



IAC-FH-AR-V1

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

Appeal Number: IA/39869/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 28 July 2015**

**Decision & Reasons Promulgated
On 5 August 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**OLASOJI OLAJIDE ATOLAGBE
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr L Tarlow, Home Office Presenting Officer

For the Respondent: Miss E Ikiriko, Solicitor, Melrose Solicitors

DECISION AND REASONS

1. This is an error of law hearing. The claimant is a citizen of Nigeria and his date of birth is 22 October 1975. He applied for a residence card as the spouse of an EEA national exercising Treaty rights in the UK, under Regulation 7 of the Immigration (European Economic Area) Regulations 2006. In a determination on the papers the First-tier Tribunal (Judge Grant-Hutchinson) allowed the appeal in a decision promulgated on 22 January 2015. The Secretary of State has appealed the decision.

First-tier determination

2. The Tribunal considered the reasons for refusal that the Claimant had not provided evidence to demonstrate that he registered his customary marriage within 60 days stipulated by the laws of the Federation of Nigeria and that it was not therefore recognised as a valid marriage in Nigeria. [7]
4. At [8] the Tribunal relied on written submissions on behalf of the Claimant that the “form CM1” was completed as part of the registration process and that the marriage certificate was the final proof of registration itself. It was alternatively submitted that the Claimant had provided documentary evidence to show that he was in a durable relationship with his EEA partner.
5. The Tribunal at [11] referred to a document identified by a yellow sticker as a form CM1 which it found showed that the marriage was registered on 21 June 2012, thus within the required 60 days. At [12] the Tribunal found that there was a valid and legally registered proxy marriage. The Tribunal did not go on to consider whether the Claimant was in a durable relationship.

Grounds of Application

6. The Secretary of State contends that the Tribunal made a material misdirection in law by failing to have regard to the decision of the Upper Tribunal in **Kareem (Proxy marriages - EU law) Nigeria [2014] UKUT 24** in particular with reference to paragraphs 14 and 16. The Tribunal ought to have considered firstly, whether a proxy marriage in Nigeria was recognised as valid in France, the relevant EEA country.
7. Further, the Secretary of State contends that with reference to the French civil code proxy marriages are incompatible with Article 146-1.

Permission to Appeal

8. Permission was granted by First-tier Tribunal Judge Brunnen on 4 March 2015 who found that it was arguable that the First-tier Tribunal failed to have regard to **Kareem** and **TA [2014] UKUT 316 (IAC)**. The Tribunal failed to consider if the proxy marriage was recognised under the law of France.

Error of law hearing

Submissions

9. Mr Tarlow relied on the grounds and produced **Kareem**. Miss Ikiriko produced a skeleton argument and expanded on the same in her submissions. In short, she submitted that the guidance in **Kareem** was not intended to have a blanket application to all proxy marriage applications and only in cases where there were concerns that the marriage had not been properly conducted and/or registered.

Discussion and Decision

10. I find there was a material error of law in the First-tier Tribunal decision by a misdirection in law in failing apply Kareem and **TA**. I do not accept the submissions made on behalf of the Claimant as set out in the skeleton argument and as pursued at the hearing before me. The scope and ambit of **Kareem** is clearly explained in the further decision of **TA** where the Upper Tribunal confirmed that the determination of whether there is a marital relationship for the purposes of the Immigration Regulations must always be examined in accordance with the laws of the member State from which the Union citizen obtains nationality. I am satisfied that the Tribunal erred in its approach having regard to the doubts expressed by the Secretary of State in the refusal letter as to the validity of the marriage. The starting point for the Tribunal should have been whether or not the marriage contracted between the claimant and the qualified person was in accordance with the national law of the EEA country of the qualified person's nationality, in this instance France.

Decision

11. There is a material error of law in the First-tier Tribunal decision which shall be set aside.

Remaking decision

12. I remake that decision with reference to the evidence that was before the First-tier Tribunal. The Secretary of State clearly raised issues concerning the validity of the marriage, in particular whether or not the marriage had been registered within the required period of 60 days. I find no evidence to establish that the relevant EEA country, namely France, legally recognises a proxy marriage in Nigeria.

13. The First-tier Tribunal did not go on to consider the issue of whether or not the parties are in a durable relationship under Regulation 8(5) of the Regulations. I have considered the evidence provided with the application and I find that whilst some bank statements and utility bills bear the same address, there is no documentary evidence to show the joint names and the same address together. There is no evidence to show that the parties have cohabited at the same address and in a subsisting relationship for over two years. I conclude that the claimant has failed to discharge the burden of proof on him to establish sufficient evidence to show that the parties are in a durable and subsisting relationship. No issue was raised as regards Article 8 ECHR.

Decision

14. I dismiss the appeal on immigration grounds.

Notice of Decision

15. The Secretary of State's appeal is allowed.

There are material errors of law. The decision is set aside.

I substitute a decision that the appeal is dismissed on immigration grounds under Regulations 7 and 8 EEA Regulations.

No anonymity direction is made.

Signed

Date 30.7.2015

Deputy Upper Tribunal Judge G A Black