Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/34850/2013

THE IMMIGRATION ACTS

Heard at Manchester	**Determination Promulgated**
On 6th March, 2014	**On 3rd April 2014**
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Before

Upper Tribunal Judge Chalkley

Between

DOLAPO SUSAN ODUWUSI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Ojukokola, SLA Solicitors
For the Respondent: Mr Harrison, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Ghana, who was born on 6th June, 1971. He claims to be married to the sponsor, Samba Mbimbi, who is a citizen of France and as such is an EEA national, and who was born on 2nd December, 1982. The appellant first entered the United Kingdom in July, 2003, using a multiple visit visa valid until 23rd January, 2004. The appellant was issued with two further visas valid from, 5th April, 2004, to 5th April, 2006, and from 6th April, 2006, to 6th April, 2011. On 11th December, 2011, he applied for a residence card as the spouse of an EEA national who was exercising, or who wished to exercise, treaty rights in the United Kingdom. On 6th August, 2013, the respondent issued a refusal to issue a residence card and it was against that refusal that the appellant appealed to the First-tier Tribunal.

2. The appellant did not seek an oral hearing and the matter was disposed of by way of an appeal without an oral hearing by First-tier Tribunal Judge B J Clarke, sitting in Birmingham. First-tier Tribunal Judge Clarke was concerned that the marriage between the appellant and sponsor was a ceremony of marriage by proxy in Oyo State, Nigeria and was not satisfied, looking at the documents provided to him, that they were sufficient to prove that there was a valid marriage ceremony and registration as claimed by the appellant. He dismissed the appeal.

3. The appellant challenged the determination, asserting that the parties had entered into a genuine marriage. At the hearing before me I referred the appellant's representative to the case of *Kareem (Proxy marriages – EU law)* [2014] UKUT 24 (IAC) and Mr Ojukokola indicated that he was familiar with that case, since he acted on behalf of appellant in that appeal. I raised with him the issue of whether the EEA national could demonstrate that the marriage between her and the appellant was valid in French law. He submitted that that was not an issue before the Tribunal. The issue was one first of validity and secondly, of recognition. He claimed that the marriage was valid in Nigeria and should therefore be recognised in the United Kingdom. Regulation 7 of the Immigration (European Economic Area) Regulations 2006 did not require the appellant to prove that the marriage was valid in France.

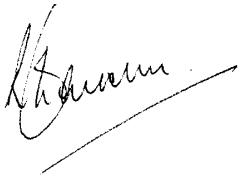
4. I adjourned briefly to consider *Kareem* and on resuming pointed out that under Regulation 7 the appellant was must show that the marriage is valid. If it is not then the Tribunal should have considered Regulation 8.5.

5. Mr Harrison pointed out that Regulation 8(5) was never raised. This was a Regulation 7 application and the Secretary of State was concerned as to the validity of the marriage. Where the Secretary of State finds Regulation 7 not met, normally she then considers the application under Regulation 8(5) and were the matter to be considered under Regulation 8.5, she may well allow it. He invited me to allow the appellant's appeal to the extent that it remains for the Secretary of State to consider the matter under Regulation 8.5. It is, he submitted, the practice of the Secretary of State when refusing under Regulation 7 to go on and consider Regulation 8.5 and she should have done so in this case. He urged me therefore to allow the appeal to the extent that it remained for the Secretary of State to consider the matter under Regulation 8.5.

6. Mr Ojukokola did not seek to persuade me to adopt another course.

7. Having refused the appellant's application under paragraph 7 of the Immigration (European Economic Area) Regulations 2006, I am told that it is her practice that the Secretary of State should then have considered whether the appellant might satisfy the requirements of paragraph 8.5 by demonstrating that he is in a durable relationship with an EEA national exercising treaty rights.

8. As urged to do by the Secretary of State for the Home Department's representative, I allow the appellant's appeal to the extent that it remains for the Secretary of State to consider the appellant's application under Regulation 8.5.



Upper Tribunal Judge Chalkley