



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

Appeal Number: IA/03544/2014

THE IMMIGRATION ACTS

Heard at Field House

On 10 July 2014

Determination

Promulgated

On 15th July 2014

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR LARRY OSARENIQHARU ELEMA

Respondent

Representation:

For the Appellant: Mr S Whitwell

For the Respondent: No Legal Representative

DETERMINATION AND REASONS

1. The respondent, Mr Larry Osareniqharu Elema, born on 15 February 1982, is a citizen of Nigeria. I shall refer to the respondent as the appellant and the Secretary of State as the respondent as they were respectively before the First-tier Tribunal.
2. The appellant had appealed to the First-tier Tribunal (Judge Hague) against a decision of the Secretary of State to refuse him a residence card by

reason of his marriage to a French citizen. The date of the refusal was 5 December 2013.

3. In a determination which is dated 1 April 2014, the First-tier Tribunal Judge decided the matter on papers without a hearing in Manchester and allowed the appeal.
4. Today, 10 July 2014, this matter comes before the Upper Tribunal following a grant of permission by Judge levins dated 22 May 2014. Mr Whitwell, a Senior Home Office Presenting Officer, appears for the Secretary of State. There is no appearance or representation on behalf of the appellant. Enquiries were made by telephone by the Tribunal of Chancery CS Solicitors this morning but they have informed us that they have had no instructions from their client and will be writing to confirm that in due course.
5. In those circumstances, I am satisfied that the notice of hearing was served by first class post on 30 May 2014 at the appellant at his last known address in Forest Hill, London, and I am satisfied that I should proceed with the hearing in his absence, which I have done.
6. I find that the Secretary of State's appeal should be allowed. I make that finding for the following reason. This is a case which concerns a marriage conducted by proxy according, as stated in the reasons for refusal letter, to the Ghanaian customary marriage laws.
7. Put very simply, there has been a complete failure on the part of the First-tier Tribunal to take account of the ratio of the case of *Kareem (Proxy marriages - EU law)* [2014] UKUT 24 (IAC). Quotations from that case appear in the grounds of appeal, and I note at paragraph 16 of *Kareem* and again at paragraph 14 that it is made clear that in these cases the law that will apply will be the law of the member state of nationality (and not the host member state) of the EU citizen; in this case, the relevant member state is France as the appellant's claimed family member is a French national; as noted in *Kareem*, and I quote: "a lack of evidence of relevant foreign law will normally mean that the party with the burden of proving it will fail."
8. As it is stated in the grounds of appeal, the First-tier Tribunal made no finding that any evidence of relevant foreign law, that is the law of France, had been provided by the appellant. The judge unfortunately appears to have proceeded on the basis of the rather misleading head note of *Kareem* which suggests that there is a two-stage test and that the question of the validity of the marriage according to the law of the EU nationals country of nationality arises only in circumstances where the marriage certificate has doubt cast upon it. Here, the judge has found that the marriage was properly registered and has simply ceased his analysis at that point. In fact, he writes at paragraph 7 of the determination:

I find on the balance of probability that the marriage between the appellant and his wife is a valid one according to Ghanaian law. It is therefore valid in the law of England and Wales and as that is the only issue in the appeal I allow the appeal.

That statement is wrong in law and, whilst it might conceivably be in line with what is said in the head note of *Kareem*, the ratio of that case which I have summarised above is wholly at odds with what the judge found.

9. I therefore set aside the determination of the First-tier Tribunal and remake the decision. Looking at the evidence that the Tribunal has before it, I say again that there is no evidence at all that the relevant foreign law, that is the law of France, allows for the form of marriage that the appellant and his French “spouse” have entered into to be considered valid, and in the absence of that evidence, the only proper course of action is to dismiss the appellant’s appeal against the Secretary of State’s decision.

DECISION

10. The determination of the First-tier Tribunal dated 1 April 2014 is set aside. I have remade the decision. The appellant’s appeal against the decision of the Secretary of State dated 5 December 2013 is dismissed.

Signed

Date 10 July 2014

Upper Tribunal Judge Clive Lane