



IAC-FH-NL-V1

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

Appeal Number: IA/16436/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 7 October 2015**

**Decision & Reasons Promulgated
On 21 October 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR. MODOU LAMIN MBOOB
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr S Kandola, Home Office Presenting Officer
For the Respondent: Mr. Y. Darboe of Queen's Park Solicitors

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the decision of First-tier Tribunal Judge Cohen promulgated on 5 May 2015 in which he allowed Mr. Mboob's appeal against the Secretary of State's decision to refuse to issue him with a residence card as confirmation of his right to reside as the husband of an EEA national exercising Treaty rights under the Immigration (European Economic Area) Regulations 2006 (the "Regulations").

2. For the purposes of this decision I refer to the Secretary of State as the Respondent and to Mr. Mboob as the Appellant, reflecting their positions as they were before the First-tier Tribunal.
3. Permission to appeal was granted on the basis that it appeared from the bundle and from the note of the HOPO that the judge had placed reliance upon a document that had not been translated.

Submissions

4. Mr. Kandola relied on the grounds of appeal. It had been accepted that the Lithuanian document had not been translated. In relation to the Lithuanian legal advice, it was submitted that nowhere in the body of the report did the lawyer engage with the Lithuanian Civil Code (pages 11-12). The appeal had been allowed by virtue of a document which said that the marriage had been registered, which document was untranslated. It was submitted that the lawyer's opinion was a vague opinion which did not engage with the Civil Code and did not explain whether or not the marriage was registered.
5. I was referred to article 1.26 of the Lithuanian Civil Code (page 17). It was submitted that this did not address the issue of proxy marriages, and that the Civil Code did not assist regarding the recognition of proxy marriages.
6. Mr. Kandola accepted that there was no challenge to the finding that the Appellant and Sponsor were in a durable relationship [26]. He therefore submitted that if the appeal were to be allowed on the basis that the Appellant met the requirements regulation 8(5) rather than regulation 7, the appeal should be remitted to the Respondent in order that she could exercise her discretion under regulation 17(4).
7. Mr. Darboe submitted that there was no error of law but, even if there was, it was not material. I was referred to CB (Validity of marriage: proxy marriage) Brazil [2008] UKAIT 00080. It was submitted that the Lithuanian law treated marriages abroad in the same way as English law. It was submitted that the Lithuanian legal opinion stated on the second page that the Lithuanian lawyer had been authorised to register the marriage in Lithuania. He would not have been able to accept an instruction to register the marriage if it were not valid in Lithuanian law. The opinion stated that he had submitted the request to the Foreign Ministry.
8. The Appellant had provided a document from the Embassy of the Republic of the Gambia certifying that the Attestation Certificate issued in the Gambia indicating that the Appellant was duly married was authentic and genuine (page 28). It was submitted that the Lithuanian authorities had been to the same Embassy.
9. In relation to the Lithuanian registration certificate, this had been received by the Appellant on the same day as the hearing in the First-tier Tribunal, 15 April 2015. The judge had seen this certificate. It would not have been possible to register the marriage if the marriage had not been recognised in Lithuanian law. He submitted that the marriage was valid under Gambian law. The judge had confirmation before him that it was valid under Lithuanian law according to the Lithuanian Civil Code.

10. In relation to the legal opinion, I was referred to the case of Kareem (Proxy marriages - EU law) [2014] UKUT 00024 (IAC). It was submitted that the lawyer had explained how the law applied. He was aware of the Civil Code as illustrated by reference to it on the first page of the opinion.
11. It was submitted that the marriage was recognised in Lithuania and evidence had been provided to the judge to this effect. There was no suggestion that the Lithuanian lawyer was not legitimate and even in the absence of the translated version of the document, the judge had sufficient evidence before him to conclude that the marriage was recognised in Lithuania.
12. In relation to regulation 8(5), the judge had made a finding that the Appellant was in a durable relationship which had not been challenged. The findings of the judge ought to stand and there was no material error of law.

Error of law decision

13. In paragraph [14] of the decision the judge states:

“I have evidence from the Gambian Embassy in London that the marriage is considered to be effective. I additionally have evidence from a Latvian (sic) lawyer confirming that the marriage would be considered legal in that country.”

(It was not submitted that the use of the word Latvian was any more than an error and I find that the judge had before him evidence from a Lithuanian lawyer, and was well aware that the Sponsor was Lithuanian.)
14. In paragraph [15] the judge found that the Appellant and Sponsor satisfy the appropriate requirements in respect of proxy marriages in Gambia, and that the marriage is valid under Gambian law.
15. In paragraph [16] he states:

“The above finding is further supported by the fact that the Gambian Embassy in the UK has had sight of the marriage certificate and certification of the same and duly confirmed the validity of the marriage.”
16. Paragraph 17 states:

“In the light of the above factors and noting current Gambian law, I find that the parties have contracted a valid marriage and I am therefore satisfied that the appellant is a family member of the sponsor and therefore that she meets the appropriate requirements of the Regulations. I find that the appellant’s appeal under the Regulations is bound to succeed. I allow the appeal under the Regulations.”
17. I find that the judge has made no reference to any untranslated Lithuanian document, let alone place reliance on any such document. I find that he has relied on evidence of the validity of the marriage under Gambian law from the Gambian Embassy, and evidence from the Lithuanian lawyer. He has found that the Lithuanian lawyer’s report confirms that the marriage would be considered legal in Lithuania [14]. In paragraph [8] he refers to the Lithuanian legal report “confirming that the marriage would be considered legal in that country”. He also refers to the

letter from the Gambian Embassy in London which confirms that the marriage was “authentic and genuine” [8].

18. Following the case of Kareem, it was necessary for the judge to be satisfied that the marriage would be recognised as a valid marriage in Lithuania. Paragraph (g) of the headnote states:

“It should be assumed that, without independent and reliable evidence about the recognition of the marriage under the laws of the EEA country and/or the country where the marriage took place, the Tribunal is likely to be unable to find that sufficient evidence has been provided to discharge the burden of proof.”
19. I find that the judge had evidence before him which satisfied him that the marriage would be recognised in Lithuania in the form of a legal opinion from a Lithuanian lawyer. I find that there is no merit in the Respondent’s objections to this legal opinion. No objection was raised at the hearing in the First-tier Tribunal to this document. It is clear that the lawyer is aware of the Lithuanian Civil Code (page 11). I find the judge was entitled to place reliance on this as independent evidence of the recognition of the marriage under Lithuanian law.
20. On the second page of the opinion the lawyer states that he has been authorised by the Sponsor to register the marriage. The lawyer sets out what documents are necessary (page 11-12) and then sets out that these documents have been provided by the Sponsor (page 12). He has therefore submitted the request to register the marriage. I find that this is something that he would not be able to do were the marriage not validly recognised by the Lithuanian authorities.
21. The judge was satisfied that he had evidence that the marriage was recognised under Gambian law, [15]. He was satisfied that he had independent and reliable evidence that the marriage was recognised under Lithuanian law [14]. He did not rely on an untranslated document in order to make this finding.
22. I find that the judge was entitled to find that sufficient evidence had been provided by the Appellant to discharge the burden of proof that the marriage was recognised under the laws of both Gambia and Lithuania.
23. As accepted by Mr. Kandola, there was in any event no challenge to the finding in paragraph [26].

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law and I do not set aside the decision.

The decision of the First-tier Tribunal stands.

No anonymity direction is made.

Signed

Date 19 October 2015

Deputy Upper Tribunal Judge Chamberlain