



**The Upper Tribunal
(Immigration and Asylum Chamber) Appeal number: IA/24338/2014**

THE IMMIGRATION ACTS

**Heard at Manchester
On April 7, 2015**

**Decision & Reasons Promulgated
On April 15, 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MR LAMIN GIBBA
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

Appellant

Mr Ahmed, Counsel, instructed by Queen's Park Solicitors

Respondent

Ms Johnstone (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The appellant is a citizen of Gambia. He entered the United Kingdom as a visitor Appellant on July 7, 2012 with a visa valid until December 15, 2012. He claimed to have met his "wife" in the Gambia in May 2011 where they grew up. The sponsor returned to live in the United Kingdom and they continued to communicate in their local Gambian dialect. On arrival in the United Kingdom he contacted the sponsor and they met up in August 2012. The sponsor moved to work in Birmingham and in September and November 2012 she invited the appellant to come and stay with her. The

appellant overstayed and at the end of January 2013 they spent a whole week together and returned to London together. They lived apart but decided to marry in September 2013. They held a customary marriage by proxy on September 3, 2013 in Gambia because the appellant was unable to travel to the Gambia due to his immigration status. This customary marriage was registered and sealed on January 15, 2014 at the Banjul Islamic Court. Since their "marriage" they have lived together as husband and wife at [-] Blackburn.

2. On April 25, 2014 the appellant applied for a residence card as the spouse of a Dutch national. The respondent considered the application but refused it on May 28, 2014 stating the proxy marriage was not recognised by the Dutch authorities and in the alternative the respondent refused to exercise his discretion in issuing a residence card to an extended family member because the appellant and his "wife" had failed to demonstrate they were in a durable relationship.
3. The appellant appealed that decision on May 30, 2014 under section 82(1) of the Nationality, Immigration and Asylum Act 2002 and Regulation 26 of the Immigration (EEA) Regulations 2006.
4. The matter came before Judge of the First-tier Tribunal Edwards on October 17, 2014 and in a decision promulgated on October 30, 2014 he refused the appellant's appeal finding the proxy marriage was not legal and the parties had failed to demonstrate they were in a durable relationship.
5. The appellant lodged grounds of appeal on November 3, 2014 submitting the FtTJ had erred by failing to have regard to the expert evidence that had been submitted on proxy marriages and in the alternative had failed to give due consideration to all of the evidence in respect of their durable relationship.
6. On December 19, 2014 Judge of the First-tier Tribunal Page gave permission to appeal finding the determination contained a paucity of reasons for finding the marriage was not genuine and permission to appeal was given on all grounds.
7. The matter came before me on the above date and the parties were represented as set out above. The appellant and his "wife" were in attendance.

ERROR OF LAW SUBMISSIONS

8. Mr Hussain adopted the grounds of appeal and submitted the FtTJ had failed to have proper regard to the expert evidence of both Mr Chernoh Marenah and Jakob Wedemeijer. The former expert had made clear that a failure to register the marriage within one month did not make the marriage void and the latter stated that under article 10.31 a marriage contracted outside of the Netherlands and valid under the law of the State where it took place was recognised as a valid marriage. The FtTJ should have accepted the marriage was valid. Alternatively, there was ample evidence of a durable relationship in the form of written and oral evidence

and various documents that had been submitted. There was no requirement to be together for two years and the FtTJ erred by failing to make adequate findings on the evidence of a durable relationship.

9. Ms Johnstone submitted neither Mr Marenah nor Mr Wedemeijer were experts. The former was a barrister and solicitor of the Supreme Court and the latter was an advocate. Neither person was an expert witness but had merely provided an opinion on Dutch law. The FtTJ considered their opinions in paragraphs [20] and [21] of his determination and made findings that were open to him. The Tribunal in Kareem (Proxy marriages - EU law) [2014] UKUT 00024(IAC) made clear that without independent and reliable evidence regarding how the laws of a country are applied it should be assumed the Tribunal is likely to be unable to find that sufficient evidence has been provided to discharge the burden of proof. Mere production of legal materials from the EEA country or country where the marriage took place will be insufficient evidence because they will rarely show how such law is understood or applied in those countries. Mere assertions as to the effect of such laws will, for similar reasons, carry no weight. The evidence produced fell into this category and the FtTJ was entitled to find the marriage was not valid and the appellant was not a family member under Regulation 7 of the 2006 Regulations. As regards the durability of the marriage the respondent had considered this and had found that they had only been living together since September 3, 2013 and as this was less than two years the FtTJ was entitled to find they were not in a durable relationship.
10. Mr Hussain reminded me that there was nothing in the Regulations that stated the parties had to be together for two years for the relationship to be durable. He submitted "durable" meant committed and he submitted there was ample evidence that they were committed as both had provided witness statements and had made themselves available for cross-examination. He further submitted the FtTJ's approach to the opinion of Mr Wedemeijer was not open to him because the articles made clear what was recognised under Dutch law.
11. I reserved my decision.

ANALYSIS AND FINDINGS

12. Two issues were raised in the appeal that came before the FtTJ and those same two issues form the basis of the matters argued before me.
13. The Upper Tribunal has considered the issue of proxy marriages and the most quoted authorities are the cases of Kareem (Proxy marriages - EU law) [2014] UKUT 00024(IAC) and TA and Others (Kareem explained) Ghana [2014] UKUT 00316 (IAC).
14. When the matter came before the FtTJ he had what can properly be described as evidence of a marriage taking place in Gambia where neither party was present in Gambia but both were in the United Kingdom. One of the parties was an EEA national and the other was a Gambian national. The Tribunal made clear that without independent and reliable evidence regarding how the laws of a country are applied it should be assumed the

Tribunal is likely to be unable to find that sufficient evidence has been provided to discharge the burden of proof. At paragraph [68(g)] of Kareem the Tribunal passed the following observation-

“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. Mere production of legal materials from the EEA country or country where the marriage took place will be insufficient evidence because they will rarely show how such law is understood or applied in those countries. Mere assertions as to the effect of such laws will, for similar reasons, carry no weight.”

15. The Tribunal in TA and Others (Kareem explained) Ghana [2014] UKUT 00316 (IAC) considered the matter further and sought to explain away any doubts on how Kareem should be interpreted by stating at paragraph [20]-

“Given that which I set out above, it is difficult to see how the Upper Tribunal in Kareem could have been any clearer in its conclusion that when consideration is being given to whether an applicant has undertaken a valid marriage for the purposes of the 2006 Regulations, such consideration has to be assessed by reference to the laws of the legal system of the nationality of the relevant Union citizen.”

16. The FtTJ was therefore tasked with considering the evidence that was placed before him and he set out his findings in paragraphs [20] and [21] of his determination. He was perfectly entitled to disregard the non-reported decision of Mustapha Touray v SSHD (appeal reference IA/30143/2011) for the reasons he gave and of course the decisions of Kareem and TA and others have since been reported. The appellant’s representatives had not satisfied the requirements of the relevant Practice Direction and in particular paragraph 11.2 and 11.3. The former required the appellant’s representatives to identify the proposition for which the determination is to be cited and certify that the proposition is not to be found in any reported determination of the Tribunal, the IAT or the AIT and had not been superseded by the decision of a higher authority.

17. Paragraph 11.3 states-

“Permission under paragraph 11.1 will be given only where the Tribunal considers that it would be materially assisted by citation of the determination, as distinct from the adoption in argument of the reasoning to be found in the determination. Such instances are likely to be rare; in particular, in the case of determinations which were unreportable (see Practice Statement 11 (reporting of determinations)). It should be emphasised that the Tribunal will not exclude good arguments from consideration but it will be rare for such an argument to be capable of being made only by reference to an unreported determination.

18. The FtTJ considered the two legal opinions and I must stress they are not independent opinions but opinions obtained for cases of this nature and the FtTJ noted that the opinion of Mr Marenah was not for this case and the opinion of Mr Wedemeijer was paid for by the appellant’s representatives. Both opinions are in effect a mere reciting of the law and the author’s

interpretation of that law. The Tribunal in Kareem made it clear this would not be sufficient.

19. The FtTJ was entitled to find the marriage was not valid and I find no material error in his approach.
20. I turn now to the second ground of appeal and the FtTJ's approach to durability of the relationship. The FtTJ considered this at paragraphs [23] and [24] of his determination.
21. In giving permission Judge of the First-tier Tribunal Page criticised the FtTJ for not making clear whether the appellant and his "wife" gave oral evidence. Reference to the record of proceedings indicates that both were called to give evidence but neither appeared to be asked many questions with their written evidence forming the basis of their accounts. In fact, neither representative put any questions to the appellant and the "wife" was only asked to clarify a couple of matters concerning her payslips and where she lived. Whilst it may have been helpful for the FtTJ to record this fact I am satisfied the absence of this from his determination is not material.
22. At paragraph [5] of his determination the FtTJ confirmed he had regard to the bundle of documents placed before him and he noted that the appellant's bundle consisted of 108 pages. At paragraph [23] the FtTJ set out the documentary evidence that he felt assisted him. The evidence was limited in nature with the majority of the papers being in the "wife's" sole name with some documents being in both names. The FtTJ heard the evidence and was unimpressed by the evidence. He did not find the parties had to live together for two years to prove a durable relationship, as argued by Ms Johnstone, but concluded on the evidence before him including the appellant's own immigration history that this was not a durable relationship.
23. The issue I have to consider is whether that conclusion was open to the FtTJ. All he had before him were the party's statements, brief oral evidence and the documents he considered. There were no statements from family or friends and there were two photographs taken at the same time (page 98) and two other photographs whose origins are unclear due to their poor quality. The FtTJ was entitled to conclude they were not in a durable relationship for the purposes of Regulation 8(5) of the 2006 Regulations.
24. I am satisfied the FtTJ did no materially err in his approach to either issue.

DECISION

25. There was no material error. The original decision is upheld.
26. The First-tier Tribunal did not make an anonymity direction and pursuant to Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 I see no reason to alter that order.

Signed:

Dated: **April 7, 2015**

Deputy Upper Tribunal Judge Alis

**TO THE RESPONDENT
FEE AWARD**

As I have dismissed the appeal I make no fee award.

Signed:

Dated: **April 7, 2015**

Deputy Upper Tribunal Judge Alis