



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/29044/2012

**THE IMMIGRATION ACTS**

Heard at Field House  
On 19 February 2014

Determination Promulgated  
On 12 March 2014

Before

UPPER TRIBUNAL JUDGE ESHUN  
UPPER TRIBUNAL JUDGE PETER LANE

Between

MR ADENIYI OLUMIDE AKINFUSI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms N Nwami, Counsel

For the Respondent: Mr N Bramble, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant is a citizen of Nigeria born on 22 March 1965. He has been given permission to appeal the decision of First-tier Tribunal Judge Ruth dismissing his appeal against the respondent's decision to refuse to issue a residence card as confirmation of a right of residence as the spouse of a Hungarian and therefore EEA national, Miss Ildiko Hering.

2. The appellant was granted permission on the basis that a panel of the Upper Tribunal was to consider the whole issue of customary marriages by proxy and therefore it was appropriate to grant permission on his application pending the outcome of the panel hearing. The Upper Tribunal has now published its decision in **Kareem (proxy marriages - EU law) [2014] UKUT 00024 (IAC)**.
3. The appellant's immigration history is not entirely clear. He officially entered the UK on 10 June 2005 on a visitor's visa valid until 11 November 2005. According to the respondent however the appellant had been refused entry clearance in Lagos on 25 August 2006. It was therefore not clear when the appellant last entered the UK but he was encountered by the respondent on 18 May 2007 and has been in the UK since that date without leave.
4. On 9 July 2012 the appellant made an application to the respondent for a residence card as the spouse of an EEA national. The respondent rejected the application in a letter dated 5 December 2012. The respondent took the view that the appellant's alleged proxy marriage carried out in Nigeria was not valid. The evidence submitted did not establish that the appellant was in a durable relationship with his EEA sponsor. On that basis the respondent concluded that the appellant did not satisfy the definitions of a family member or extended family member contained in regulations 7 and 8 of the Immigration (European Economic Area) Regulations 2006.
5. The judge had before him copies of documents the appellant had submitted to the respondent in support of his application and copies of documents the appellant had submitted in support of his appeal. They included a Nigerian divorce decree, a certificate of registration of customary marriage from Nigeria, an affidavit apparently from the father of the sponsor, the opinion of a Nigerian solicitor as to the validity of proxy marriages in Nigeria and a letter from the Ilaje Local Government where the proxy marriage was registered.
6. The judge heard evidence from the appellant, Miss Ildiko Hering and her daughter.
7. In determining the validity of the appellant's customary marriage, the judge had regard to the Nigerian Federal Marriage Act 1990 and came to the view that customary marriages are not governed by the Federal Marriage Act. The appellant's grounds accepted that the judge was correct to form that view but argued that the judge materially erred in law in his finding that the appellant's proxy marriage was not valid under Nigerian customary law. Ms Nwami argued that the judge was wrong at paragraph 35 to adopt the respondent's assertion in the Reasons for Refusal Letter that there are four essential elements for a valid customary marriage in Nigeria and was wrong to conclude at paragraph 35 that there was no valid marriage because the requirements had not been satisfied. The four requirements relied on by the judge were: the consent of the parties; capacity; the giving of a dowry; and the formal giving away of the bride. Ms Nwami argued that there was no evidence to substantiate these four elements. She relied on head note (d) of **Kareem** which held:

*“In appeals where there is no such marriage certificate or where there is doubt that a marriage certificate has been issued by a competent authority, then the marital relationship may be proved by other evidence. This will require the Tribunal to determine whether a proxy marriage was contracted.”*

8. Ms Nwami submitted that in the appellant’s case a competent authority issued the marriage certificate and therefore the marriage was registered according to customary law in Nigeria. She argued that the judge’s findings must be set aside because of the helpful guidance in **Kareem**. Because there was a valid marriage certificate there was no need for other evidence to assess whether the marriage was conducted according to customary law in Nigeria.
9. Mr Bramble on the other hand argued that the judge did not err in law in that the requirements relied on by the judge formed part of the criteria upheld by the Upper Tribunal at paragraph 54 of **Kareem** as follows:

*“54. The balance of the evidence before us is that a dowry is a requirement of a customary marriage in Nigeria, and indeed there appears to be no evidence to the contrary. Similarly, and to the contrary, we conclude on the balance of probabilities that a customary marriage will not be regarded as a marriage in Nigerian law unless there is evidence of the parties’ consent, that they have the capacity to marry and that there has been a formal giving away of the bride (i.e. parental consent to the marriage). Unless evidence demonstrates that these requirements do not apply in the relevant community these criteria will be the usual starting point for deciding if a marriage has been contracted.”*

10. We have considered the judge’s findings and come to the conclusion that he did not err in law. The judge noted that the validity of the marriage, discounting the evidence of the appellant and sponsor which he did not accept to be credible, was very limited. It consisted of photocopies of his certificate of registration of customary marriage in the Chief Magistrates’ Court of Ondo State, a letter from the Commissioner for Oaths from that state, an alleged affidavit from the sponsor’s father and a letter from the Ilaje Local Government. These documents, all of which were photocopies, said nothing about whether or not a dowry was paid and whether or not there was a formal giving away of the bride. Furthermore, it was not entirely clear from the affidavit of the alleged father of the sponsor whether or not he was in Nigeria at the time of the marriage. Ms Nwami who was also Counsel below had suggested that although the documentation did not provide these details as to these matters, the judge should accept on balance that the essential four requirements must be satisfied as the documents would not otherwise have been issued. The judge said he was not prepared to accept that submission given his findings as to the credibility of the witnesses. In his overall assessment of credibility in the round, he considered the failure of any of the documentary evidence to support the satisfaction of all the four essential requirements for a valid customary marriage to be suspicious.
11. In paragraph 55 the Tribunal recognised that this could not be an exhaustive list because, as Nigerian case law indicates, the requirements for a marriage to be accepted as having been contracted by custom and native law varies within Nigeria.

In **Kareem** the applicant was an Ibo. The appellant in the instant appeal is Yoruba. Counsel was unable to tell us what variation, if any, there was between an Ibo customary marriage and a Yoruba customary marriage.

12. The appellant had submitted the opinion of a Nigerian solicitor as to the validity of proxy marriages in Nigeria. We accept that the judge did not make any finding on this opinion but we find that his failure to do so does not materially undermine his decision. The solicitor said that customary marriage is contracted in accordance to the customary laws (native traditions, customs and cultures) of the parties to the marriage. It is governed by rules which are largely unwritten. In paragraph 16 he said there are five identifiable requirements of a customary marriage and they are – relationship (consanguinity and affinity); age, payment of dowry; capacity; and consent. We note that he does not include the formal giving away of the bride. In any event, we find that these requirements were taken into account by the judge who noted that the marriage certificate did not say anything about whether or not a dowry was paid. In the circumstances we find that the judge’s conclusion at paragraph 35 was not flawed.
13. Counsel then argued that the judge’s credibility findings on the durability of the marriage were flawed. This was because the judge failed to give adequate reasons for rejecting the evidence of the appellant’s daughter who had said that she was in a similar situation to her mother when she herself had a relationship with a Nigerian man with whom she has two children. Her evidence was that the language was not an essential element by which to gauge the genuineness or durability of the relationship.
14. We note that at paragraph 36 the judge said that he did not find the evidence of the appellant and his partner in relation to their marriage and relationship to be credible. He considered it necessary for the parties wishing to show that they are in a durable relationship to be able to demonstrate a relationship of mutual affection and support in one way or another. He said there was simply no attempt to set out any aspect of the lives this alleged couple lived together in their witness statement or in examination-in-chief. In cross-examination, their evidence in this regard was very limited. The only information he was able to glean from either was that they sometimes go to parties at the week-end and attend church. Otherwise they remained at home. He found it very strange indeed that neither the appellant nor the sponsor was able to describe any other aspect of their mutual lives together.
15. In his view the most significant aspect which undermined the credibility of both the appellant and the sponsor was the fact that neither the appellant nor the sponsor are able to speak to each other in a common language. The appellant confirmed he does not speak the Hungarian language and the sponsor speaks only extremely limited English and does not speak any language spoken in Nigeria. Despite claiming to have been with the sponsor in a loving and mutually dependent relationship since 2010, he has not been able to speak directly to her since her English is too poor. The judge found it impossible to accept that a genuine relationship could be carried on over three years by reference only to Google translates, a dictionary and

interpretation by the daughter. He found that this fact fatally undermined the credibility of the appellant, the sponsor and her daughter.

16. Counsel submitted that there was other evidence of durability in the form of the sponsor's payslips, bank statements and utility bills which all go to the same address but this evidence was not considered by the judge. She also said that there were letters of support from witnesses, none of whom attended the hearing to support the appellant's appeal.
17. We agree with Mr Bramble's submission that the judge did not unnecessarily focus on the language difficulty. At paragraph 37 he considered the day to day relationship of the couple, their language and at paragraph 45 noted that there were a number of supporting letters in the bundle attesting to the genuine nature of the relationship. However none of the persons preparing those letters attended to give evidence so that the evidence could be tested. Furthermore, the documentation, such as the tenancy agreement, did not of itself show a genuine relationship and did not lead him to alter his conclusion.
18. We find that the judge considered all the evidence in the round and his conclusion that the appellant and the sponsor are not in a durable or genuine relationship was one that was open to him on the evidence.
19. Finally we note what the Upper Tribunal said in paragraph 17 of **Kareem**. It said:

*"Spouses; rights of free movement and residence are derived from a marriage having been contracted and depend on it. In light of the connection between the rights of free movement and residence and the nationality laws of the Member States, we conclude that, in a situation where the marital relationship is disputed, the question of whether there is a marital relationship is to be examined in accordance with the laws of the Member State from which the Union citizen obtains nationality and from which therefore that citizen derives free movement rights."*

20. At paragraph 18 the panel goes on to find that "given the intrinsic link between nationality of a Member State and free movement rights, we conclude that the legal system of the nationality of the Union citizen must itself govern whether a marriage has been contracted".
21. In this case we have no evidence from Hungry to determine whether the customary marriage between the appellant and his Hungarian wife is valid in accordance with Hungarian law. In the absence of such evidence, we do not find that the judge erred in law.
22. The appellant's appeal is accordingly dismissed.

Signed

Date

Upper Tribunal Judge Eshun