



**UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)
IA/42444/2013**

APPEAL NUMBER:

THE IMMIGRATION ACTS

Heard at: Field House

**Determination
Promulgated**

On: 6 May 2014 and 5 August 2014

On: 1 September 2014

Prepared: 28 August 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MRS MONICA EVELYN OFUKAMA

Respondent

Representation

For the Appellant: Mr P Deller, Senior Home Office Presenting Officer

For the Respondent: On 6th May 2014: Mr R O Ojukotola, SLA Solicitors

On the 5th August 2014: No appearance

DETERMINATION AND REASONS

1. For the sake of convenience I shall refer to the appellant as the "secretary of state" and to the respondent as "the claimant."
2. The claimant is a national of Nigeria, born on 6th June 1978. She appealed before the First-tier Tribunal against the decision of the secretary of state refusing her application made on 31st January 2013 for a residence card as a confirmation of her right to reside in the UK pursuant to the Immigration (EEA) Regulations 2006 ("the 2006 Regulations"). Her application was refused on the 1st October 2013.

3. She opted for a determination of her appeal before the First-tier Tribunal on the papers.
4. In a determination promulgated on 7th January 2014 the First-tier Tribunal Judge allowed the claimant's appeal under the "immigration rules." She found that the certificate produced indicated registration of a proxy marriage in Nigeria "which is, then, recognised as valid under the Immigration Rules." Accordingly she found that the marriage was valid.
5. On 4th April 2014, First-tier Tribunal Judge Davidge granted the secretary of state's application to appeal. She stated that in the light of remarks made by the Judge concerning the absence of documentation to establish the validity of the marriage, the grounds revealed an arguable material error of law. Further, the Judge had fallen into error for failing to take the approach set out in the case of **Kareem (Proxy Marriages - EU Law) [2014] UKUT 24**.
6. At the hearing before the Upper Tribunal on 6th May 2014, I found that the decision of the First-tier Tribunal Judge involved the making of a material error on a point of law as no evidence had been produced as to whether the marriage was contracted between the claimant and the qualified person according to the national law of the EEA country of the qualified person's nationality, in this case France.
7. At the same time I gave directions to the parties. The claimant was represented on that occasion by Mr R O Ojukotola, SLA Solicitors. Permission was granted to the claimant to file and serve further evidence, including expert evidence regarding the validity of her marriage according to French law, such evidence to be filed on or before 30th June 2014. The secretary of state was given permission to respond to such evidence by 22nd July 2014.
8. No evidence has been produced or filed pursuant to those directions.
9. On 4th August 2014 the claimant's solicitors, SLA Solicitors, wrote to the Tribunal seeking an adjournment on the basis that Mrs Ofukama was currently in admission at a hospital following the premature birth of her child. They were in the process of obtaining medical evidence to be adduced to the court as a matter of urgency. It was contended that she had serious medical complications and was in intensive care. No such evidence was produced, however.
10. On 4th August 2014, a Judge of the Upper Tribunal refused the adjournment on the basis that the case had been considered on the papers before the First-tier Tribunal. Having regard to the issue that is to be determined in the Upper Tribunal, there was no reason why the

hearing could not proceed without the claimant being present, particularly as she has representation.

11. On 5th August 2014, I stood the appeal down until after midday in order to ascertain whether the solicitors would be attending. I also ascertained that no further faxes, letters or telephone calls had been sent or made by the representatives.
12. I am satisfied that notice of the hearing including the date, time and place was sent not only to the claimant but the solicitors as well.
13. In the absence of any explanation as to why the solicitors did not attend the hearing, I proceeded to determine the appeal in the absence of the claimant. Mr Deller on behalf of the secretary of state opposed any further adjournment in this case. He noted that there had been a failure to comply with the directions.
14. At the hearing, Mr Deller submitted that the decision in **Kareem**, supra, had recently been considered by the Upper Tribunal in the case of **TA and Others (Kareem explained) Ghana [2014] UKUT 00316 (IAC)**. There it was held that following **Kareem**, the determination of whether there is a marital relationship for the purposes of the 2006 Regulations should always be examined in accordance with the laws of the member state from which the union citizen obtains nationality.
15. There has been no attempt to comply with the directions which gave the claimant the opportunity of adducing relevant evidence, including expert evidence regarding the validity of her marriage according to French law.
16. Accordingly, Mr Deller submitted that the claimant's appeal should be dismissed.

Decision

17. Following the decision in **Kareem**, as referred to in my earlier decision on the error of law, the claimant has not provided any evidence from France as to whether there is a marital relationship for the purposes of the 2006 Regulations.
18. I accordingly find that the claimant and her sponsor are not to be treated as being married for the purposes of the 2006 Regulations and that the claimant cannot therefore establish that she is a family member for the purpose of Regulation 7 of those regulations.
19. From the refusal decision it is evident that the secretary of state had also considered and refused the application pursuant to Regulation 8 of the 2006 Regulations. She was not satisfied that there was sufficient

evidence that the claimant was in a durable relationship with an EEA National.

20. The grounds of appeal before the First-tier Tribunal were directed to the validity of the proxy marriage. There was no ground raised relating to the secretary of state's assertion regarding the durable relationship. The grounds contended that the secretary of state had erred by not recognising or taking into consideration the provisions of 'Article 8 of the Human Rights Act 1998'.
21. In paragraph 7 the grounds it was also asserted with regard to the European Convention "the Convention recognises the fact that person's EEA Member State can exercise a Treaty right in the UK and so doing all rights enjoyed by them should be extended to their family members".
22. It is further averred that the secretary of state exhibited bad faith and that the decision is unreasonable, illegal and perverse. It is also contrary to the UK's obligations under the Geneva Convention, 1951.
23. The First-tier Tribunal Judge did not make any findings with regard to Regulation 8(5) of the 2006 Regulations. The secretary of state had contended that there was insufficient evidence to demonstrate that they had lived together before the date of the customary marriage and that there was no evidence that they knew each other or had met before the date of that marriage. Accordingly, it had not been demonstrated that the claimant was in a durable relationship for the purposes of the 2006 Regulations [6].
24. There was no counter appeal by or on behalf of the claimant as to the issue of durable relationship.

Decisions

25. The First-tier Tribunal's determination contains an error on a point of law and is set aside.
26. The decision I substitute is to dismiss the claimant's appeal.

Signed
2014

Date 28 August

C R Mailer
Deputy Upper Tribunal Judge

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