



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

Appeal Number: IA/14885/2012

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 8 January 2014  
Prepared 8 January 2014**

**Determination  
Promulgated  
On 16 January 2014**

**Before**

**UPPER TRIBUNAL JUDGE MCGEACHY**

**Between**

**MS NGOZI BLESSING UDEMBA**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Ronald Layne, of Counsel, instructed by Messrs  
Harrison Morgan Solicitors

For the Respondent: Mr G Saunders, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant made an application for a residence card under the Immigration (European Economic Area) Regulations 2006 on 24 December 2011 on the basis that she had married an EEA national, Mr Linhart, who

was exercising Treaty rights in Britain. The marriage was a proxy marriage which had been conducted in Nigeria.

2. The application was refused by the Secretary of State on the basis that the marriage was not valid as it had been carried out by proxy and the marriage certificate produced by the appellant was therefore not considered to be evidence that the appellant and Mr Linhart were related as claimed. The application was therefore refused under Regulation 7 of the Immigration (European Economic Area) Regulations 2006.
3. The appellant appealed and her appeal was heard by Judge of the First-tier Tribunal Murray and allowed in a determination promulgated on 23 October 2012.
4. The Secretary of State was granted permission to appeal and the matter then came before me on 8 October 2013. Having heard submissions from both parties, I decided that there were material errors of law in the decision of Judge Murray and gave my reasons in a decision dated 21 October 2013, at the end of which I set out directions for the further conduct of the appeal.
5. I wrote as follows:-

- "1. The Secretary of State, with permission, appeals, against a decision of Judge of the First-tier Tribunal Murray who in a determination promulgated on 23 October 2012 allowed the appeal of Ms Ngozi Blessing Udemba against a decision of the Secretary of State to refuse to issue a residence card as confirmation of her right to remain in Britain as the spouse of an EEA national.
2. Although the Secretary of State is the appellant before me I will for ease of reference refer to her as the respondent as she was the respondent in the First-tier Tribunal. Similarly although Ms Ngozi Blessing Udemba is the respondent before me I will again for ease of reference refer to her as the appellant as she was the appellant before the First-tier Tribunal.
3. The appellant entered Britain in September 2009 with leave to remain as a student until January 2012. Her application for the residence card was made on 24 December 2011. In support of her application she provided the Czech passport of Jaroslav Linhart, a Czech national, a document relating to her own divorce in Nigeria, wage slips of Mr Linhart, a bank statement and photographs as well as a Nigerian marriage certificate which indicated that she and Mr Linhart had been married, by proxy, in Nigeria.
4. The application was refused, the writer of the letter of refusal stating that:-

‘UKBA is aware that paragraph 24.23 of the COIS Report Nigeria states that:

“The United States State Department Reciprocity Schedule, in an undated section on marriage certificates in the country accessed on 17 October 2011, 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’.

You have submitted a marriage certificate which states that you were married to your EEA national sponsor in Nigeria on 15 November 2011. Whilst it is noted that this is a customary marriage certificate it is also noted that this has been carried out by proxy. For this reason UKBA cannot accept the marriage certificate as evidence of your relationship. On that basis your application has been refused under Regulation 7 of the Immigration (EEA) Regulations 2006.”

The notice of immigration decision stated that:-

‘You have applied for a residence card as confirmation of a right of residence as the family member of an EEA national who is a qualified person, but you have failed to produce satisfactory evidence that you are related as claimed to an EEA national. Your application has also been considered under Article 8 of the Human Rights Act. After careful consideration of your case we are satisfied that this decision does not represent a breach of Article 8 of your human rights.

You do not have a basis of stay in the United Kingdom under the Immigration (European Economic Area) Regulations 2006.’

5. It is of note that the Reasons for Refusal Letter relies on only one issue: that is that the marriage could not be valid as it was a proxy marriage.
6. I would comment that there does not appear to be any evidence from Mr Linhart although, of course, wage slips were produced and he may have signed the declaration at the end of the application.
7. There is an ‘affidavit of confirmation of marriage between Jaroslav Linhart and Ngozi Blessing Udemba’ which claims to be made by Mrs Linhortova and Mrs Etoniru in Enugu Central Government area of Enugu State in Nigeria and states that ‘we are legitimate parent of Jaroslav Linhart and Ngozi Blessing Udemba’. The affidavit goes on to say that ‘their marriage was celebrated in our presence and that of concerned members from the families of both spouses who witnessed the payment of full dowry’. There is no evidence that that assertion is correct – there is nothing to indicate that Mrs Linhortova was present in Nigeria let alone that the ‘families of both spouses had witnessed the payment of the full dowry there’.
8. The appeal came before Judge of the First-tier Tribunal Murray at Newport in October 2012. It appears to have been dealt with on the

papers by Judge Murray and therefore there was no evidence from either Mr Linhart or the appellant and the appellant was not subjected to cross-examination. The reality is that there has never been any appearance by Mr Linhart.

9. The judge had to deal with the issues before her taking into account the reasons given by the respondent for refusing the application as well as the grounds of appeal submitted on behalf of the appellant. The grounds of appeal before her stated that human rights and the Immigration (EEA) Regulations 2006 had not been properly considered, pointing out that the Secretary of State had based the reasons for refusal on paragraph 24.23 of the COIS Report in Nigeria which was in relation to the Nigerian Civil Marriage Act and not the Customary Marriage Act and that the appellant had conducted a customary rather than a registry marriage with her husband and had produced a customary marriage certificate under the Nigerian Marriage Act 1990. They asserted that the Nigerian COI Report indicated that a marriage was valid where two parties had agreed to enter into the union and that could be done through either civil customary court or a licensed place of worship. The grounds refer to the Nigerian COI Report of 6 April 2011 which stated at paragraph 24.19 that:

‘In an e-mail from the British High Commission in Abuja to the UKBA of December 2008 states “although proxy marriages are not recognised under Nigerian civil law they are allowed under customary law”.’

The grounds went on to state:-

- ‘8. It is submitted that appellant’s Customary Marriage to his wife is derived from paragraph 35 of the Marriage Act of Nigerian Native Law and Custom.
9. The appellant confirms that both her and her husband were not physically present at their wedding however they were both represented by their close family relatives in accordance with the Customary Marriage Act ‘proxy’. The Customary Marriage Certificate submitted is valid.
10. It is submitted that under the Marriage Act of Nigerian Native Law and Custom, the parties to the marriage need not be present at the ceremony and can be represented by their family members. See attached Customary Marriage Certificate and Affidavit.’

The grounds then dealt with the issue of the rights of the appellant and her husband under Article 8 of the ECHR.

10. The judge considered the evidence before her before stating in paragraphs 12 onwards:-
  - ‘12. According to Regulation 7 of the EEA Regulations a spouse is a family member for the purposes of the Regulations. The only further definition of spouse in the EEA Regulations is

that the word does not include a party to a marriage of convenience (Regulation 2).

13. A marriage is formally valid when it is celebrated in accordance with the form required or recognised as sufficient by the law of the country in which the marriage is celebrated (see Dicey & Morris on The Conflict of Laws, Sweet and Maxwell 2006). The Respondent's IDIs state at Chapter 8, section 1 paragraph 3.1 that where the law of the country requires a ceremony, and a ceremony takes place with the participation of a proxy in that country, then the country where the marriage is celebrated is the country in which the marriage occurred, not the country from which the proxy was appointed by the sponsor. In the case of **CB (Validity of marriage: proxy marriage) Brazil [2008] UKIAT 00080** the Tribunal held that there was no exception in immigration cases to the rule of private international law that the validity of a marriage is governed by the lex loci celebrations and on the authority of **Apt v Apt [1948] P 83** there is no reason in public policy to deny recognition to a proxy marriage.
14. According to the Respondent's SET 3.18 which also deals with marriages by proxy, marriage by proxy should be considered as having been celebrated in the country in which the ceremony took place. If the first two questions in SET 3.4 are answered in the affirmative and the last in the negative then the marriage will be valid. Those three questions are: is the marriage one recognised in the country in which it took place; was the actual marriage properly executed so as to satisfy the requirements of the law of the country in which it took place and was there anything in the law of either party's country of domicile which restricted his or her freedom to marry?
15. The Appellant has provided evidence in relation to the validity of proxy marriages in Nigeria. The Appellant's submissions at page 4 of the Appellant's bundle state that the Nigerian Marriage Act chapter 218 (submitted) and the Nigerian COI Service Report indicate that a marriage is valid when two parties have agreed to enter into the Union and this can be done through either a Civil, Customary Court or a licensed place of worship.
16. The Appellant has produced a section from the Nigerian Marriage Act at page 17 of her appeal bundle. There is no prohibition under that Act on customary marriages. According to the Respondent's COIR paragraph 24.19 produced at the end of the Appellant's bundle, in an email from the British High Commission in Abuda to the 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". I am satisfied on this evidence that a proxy marriage is valid for the purposes of

Nigerian customary law. The first of the three questions in the IDIs is therefore to be answered in the affirmative as the marriage is recognised in the country in which it took place.

17. The Appellant has produced a certificate of customary marriage at page 14 of the Appellant's bundle. It is issued by the Federal Republic of Nigeria and stamped by a district registry. I am satisfied that it is properly executed so to satisfy the laws of the country in which it took place. There is nothing before me to suggest that there is anything in the law of either party's country of domicile to restrict them from marrying. I therefore conclude that the Appellant has entered into a valid marriage and is therefore a family member for the purposes of the EEA Regulations. There are no other issues to be determined in this appeal.'

11. The judge therefore allowed the appeal.
12. The grounds of appeal claimed that the judge's findings were irrational because she had relied on paragraph 24.19 of the respondent's Country of Origin Report but it was not clear what year the report was from. The grounds referred to the terms of that paragraph in the January 2012 report which was completely different and therefore stated that the judge had erred in not relying on the current version of the COIR. The grounds then went on to refer to the United States Department Reciprocity Schedule referred to in the refusal letter and alleged that the judge had relied on out of date evidence to find that proxy marriages are valid in Nigeria as "seemingly the only evidence relied on is that from an out of date COIR". The final ground of appeal was that:

'(3) The FTTJ has therefore erred on two counts:

"(a) he failed to reconcile the difference between 24.23 quoted in the refusal letter and the 'old' 24.19 submitted by the appellant; and

(b) he erred in finding that proxy marriages are valid in Nigeria by relying on an out of date COIR; the current one makes no mention of proxy marriages being valid under Nigerian customary law.

(4) As such the appellant failed to demonstrate that proxy marriages are valid in Nigeria.'

13. On that basis permission was granted.
14. At the hearing of the appeal before me Mr Nath first asked for an adjournment on the basis that a Vice Presidential panel was shortly to determine the issue of Nigerian proxy marriages before he submitted a number of documents from the Foreign Commonwealth Office. The first dated 4 February 2013 states that 'proxy marriages' were a fairly common practice amongst communities in Nigeria and is recognised

under Nigerian customary law as a form of customary law marriage. The letter went on to say:-

‘A marriage is by proxy where the presence of the bride and groom is not required for the ceremony. In most cases, it is celebrated by the immediate and extended family of the bride and groom.

‘Proxy marriages’ find their origin in the fact that under customary law, marriage creates a relationship not only between the parties to the marriage but also between their families. Because customary law marriages are legally binding and recognised as one of the types of marriages in Nigeria, ‘proxy marriages’ which form part of customary law marriages are also legally binding where celebrated in accordance with the native law and custom of the particular community.’

Having referred to the requirements for registering marriages it is stated that every customary marriage is to be registered within 60 days in the area court or customary court where the marriage was contracted.

15. It was stated that:

‘The Honorary Legal Adviser is therefore of the opinion that so-called ‘proxy marriages’, as an aspect of customary law marriage, are legal; and legal recognition is conferred by registration in an area or customary court.’

16. The second letter which is dated 22 May stated:-

‘The British High Commission consulted several local lawyers, including its honorary legal adviser, in collating this response.

It was emphasised that the words ‘proxy’ and ‘customary’ ought not to be used interchangeably, and a proper distinction observed. Proxy marriage is a marriage purported to be carried out in a ceremony where one or both (double proxy) of the parties is/are absent. Photographs of the party/parties absent may be used to represent him/her/them. More ‘sophisticated’ proxy marriages are celebrated via video conferencing. Customary marriage is a marriage ceremony conducted according to the historical norms, values and beliefs of one or both parties. This is in contrast to statutory marriage, under the Marriage Act, which is conducted by a registrar of marriages or conducted by clergy in a church licensed under law to conduct marriages....

Marriage by proxy has come to be accepted in Nigeria, but only as far as customary marriage is concerned. ...Lawyers emphasised that, under Nigerian law, customary (and Islamic) marriages are valid and acceptable.’

With regard to the issue of whether or not a Nigerian proxy marriage is valid if it involved a foreign citizen it was stated that:

‘A Nigerian could marry a foreigner by proxy under customary law in a ceremony held in Nigeria.’

17. Mr Nath also referred to the section of the COIS 2013 Report which at paragraph 23.26 referred to the US State Department Reciprocity Schedule, which stated that both parties to the marriage should technically be physically present at the same location with the witnesses to sign certain marriage documents and that proxy marriages had ceased to be valid but then went on to refer to the correspondence from the Foreign and Commonwealth Office to which I have referred above.
18. In his submissions Mr Nath referred to the grounds of appeal on which he relied and the terms of the COIS Report. He argued that the judge had erred in law in that there was no evidence that customary procedures had been followed.
19. In reply Mr Layne stated that the judge had made findings on the basis of the evidence before her which included the 2011 COIS Report. He pointed out that the respondent had appeared to rely on a USA State Department document which was undated and referred to the contradictory information in the various reports. In any event he argued that the affidavit showed that the customary provisions had been met – the families had been present and moreover the marriage certificate being registered within the relevant timescale. He emphasised that the most recent COIS Report indicated that proxy marriages were valid.
20. In reply Mr Nath stated that the burden lay on the appellant to prove her case and to show that the requirements of the Nigerian Customary Law were met.

### **Decision**

21. The refusal in this case is on the sole basis that proxy marriages in Nigeria are not valid. However, for a marriage to be valid it is clear that certain requirements must be met such as the presence of both families at the ceremony. Although the affidavit claims that Mr Linhart’s mother was at the ceremony there was nothing to show that that was the case and I conclude that the judge erred in law in not further enquiring whether those requirements were met. There was before her nothing to show that all the requirements of the relevant Nigerian law were met. Moreover, despite noting the terms of the IDIs which pointed out that the marriage needed to be accepted as valid in the country of both parties to the marriage the judge made no enquiry as to the whether or not a proxy marriage was valid in the country of Mr Linhart’s domicile. Moreover, before allowing the appeal outright I consider that she should have considered whether or not the marriage was not a marriage of convenience. I find that these were material errors of law and I therefore set aside the determination of the Judge of the First-tier.

### **Directions**



1. The determination of the first-tier Judge having been set aside I direct that the appeal proceed to a hearing afresh in the Upper Tribunal.
  2. At the hearing evidence will be led and submissions made on whether or not the requirements of Nigerian law were met and whether or not the marriage is valid in the Czech Republic – the country of Mr Linhart’s domicile. Both the appellant and Mr Linhart must attend the hearing and evidence to show that Mrs Linhortova was present in Nigeria and swore the affidavit must be produced: her passport or a copy thereof must be produced. Furthermore evidence must be produced to show that this was not a marriage of convenience.
  3. Full statements and all documentary evidence as well as a detailed skeleton argument from the appellant’s representatives must be served 14 days before the hearing.”
6. At the substantive hearing before me on 8<sup>th</sup> January 2014 , Mr Layne was instructed on behalf of the appellant. Despite the clear direction which I had made in paragraph 2 of my directions, neither the appellant nor Mr Linhart attended, nor was there any evidence to show that Mrs Linhortova had been present in Nigeria and sworn the affidavit on which the appellant relied.
  7. Mr Layne contacted the appellant’s solicitors and was told that neither the appellant nor Mr Linhart would attend the hearing.
  8. In these circumstances, I heard submissions from both representatives. Mr Saunders relied on the notice of refusal and the US State Department Report to which reference was made therein. He also relied on what I had written in paragraph 21 of my decision.
  9. In reply, Mr Layne argued that the refusal notice only raised one issue which was whether or not proxy marriage in Nigeria was valid. He emphasised that the respondent had not questioned the genuineness of the relationship. He referred to the COIS Report of 14 June 2013 which at paragraph 23.27 referred to a letter from the Foreign and Commonwealth Office to UKBA dated 1 February 2013 which stated that proxy marriages were a fairly common practice amongst communities in Nigeria and that:-

“It is recognised under Nigerian customary laws as a form a customary law marriage. A marriage is by proxy where the presence of the bride and groom is not required at the ceremony. In most cases, it is celebrated by the immediate and extended family of the bride and groom... ‘Proxy marriages’ find their origin in the fact that under customary law, marriage creates a relationship not only between the parties to the marriage but also between their families.”
  10. He pointed out that there was a requirement that the customary marriage be registered within 60 days and stated that had happened in this case – the appellant’s marriage therefore complied, he claimed, with local

requirements. He referred to the affidavit produced which indicated that the appellant's parents and her husband's mother had been present – the affidavit had been signed by both proxies.

11. He therefore asked me to find that, notwithstanding there was no evidence that the sponsor's mother had travelled to Nigeria, the documentary evidence produced showed that the formalities for a proxy marriage had been completed and should the respondent have not considered that the relevant requirements of the law had been met it was for the respondent to make appropriate enquiries.
12. He stated that he noted that I had indicated that it was relevant to ascertain whether or not a proxy marriage would be valid in the Czech Republic. He referred me to a document which he had printed from the internet giving relevant information about procedures relating to marriage in the Czech Republic entitled "What to do if you wish to marry a foreigner in the Czech Republic". Paragraph 18 of that document reads as follows:-

"18. Marriage by proxy – exceptional circumstances

- If one of the engaged couple is unable to attend the ceremony in person due to extenuating and serious circumstances, you can apply for permission to conduct the marriage by proxy.
- First you need to obtain a confirmation that your country of origin will recognise that marriage.
- The authority competent to give permission to marriage by proxy is the regional council (Krajasky Ulad), some municipal councils and the city councils in Prague, Brno, Ostreva, and Pizen."

13. He stated that there was therefore evidence that the proxy marriage would be valid in the Czech Republic.
14. He referred to the Immigration Directorate Instructions which set out the requirements which had to be met. The first was whether or not a proxy marriage was valid in Nigeria – he referred to the Nigerian Marriage Act of 1994. Secondly, the marriage had to be properly executed. For this he referred to the certificate of customary marriage. Thirdly the requirements relating to domicile, he argued were met by the fact that Nigeria was the domicile of the appellant. He therefore asked me to find that the marriage was valid and that the appeal should be allowed.

## **Discussion**

15. In my decision that there were material errors of law in the determination I emphasised my concerns regarding the validity of the marriage. In my directions I made it clear that I required evidence that the appellant's husband's mother had, as claimed, travelled to Nigeria. No such evidence

has been forthcoming. This is not a case, such as an asylum claim, where it would have been difficult to obtain supporting evidence and I am entitled to place weight on the fact that there is no evidence of the travel of Mr Linhart's mother to Nigeria. Moreover, it is clear that the issue of whether or not proxy marriages are valid in Nigeria is a complicated one and various requirements have to be met. In considering whether those requirements have been met, I have to look at the documents which have been produced. I consider these within the context of this appeal where this appellant and her claimed husband have never appeared before a court or at the Home Office and, despite being directed by me to appear at the substantive hearing, did not do so. The appellant has put in an affidavit stating that she and her husband did not wish to incur the costs of a marriage because they both came from cultures where elaborate marriage celebrations were expected. However, the appellant claims that rather than have a Registry Office wedding here, she and Mr Linhart were prepared to make arrangements for Mr Linhart's mother to travel to Nigeria. I simply do not believe that that would have happened and I therefore do not find, on the balance of probabilities, that the documentary evidence from Nigeria is genuine.

16. Moreover, I do not consider that, while it may well be the case that proxy marriages which, of themselves are not valid in Nigeria, might take place in certain circumstances, they could be considered as valid under customary law and that that was the case here. I note the terms of the letter of 4 February 2013, to which I referred in paragraph 14 of my decision. That stated that customary law marriage could be legally binding when celebrated according to the native law and customs of the community. There is simply no evidence that the appellant herself was a member of a particular community which would accept that proxy marriages which could be valid under customary law. I therefore do not accept the form of register of the customary marriage which has been produced, nor indeed the affidavit even though that asserts that the marriage was in accordance with Igbo law and custom. There is nothing to back up that assertion.
17. I have considered the documents relating to the acceptance of proxy marriages in the Czech Republic on which Mr Layne relied. That paragraph refers to exceptional circumstances where one of the engaged couple is unable to attend the ceremony in person "due to extenuating and serious circumstances" and permission would be required to conduct the marriage by proxy. There are simply no "extenuating and serious circumstances" put forward which would indicate that, had the appellant and her husband married by proxy in the Czech Republic that marriage would have been valid. In any event that document does not indicate that proxy marriage between a Czech citizen and the foreigner in the foreigner's country would be considered to be valid.
18. For these circumstances, I find that the appellant has not discharged the burden of proof upon her and I dismiss this appeal.

19. I would add that after the error of law hearing I received a letter from the appellant's solicitors dated 31 October which appeared to argue that I should not have raised the question of whether or not the marriage was genuine. I consider that it was appropriate for me to have done so given the extraordinary circumstances where two people, resident in Britain, would decide that they wished to marry "by proxy" in Africa rather than marry here and would then decide that they would not attend the hearing or indeed provide any persuasive evidence of cohabitation.
20. For the above reasons, having set aside the determination of the First-tier Tribunal, I remake the decision and dismiss this appeal on immigration grounds. I would add that, although it was not argued before me that the appellant's rights under Article 8 of the ECHR are infringed by the decision, there is simply nothing before me to indicate that the removal of this appellant would be in any way disproportionate.

Signed  
Upper Tribunal Judge McGeachy

Date