



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/41310/2013**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 3rd November 2014**

**Decision and Reasons
Promulgated On 9th
December 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

**Mrs Alice Adunola Arogundade
(Anonymity Direction Not Made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Okunu, instructed by Samuel Louis Solicitors
For the Respondent: Mr S Kandola Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Nigeria born on 7th July 1973 and she applied for a residence card as confirmation of a right to reside in the UK on the basis of her marriage or durable relationship with an EEA national.
2. The respondent refused the appellant's application on 23rd September 2013 with reference to Regulation 7 of the

Immigration (European Economic Area) Regulations (EEA Regulations). The detailed refusal letter stated that the appellant had not provided evidence to demonstrate she had registered a customary marriage in accordance with Nigerian Law. Accordingly it was not legally recognised as valid in Nigeria and thus could not be accepted as valid in the UK.

3. The respondent noted that the appellant had also failed to provide satisfactory evidence that she was in a durable relationship with an EEA national in accordance with Regulation 8.
4. First-tier Tribunal Judge Cameron determined the matter on 22nd July 2014 and issued a determination on 5th August 2014 dismissing the appeal. He dismissed the appeal with reference to Regulation 7 and Regulation 8 of The Immigration (European Economic Area) Regulations 2006. He did not accept that the appellant had demonstrated that she was in a durable relationship because of the inconsistency in the answers given during cross examination between the appellant and her said partner. An application for permission to appeal by the respondent was granted by First Tier Tribunal Judge McDade on the basis that the judge misapplied the correct standard of proof. The matter came before me.
5. At the hearing however Mr Okunu recorded that he had requested the Record of Proceedings. He also at the hearing before me made an application to amend the grounds of appeal. He submitted that the judge had erred in the approach to Regulation 7 of the EEA Regulations and had misapplied **Kareem (Proxy marriages EU law) Nigeria [2014] UKUT 24** and thus the decision was flawed. A document issued by a competent authority had been issued.
6. However, **Kareem**, as confirmed in **TA and Others (Kareem explained) Ghana [2014] UKUT 00316 (IAC)** identifies that the issue of whether there is a marital relationship, for the purposes of the Immigration (EEA) Regulations 2006, must always be examined in accordance with the laws of the Member State from which the Union citizen obtains nationality. As the judge identified in paragraph 52 'the difficulty for the appellant is that the appellant has not provided any evidence that the marriage is valid in accordance with the law of the member stated of the union citizen'. The application by the appellant's representative was a substantial departure from the grounds and I note that the judge correctly directed himself. I found that there was no prospect of success in this application and refused Mr Okunu his application.
7. The appeal was therefore dismissed on the basis of the validity of the marriage and as Kareem confirms it is for the appellant to show the validity of the marriage. However, the

judge also turned his mind to the issue of the relationship and whether the appellant was in a durable relationship. The burden of proof is on the appellant to establish that the appellant is in a durable relationship. The grounds alleged that the judge was perverse and irrational in his approach because out of 140 questions the appellant and sponsor had only contradicted each other on 6. This is a high threshold to demonstrate and I have carefully assessed the record of proceedings.

8. The judge addressed this issue in paragraph 56 of the determination and I have considered the record of proceedings. The judge explained that 'it is relevant to take into account the *particular* questions which were answered inconsistently'. Thus the judge weighted the importance of the nature of the questions rather than the quantity. First at paragraph 57 the judge noted that the appellant could not spell her husband's name. The judge heard re-examination on and took into account the point that the appellant could not read English and was not educated and that the couple were learning the language together but found that as they had been married for over 5 years she should at least be able to spell his name. She could not.
9. The judge also noted the fact that the appellant stated she had lived in the current accommodation for 2 years whereas the husband stated it was two months which accorded with the tenancy agreement. The judge took into account that giving evidence in court could be difficult [60] but he did not accept that the appellant could be so wrong in her response as to where she lived. Both also gave an incorrect answer as to the rent. Clearly the judge found these to be fundamental questions and gave his reasoning and this does not disclose perversity.
10. The judge also made a finding that the appellant's father was dead whereas the husband stated that she was in contact with her father on a regular basis and he would occasionally speak to him when she was speaking to the father.
11. The judge highlighted serious departures from consistent evidence of a fundamental nature and I do not accept that the judge's reasoning in this matter was perverse or irrational. He gave adequate reasons for his findings.
12. I find that there is no error of law in the determination of the First Tier Tribunal judge for the reasons explained above and the determination shall stand.

Signed

Date 3rd November 2014

Deputy Upper Tribunal Judge Rimington