



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

Appeal Number: IA/44242/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 29<sup>th</sup> May 2014**

**Determination**

**Promulgated**

**On 17<sup>th</sup> June 2014**

**Before**

**UPPER TRIBUNAL JUDGE RENTON**

**Between**

**SAMSON OLADAYO AREMU  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Unrepresented

For the Respondent: Ms S Ong, Home Office Presenting Officer

**DETERMINATION AND REASONS**

**Introduction**

1. The Appellant is a male citizen of Nigeria, born on 1<sup>st</sup> May 1984. On 27<sup>th</sup> November 2011 he applied for a residence card as confirmation of his right to reside in the UK as the spouse of Sadia Ismaham Sahraoul, an EU citizen exercising Treaty rights in the UK. That application was refused for the

reasons given in a Notice of Decision dated 5<sup>th</sup> August 2013. The Appellant appealed and his appeal was decided on the papers by Judge of the First-tier Tribunal Clapham (the Judge) on 20<sup>th</sup> January 2014. She dismissed the appeal for the reasons given in her Determination of that date, but at an earlier hearing of this appeal I decided that the Judge erred in law in coming to that conclusion and I set aside her decision.

2. The case comes before me today to remake the decision of the Judge.
3. At the hearing there was no appearance by or on behalf of the Appellant. I decided to proceed with the hearing under the provisions of Rule 38 of the Tribunal Procedure (Upper Tribunal) Rules 2008. I was satisfied that the Appellant had been notified of the hearing in accordance with those Rules, and I believed it was in the interests of justice to proceed with the hearing.
4. At the hearing, I heard a brief submission from Ms Ong which is noted in the Record of Proceedings and need not be set out here.
5. I set aside the decision of the Judge because he had failed to take into account evidence contained in a bundle submitted by the Appellant and received prior to the decision of the Judge. There has been no subsequent evidence. When making my finding of an error of law, I commented that the Appellant needed to adduce evidence to meet the requirements of the decision in **Kareem (Proxy marriages - EU law) [2014] UKUT 00024 (IAC)**. No such evidence has been received.
6. The Appellant and his wife claimed that they married according to Nigerian native law and custom at Lagos on 13<sup>th</sup> July 2011. They produced a marriage certificate to that effect. Their evidence may well be credible, but for that marriage to entitle the Appellant to a residence card he must establish its validity for European Union law purposes as required by the decision in **Kareem**. The Appellant has not discharged this burden.
7. Notwithstanding this failure, the Appellant might still qualify for a residence card if he can show a durable relationship between himself and the Sponsor as required by Regulation 8(5) of the Immigration (European Economic Area) Regulations 2006. There are now before me brief statements from the Appellant and his claimed wife that they live together at an address in London. No further information is given as to the length and nature of their relationship. This evidence does not have the benefit of being tested by cross-examination. I find that that evidence is insufficient to discharge the burden of proof on the balance of probabilities, and I am therefore not satisfied that there is a durable relationship between the Appellant and the Sponsor.

## **Decision**

I remake the decision of the Judge by dismissing the appeal.

**Anonymity**

The First-tier Tribunal did not make an order pursuant to Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I find no reason to do so.

Signed

Date

Upper Tribunal Judge Renton