



Upper Tier Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/19501/2014

**THE IMMIGRATION ACTS**

Heard at Field House  
On 17 April 2015

Decision and Reasons Promulgated  
On 20 April 2015

Before

Deputy Upper Tribunal Judge Pickup

Between

Bukola Rukayat Adeyemo  
[No anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

**Representation:**

For the appellant: Mr M Ume-E-Ezeoke, instructed by Nathan Aaron Solicitors  
For the respondent: Mr D Clarke, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant, Bukola Rukayat Adeyemo, date of birth 25.2.89, is a citizen of Nigeria.
2. This is his appeal against the determination of First-tier Tribunal Judge Russell promulgated 17.12.14, dismissing his appeal against the decisions of the Secretary of State to refuse his application for an EEA Residence Card as confirmation of a right

to reside in the UK, pursuant to the Immigration (EEA) Regulations 2006. The Judge heard the appeal on 17.12.14.

3. First-tier Tribunal Judge Davies granted permission to appeal on 20.2.15, noting that as the First-tier Tribunal Judge mistakenly referred to Ghana throughout the decision it was arguable that the judge had not applied his mind to the issues in the appeal.
4. Thus the matter came before me on 17.4.15 as an appeal in the Upper Tribunal.

### **Error of Law**

5. For the reasons set out below I find that there was no error of law in the making of the decision of the First-tier Tribunal such that the determination of Judge Russell should be set aside.
6. It is true that Judge Russell mistakenly referred to the appellant as being a citizen of Ghana, when she is Nigerian. However, I am satisfied that there is no error of substance in the decision of the First-tier Tribunal which would require it to be set aside and remade. The grounds make great play of the mistaken replacement of Nigeria with Ghana in the decision, but do not demonstrate that the decision was wrong in principle. The outcome of the appeal would be the same if Ghana were replaced by Nigeria.
7. The refusal decision explained why the customary marriage did not meet the requirements of Nigerian law. The grounds in this regard are merely a disagreement with that view, adopted and applied in the First-tier Tribunal decision.
8. Even if the marriage is valid in Nigeria, pursuant to Kareem (Proxy marriages - EU law) [2014] UKUT 00024 (IAC), the appellant has to demonstrate that such a marriage is valid by the law of Portugal, the country of the EEA sponsor's citizenship. No such evidence was produced. This issue is not addressed at all in the grounds of application for permission to appeal. In the circumstances, the application could not succeed under regulations 7 and 17, as the appellant failed to demonstrate that she is a family member of the sponsor, having failed to demonstrate that the marriage of 7.10.13 is valid. The appellant's representative accepted that the appellant could not meet the evidential requirement to prove the marriage is valid in Portugal.
9. The refusal decision and the First-tier Tribunal also considered the alternative qualification under regulation 8(5), on the basis of the appellant being the an extended family members as the unmarried partner of an EEA citizen exercising Treaty rights in the UK. This requires the appellant to demonstrate that she is in a durable relationship with the EEA national sponsor. As the refusal decision made clear, the Secretary of State would expect the appellant to demonstrate that they had been living together for at least two years. As Judge Russell noted at §9 of the decision of the First-tier Tribunal, there was remarkably little evidence that the appellant is in such a durable relationship. At §10 the judge noted that the witness statements say nothing of the substance or length of the relation. I accept that they both insist that they live together and that the marriage is subsisting but that self-

servicing evidence carries little probative weight in the absence of supporting evidence. At §11 the judge found no other evidence of a relationship, and at §12 found an absence of cogent evidence of cohabitation. I was referred to the Lloyds Bank statement, which does not show the appellant's name. Apparently the appellant sent into the Tribunal late a photocopy of a tenancy agreement showing both names at the address they claim to live at. This was not received until after the hearing at which the judge refused to admit any further evidence from either side. The tenancy agreement, even if accepted had to be considered in the round with the remarkable lack of supporting evidence. The appellant asked for the appeal to be decided on the papers and thus there was no oral evidence before the First-tier Tribunal on these issues. Frankly, the judge's assessment of the evidence of a durable relationship is unassailable and entirely justified by cogent reasons.

10. The judge did not address article 8, which was raised in the grounds of appeal to the First-tier Tribunal, but given the findings already made that the appellant had both failed to prove that she was validly married and that she was in a durable relationship with the EEA sponsor, it is inevitable that any article 8 proportionality assessment would have found the decision entirely proportionate. The appellant has not been asked to leave the UK and the refusal decision explained that if she wanted to make a family life or private life claim she should do so on the specified form and for which a separate fee is payable. It is entirely open to the appellant to make a further application, taking care to address the legal and evidential requirements. In the circumstances, even if the First-tier Tribunal had considered article 8 either under the Rule or outside them, it is inevitable that the appeal would still have been dismissed on all grounds.
11. In the circumstances, I find no error of law in the finding of the First-tier Tribunal that the appellant failed

**Conclusions:**

12. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed.



**Signed**

**Deputy Upper Tribunal Judge Pickup**

## **Anonymity**

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Given the circumstances, I make no anonymity order.

## **Fee Award**

**Note: this is not part of the determination.**

In the light of my decision, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007).

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: The appeal has been dismissed and thus there can be no fee award.



**Signed**

**Deputy Upper Tribunal Judge Pickup**