwealth Office confirming that such marriages were valid. Since he considered that that was the only basis upon which the application had been refused, the judge concluded that the appellant's marriage was valid and that he was, therefore, the spouse of an EEA national and that he was entitled to a residence card as such.

6. The respondent sought permission to appeal that decision to the Upper Tribunal on the grounds that the judge had failed to give adequate reasons for concluding that the appellant was the spouse of an EEA national and had based his decision purely on general background evidence.

7. Permission to appeal was granted on 16 January 2014.

Appeal before the Upper Tribunal

8. The appeal came before me on 25 February 2014. Although the appellant's representatives had advised the Tribunal that he wanted the appeal considered on the papers without an oral hearing, the appellant appeared at the hearing. He was no longer represented. His wife was not present and he told me that she was visiting her mother in France, having gone there on 12 February 2014, and was due back on 15 March 2014. He did not have any evidence to confirm that.

9. Mr Avery made submissions on the error of law. He submitted that the judge had made only general comments about proxy marriages without applying the relevant considerations to the appellant's case. He had not engaged with the evidence or provided any real reasons for his findings. The appellant, in response, asked me to find that the judge's decision was correct.

10. I advised the parties that in my view the judge had erred in law and that his decision had to be set aside. As Mr Avery submitted, he had only considered the general position on proxy marriages but had failed to consider the appellant's individual circumstances. It was not the case, as the judge said, that the refusal of the appellant's application arose solely out of an incorrect conclusion on the validity of proxy marriages. Clearly the respondent had engaged with the appellant's own circumstances, considering the various conditions of a customary marriage which had not been fulfilled in his case. The judge had failed to give any consideration to that matter. Accordingly his decision was materially flawed and had to be set aside.

11. Having first established that the appellant did not want an oral hearing in order for his wife to attend and that he preferred that I re-made the decision on the basis of submissions on that occasion, I proceeded to hear from both parties.

12. Mr Avery stood by the refusal decision and also relied on the recent case of Kareem (Proxy marriages - EU law) Nigeria [2014] UKUT 24 in which the Upper Tribunal found that the starting point in such cases was whether the marriage was valid in the EEA national's country, in this case France. There was no evidence that the French authorities would recognise a proxy marriage.

13. I asked the appellant for his response. He was unable to state if the marriage was recognised in France and submitted simply that he and his wife had been together for three years, as shown by the documentary evidence. I asked him if he was happy for me to make my decision on the documents he had submitted previously and he confirmed that he was. I asked him if he wanted to add anything and he said that he did not.

Consideration and Findings

14. Whilst, as Judge Maxwell found, proxy marriages can be recognised as valid in Nigeria under customary law, the fact is that there is, in the appellant's case, a dearth of reliable evidence to show that any ceremony took place in Nigeria which can be

considered as a proxy marriage. The appellant stated in his witness statement that there was such a ceremony at which his wife was represented by her aunty who was based in Nigeria and who received the dowry on her behalf and gave her consent to the marriage. He also referred to his family members who were present at the ceremony and stated that his father subsequently registered the marriage. The information provided in the statement from Sonia Almeida was the same, albeit very brief. There is also a statement from Michell Martins, said to be Sonia Almeida's aunt. However, neither witness was available for examination and, significantly, the appellant did not seek to produce his wife in order to confirm her evidence. Other than statements made by persons unavailable for examination, the only evidence of the marriage consists of a certificate of registration of marriage which suffers from many of the evidential deficiencies identified in the case of Kareem at paragraphs 39 to 43 and which leads me to the same conclusions as reached by the Tribunal at paragraph 43 with regard to the reliability of the evidence.

15. In the light of such unreliable evidence it seems to me highly unlikely that a ceremony such as that described in the witness statements actually occurred and that there has in fact been any form of marriage between the appellant and Ms Almeida. There are, indeed, no photographs of any ceremony and no detailed accounts of the occasion such that would lend any credence to the accounts given in the witness statements. Clearly, the evidence produced by the appellant falls way short of demonstrating that he and Ms Almeida would be regarded as being married according to Nigerian law.

16. However, in any event, there is a clear absence of any evidence of the validity of the claimed proxy marriage under French law and no indication that the French authorities would regard the parties as being lawfully married according to Nigerian law or French law. That was found by the Tribunal in Kareem to be an essential ingredient in such marriages and in the absence of any evidence in that regard it is clear that the appellant has failed to show that he has entered into a valid marriage. Indeed the credibility of his claim is further undermined by the inconsistency in the evidence of the dates of his marriage, as relied upon by the respondent in refusing his application. The appellant sought to provide some explanation for the discrepancy in his witness statement, but he has not produced any evidence to support that explanation. Given the nature of the evidence as a whole, I consider that to be yet one more reason to conclude that there has never been any marriage.

17. Accordingly, I do not accept that the appellant is married to Ms Almeida. As such, he is not entitled to a residence card as the spouse of an EEA national and he has failed to show that the respondent's decision of 7 April 2013 was in breach of the EEA Regulations.

18. With regard to Article 8, I do not accept that there is any family life between the appellant and Ms Almeida such as to engage Article 8 of the ECHR. The appellant's appeal bundle contains various pieces of documentary evidence upon which he relies as evidence of cohabitation. However in the light of the overall unreliability of the evidence and in the absence of any appearance by Ms Almeida, I consider that the weight to be attached to the documents is limited and shows no more than that their names have been associated with the same address. Likewise, I find the weight to be attached to the

photographs produced to be limited and I do not accept that they amount to reliable evidence of a subsisting relationship. The appellant has not produced evidence of any established private life in the United Kingdom. There is a lack of information about his length of residence and his past immigration status. In the circumstances, and in the light of the evidence as a whole, I consider that the interference with any private life he may have established here would not be disproportionate to the legitimate aim of maintaining an effective immigration control. The appellant relies upon evidence indicating that he has close family remaining in Nigeria and, as such, there is no reason why he cannot re-establish his private life in that country. Any requirement for him to leave the United Kingdom would not be in breach of Article 8.

19. Accordingly I would dismiss the appellant's appeal under the EEA Regulations and on Article 8 grounds.

DECISION

20. The making of the decision of the First-tier Tribunal involved an error on a point of law. The Secretary of State's appeal is accordingly allowed and the decision of the First-tier Tribunal is set aside. I re-make the decision by dismissing Mr Adekoya's appeal on all grounds.

Signed
Upper Tribunal Judge Kebede