



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

Appeal Number: IA/10826/2013

THE IMMIGRATION ACTS

Heard at Field House

On 7 November 2013

Determination

Promulgated

On 3 December 2013

Before

DESIGNATED JUDGE MURRAY

Between

**MS OLAIDE RAMON ODUNTAN
(ANONYMITY NOT DIRECTED)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Respondent: Ms Holmes, Home Office Presenting Officer

For the Appellant: Mr Mtisi, Obeseki Solicitors, London

DETERMINATION AND REASONS

1. The appellant is a citizen of Nigeria born on 11 September 1967. She appealed against the decision of the respondent dated 18 March 2013 refusing her a residence card under the Immigration (European Economic Area) Regulations 2006 as confirmation of a right to reside in the United Kingdom. Her appeal was heard by Designated Judge David Taylor on 19 August 2013. He dealt with it on the papers. The appeal was dismissed in a determination promulgated on 26 August 2013.
2. An application for permission to appeal was lodged and permission was granted by Judge of the First-tier Tribunal Baker on 18 September 2013. The First-tier Tribunal dismissed the appeal on the basis that there was no evidence of whether the claimed proxy marriage between a Polish citizen

and a Nigerian citizen is valid in Polish law. The grounds state that this issue was raised by the First-tier Tribunal for the first time in the determination, without any reference to the respondent or the appellant and so there was a procedural error, as both parties should have been given notice of this point so that relevant submissions could be made. They go on to state that consideration should have been given as to whether the appeal should have been determined at an oral hearing rather than on the documents.

The Hearing

3. The appellant's representative submitted that he is relying on the grounds and his skeleton argument and the submissions made at the First-tier hearing by the appellant's previous representative. He submitted that the respondent in the refusal letter electively quoted from the COI Report and the judge made the same error.
4. I was referred to the skeleton argument at paragraph 11 which quotes section 24.19, 24.20 and 24.21 of the COI Report. The representative submitted that these paragraphs set out the position in Nigeria on proxy marriages and although proxy marriages are not recognised under Nigerian civil law, they are recognised under Nigerian customary law. The COI Report was before the judge.
5. I was then referred to the case of CB (Brazil) [2008] UKAIT 00080. The appellant's representative submitted that had the judge considered this, the appeal would have been allowed. Instead he considered whether this marriage would be valid under Polish law. The representative submitted that based on this case, as the law stands today, the appellant's appeal should have been allowed and the judge made a material error. He also submitted that as proxy marriages are valid in Nigeria under customary law, had the judge read the objective evidence, his decision would have been different. I was asked to set aside the decision and allow the appeal.
6. The Presenting Officer submitted that based on the said case of CB, what the judge has done in his determination is exactly what he should not have done. Because of this she had difficulties supporting the respondent's position. She submitted that what the judge did was look at domicile and the case of CB states that this is not what should be done.
7. At paragraph 25 of CB it is stated "The validity of a marriage is governed in this jurisdiction by the *lex loci celebrationis* and not the domicile of the parties. Accordingly I conclude that the judge correctly decided that since the *lex loci celebrationis* in this case, Brazilian law, recognises proxy marriages, the marriage of the appellant and his wife is valid under English law and as a consequence the relevant requirements of the EEA Regulations are met."

Determination

8. I have carefully considered the evidence which was before the First-tier Tribunal and the judge's determination and reasons, based on what was before him. I have carefully considered the appellant's skeleton argument and the said case of CB (Brazil). On this basis, as the appellant's proxy marriage in Nigeria is valid under customary law, it will be under English law.
9. The way the judge dealt with the appeal was an error. Although the law of the United Kingdom does not allow proxy marriages to be contracted here, the United Kingdom recognises proxy marriages if they are valid under the law of the country, in which they take place, provided they have been executed properly.
10. That is the case here. As a consequence the relevant requirements of the EEA Regulations are met.

DECISION

11. There is a material error of law in the judge's determination and I am setting it aside.
12. The appellant's appeal for a residence card under the Immigration (European Economic Area) Regulations 2006, as confirmation of a right to reside in the United Kingdom, is allowed.
13. Anonymity has not been directed.

Signed

Date

Designated Judge Murray
Judge of the Upper Tribunal