



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

Appeal Number: IA/45633/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 9 September 2014**

**Determination  
Promulgated  
On 12 September 2014**

**Before**

**UPPER TRIBUNAL JUDGE MOULDEN**

**Between**

**MR ABIOLA MORUFF SANUSI  
(No Anonymity Direction Made)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: the appellant attended but was not legally represented

For the Respondent: Mr T Wilding a Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant is a citizen of Nigeria who was born on 20 July 1978. He has been given permission to appeal the determination of First-Tier Tribunal Judge Trevaskis ("the FTTJ") who dismissed his appeal against the respondent's decision of 17 October 2013 to refuse to issue him with a residence card as confirmation of his right to reside in the UK as the family member of an EEA national under Regulation

17 (1) (b) of the Immigration (EEA) Regulations 2006 (“the EEA Regulations”).

2. The respondent refused the application because she was not satisfied that the appellant’s claimed wife (“the sponsor”) was employed or exercising treaty rights in the UK. She was not satisfied that the appellant and the sponsor were lawfully married. They had not been present when the marriage took place in Nigeria and it appeared to be a proxy marriage. It had not been registered as required by local legislation. Finally, and in the alternative, it was concluded that the appellant and the sponsor were not unmarried partners because they had not established that they were in a durable relationship.
3. The appellant appealed and asked for the appeal to be determined on the papers, which is what the FTTJ did. He reviewed the evidence including the country evidence about marriages in Nigeria before concluding, in the light of CB (validity of marriage; proxy marriage) Brazil [2008] UKAIT 0080 that it had not been shown that the claimed marriage had been registered in accordance with Nigerian legal requirements. Furthermore, the evidence submitted did not show that the appellant and the sponsor were in a durable relationship. There was no evidence that they were living together.
4. The FTTJ went on to consider the appeal on Article 8 human rights grounds concluding that there were no arguably good grounds for granting the appellant leave outside the Article 8 provisions in the Immigration Rules. He dismissed the appeal.
5. The appellant applied for permission to appeal through his then solicitors which was granted. The grounds argue that the FTTJ erred in law because the marriage had been properly registered in accordance with Nigerian law. Reference is made to an extract from an Upper Tribunal Determination in effect submitting that it was inappropriate for a judge to question a certificate issued by the competent authorities in another country in the absence of any evidence of fraud.
6. The appellant attended the hearing before me with the sponsor and her children. He told me that he was no longer legally represented because he could not afford it. I note that the sponsor is of Portuguese nationality. She produced her original passport.
7. The appellant was given copies of Kareem (proxy marriages – EU law) [2014] UKUT 24 (IAC), TA and others (Kareem explained) Ghana [2014] UKUT 316 (IAC) and CB (validity of marriage; proxy marriage) Brazil [2008] UKAIT 0080.
8. The appellant submitted that Portuguese law permitted proxy marriages. He produced a letter and an extract from a document from the Permanent Mission of Portugal in Geneva answering

questions from the office of the High Commissioner for Human Rights in relation to child, early and forced marriages. He relied on a passage which reads; “marriage by proxy is permitted (Article 1620 CC). One of the intending spouses may delegate authority to an appointed representative through a proxy document that must contain specific authority to contract the marriage, name and the other intending spouse (sic) and indicate how the marriage will take place and the type of marriage.” He accepted that this document had not been before the FTTJ.

9. The appellant also produced a document. It is not clear from the face of it exactly what the document is but the appellant said that it was an “extract from Customary Registration Act of Nigeria”. He referred me to paragraphs 39 and 42 which, he said, set out the requirements in Nigeria for the issue of a marriage certificate and the registration of customary marriages. He accepted that this document was not before the FTTJ.
10. The appellant accepted that his marriage in Nigeria was a customary marriage not a statutory one. I showed him small bundle of documents from the Tribunal file which he accepted was a full set of the documents he had submitted in relation to the marriage in Nigeria. He said that the information on the face of these documents was sufficient to show that he and the sponsor had gone through a valid marriage in Nigeria, recognised by Nigerian law. The document he had now produced showed that the marriage was also a valid marriage under Portuguese law.
11. The appellant produced an original letter from the London Borough of Barking and Dagenham dated 11 January 2013 stating that the sponsor would be put on the electoral register at the address where he lived. He said that this had been sent to the respondent with his original application. I referred him to his representatives’ letter which accompanied the application which listed the accompanying documents. This letter was not amongst them. The appellant insisted that this letter had been submitted. There is no reference to it in the determination of the FTTJ. I am not persuaded that this letter was submitted to the respondent or that it was before the FTTJ.
12. Mr Wilding submitted that there was no material error of law. The only issue raised in the grounds of appeal was how the FTTJ dealt with the question of the validity of the marriage. He relied on Kareem which showed that in order to demonstrate a valid marriage for the purpose of the EEA Regulations the claimant had to establish that the marriage and the marriage process was recognised in the State of the EU national (in this case Portugal) and that if the marriage had been a proxy marriage it was recognised in the country where it took place.

13. Mr Wilding argued that the document now produced by the appellant which made reference to Portuguese law had not been before the FTTJ and in any event did not assist because it did not show how this marriage would be treated under Portuguese law. It was not clear whether it related to proxy marriages in Portugal or elsewhere. There was no reference to a proxy marriage in a third country. There was no expert evidence as to what Portuguese law was or how it would be applied. There was a requirement for a proxy document but no evidence of the issue of one. The document appeared to permit a marriage to take place in the absence of one of the parties but not both.
14. The Nigerian customary marriage proxy procedure had not been properly followed for the reasons given by the FTTJ in paragraph 11. The respondent's refusal letter had highlighted the requirements which had not been complied with. The appellant had not established either that these requirements had been met in full or that any statement on the face of the documents was sufficient evidence that the registration requirements had been met. The grounds of appeal had not challenged the FTTJ's findings in relation to the lack of a durable relationship or in relation to Article 8. However, he argued that in any event the FTTJ reached conclusions open to him on all the evidence in relation to these matters. The evidence did not show that the appellant and the sponsor were in a durable relationship. Article 8 grounds had not been raised by the appellant although they had been addressed by the respondent in the refusal letter. There was no arguable error of law.
15. In his reply the appellant said that the law in Nigeria did not require the marriage registration documents to show that all the pre-registration information had been supplied. All that was needed was to say that the marriage had been registered under Nigerian law. This had been done.
16. I reserved my determination.
17. I find that the appellant may have done himself an injustice in relation to the document which he produced at the hearing before me (referred to in paragraph 9 above) when he told me that it had not been before the FTTJ. It is either similar to or a partial extract from the Births Deaths etc. (Compulsory Registration) Act 2004 of Nigeria referred to in the respondent's reasons for refusal letter dated 17 October 2013. The refusal letter sets out, in bold, the information which should have been but was not supplied to the Chief Registrar and shown on the registration documents produced by the appellant. The respondent reached the conclusion, which was the same conclusion reached by the FTTJ in paragraph 11 of the determination, that because the documentation produced by the appellant did not show that these requirements had been met he had not established to the required standard that the form of marriage he had gone through was recognised as a legally valid

marriage in Nigeria. I find that in the absence of any better evidence as to the requirements of Nigerian law, which could have been in the form of expert evidence from an expert in Nigerian law, the appellant has not established that the requirements of Nigerian law were met or that his marriage is one which is recognised under Nigerian law and that the FTTJ was entitled to reach this conclusion for the reasons he gave.

18. Even if the appellant had established that his marriage was one which was recognised under Nigerian law it would also have been necessary for him to show, under the principles set out in Kareem, that the marriage was contracted between him and the sponsor according to the national law of her nationality, which is Portuguese. There was no evidence before the FTTJ about this. The letter and document which I have referred to in paragraph 8 was not before the FTTJ. In any event it does not show that the marriage was contracted according to the law of Portugal. The provisions are far from clear. It does not show whether it relates to proxy marriages within or outside Portugal. It appears to indicate that they can be a proxy from one party but not both. There is reference to an appointed representative but no indication of how that representatives should be appointed and what documentation is required. There is no expert legal evidence to fill in any of these gaps or provide any further explanation. Even if this material had been before the FTTJ I find that it would not have assisted the appellant to show that his marriage was one which would have been recognised by the laws of Portugal.
19. The grounds of appeal do not call into question the FTTJ's findings in relation to durable relationship or Article 8 human rights grounds. Even if they had done so I find that Article 8 grounds were not raised by the appellant. They were sufficiently addressed by the respondent in the refusal letter and the FTTJ in paragraphs 14 to 17 of the determination. The FTTJ reached a conclusion open to him on the evidence that the appellant had not established that he and the sponsor were in a durable relationship.
20. I have not been asked to make an anonymity direction and can see no good reason to do so.
21. I find that the FTTJ did not err in law and I uphold the determination.

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Signed  
Upper Tribunal Judge Moulden

Date 10 September 2014

