



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/19069/2012

THE IMMIGRATION ACTS

Determined at: Manchester
On: 4th August 2014

Determination Promulgated
On: 8th August 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE BRUCE

Between

MRS FRANCA NGUNAN ENWEREM

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS

1. The Appellant is a national of Nigeria date of birth 27th May 1982. She has permission to appeal against the decision of First-tier Tribunal Judge Colyer dated 16th November 2012 to dismiss her appeal against the Respondent's decision to refuse to issue her with a residence permit confirming her right of residence as the spouse of an EEA national.
2. This appeal is determined on the papers before me at the request of the Appellant. Upper Tribunal Judge Eshun made directions for paper disposal on the 15th January 2013 and there has been no objection to this course of action by the Respondent. I initially dealt with the matter on the papers in May 2013 and directed that the matter be stayed pending an Upper Tribunal decision on the effect of proxy marriage. There was then an unfortunate delay in having the matter re-listed for which I apologise.

3. The matter in issue was whether the Appellant had shown that she was in fact married to the EEA national in question, Mr David Jorg Costa Afonso, a national of Portugal. The Appellant had submitted a certificate of marriage issued by Mrs NJ Okuomo Chioma, Secretary of the Mbaitoli Local Government "Artea" of Imo State, Nigeria. This read "this marriage is conducted under the native law and custom of Imo State at Mr Alexander Achigbe's compound at Umuowa, Ubomiri in Mbaitoli Local Government area of Imo State". She also provided a document showing that an earlier customary marriage had been dissolved and an affidavit from her father stating that he had been present at the ceremony of his daughter's marriage to Mr Costa Afonso.
4. The Respondent had refused the application on the grounds that proxy marriages are not universally recognized under UK law and will be accepted only if they are recognized as valid marriages under the issuing country's own law. The refusal letter cited paragraph 24.23 of the Nigerian Country of Origin Information Report which states that proxy marriages are no longer considered valid under Nigerian law. I would only observe that I do not know how the Respondent deduced from the documents in her bundle that this was a proxy marriage; it may be that some documents have not been reproduced but there is nothing to indicate that this was the case.
5. When the matter came before Judge Colyer on the papers Judge Colyer referred to the spelling mistake of 'Artea' in the marriage certificate and found it strange that it should record that 'both parents' gave consent to the marriage. On this basis Judge Colyer concluded that there was doubt as to the validity of the certificate and placed no weight upon it. Judge Colyer adopted the Respondent's submissions on the validity of proxy marriages in Nigeria. The Judge directed himself to the authorities of CB (Validity of Marriage: Proxy Marriage) Brazil [2008] UKAIT 00080 and Apt v Apt [1947] P 127 which provide that the recognition of proxy marriages are not contrary to public policy, and that such a marriage considered valid in the country where it is contracted will be recognized in the UK per the doctrine of *lex loci celebrationis*. Judge Colyer then cited the COIR to the effect that Nigerian law no longer recognizes proxy marriages and on that basis dismissed the appeal. He went on to deal with Article 8 but in the absence of any substantive evidence about the Appellant, Mr Costa Afonso or their life in the UK considered that it would be proportionate to expect them to go and live in Nigeria.

6. The grounds of appeal submit that the determination contains the following error of law: the material in the COIR which indicated that proxy marriages are no longer considered valid in Nigeria only related to civil matrimonial law, not customary marriage, which is governed by native law and custom.
7. The relevant paragraphs of the 2011 COIR are as follows:

24.15 EveryCulture.com, in a section on marriage in its undated profile of the country accessed 18 March 2011, noted: “There are three types of marriage in Nigeria today: religious marriage, civil marriage, and traditional marriage. A Nigerian couple may decide to take part in one or all of these marriages. Religious marriages, usually Christian or Muslim, are conducted according to the norms of the respective religious teachings and take place in a church or a mosque. Christian males are allowed only one wife, while Muslim men can take up to four wives. Civil official weddings take place in a government registry office. Men are allowed only one wife under a civil wedding, regardless of religion. Traditional marriages usually are held at the wife's house and are performed according to the customs of the ethnic group involved. Most ethnic groups traditionally allow more than one wife.” [104]

24.16 The Social Institutions and Gender Index (SIGI) undated profile for Nigeria, accessed 18 March 2011, stated: “There are three forms of marriage in the country: monogamous marriage registered under the civil marriage law, customary marriage, and Islamic marriage. In southern Nigeria, the minimum legal age for marriage is between 18 and 21 years of age, depending on the region; in the north it ranges from 12 to 15 years. In some regions, customary law allows girls to marry from the age of only nine years; such marriages are banned in two states, but remain common overall. The incidence of early marriage is high in Nigeria ...” [68]

...

24.19 In an email from the British High Commission in Abuja to UKBA of 1 December 2008 it was stated that: “... Although proxy marriages are not recognised under Nigerian civil law, they are allowed under customary law.” [2d]

...

24.21 The United States State Department Reciprocity Schedule, in an undated section on marriage certificates in the country, recorded that: “... both parties to the marriage technically must be physically present at the same location with witnesses to sign certain marriage documents, proxy marriages have ceased to be valid but still occur.” [3e]

8. Although the determination refers to paragraph 24.23 there is no reference to the preceding paragraphs which show that proxy marriage conducted under customary law are still valid. I am satisfied that the determination has failed to take material evidence into account. The evidence in the COIR indicates that such a marriage would be considered valid in Nigeria.
9. The grounds of appeal do not address the comments made by the Judge in respect of the certificate being “strange”. The Judge found that the spelling mistake in ‘area’ and the fact that the parents’ consent is recorded together “put such doubt as to the validity of the document” so he can place no weight upon it. The Respondent had not challenged the veracity of this document. Had she done so it would have been for the Respondent to produce cogent evidence to show that the document was false. I am not satisfied that the document could be rejected for the reasons given in the determination. There may be perfectly valid cultural reasons why the consent of both parties is recorded, or it may simply be the practice of Mrs Okuomo to record that fact. That leaves the spelling mistake. Had this been an official document produced on behalf of the Nigeria state I would agree that such an error could reveal falsity. However this document purports to be nothing more than a certificate issued by Mrs Okuomo. The fact that it contains a spelling mistake is therefore more understandable. I note that an affidavit from the Appellant’s father attesting to his presence at the ceremony has gone unchallenged. In those circumstances the Appellant has shown that she is married according to Nigerian customary law to Mr Costa Afonso.
10. There is however the matter of whether the Appellant’s marriage is recognized by Portugal. Since Judge Colyer promulgated his decision the Upper Tribunal has issued the guidance in Kareem (Proxy marriages – EU law) [2014] UKUT 00024(IAC): the burden is on the Appellant to show that her marriage is also recognized by the Portuguese authorities. In the absence of this evidence the appeal must fail because the Appellant has not discharged the burden of proof.

Decision

11. The decision of the First-tier Tribunal did contain an error such that it is set aside.
12. I re-make the decision by dismissing the appeal.

Deputy Upper Tribunal Judge Bruce
4th August 2014