



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

Appeal Number: EA/01918/2015

THE IMMIGRATION ACTS

**Heard at Manchester Piccadilly
On 26 September 2017**

**Decision & Reasons Promulgated
On 17 October 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

**LUKMAN OLAKUNLE OLAYEMI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Bates Senior Home Office Presenting Officer

For the Respondent: Mr Djukotola of SLA Solicitors

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. The Appellant, a national of Nigeria was born on 28 April 1982. The Appellant appealed against the decision of the Secretary of State dated 20 October 2015 to refuse to grant an application for a residence card as a confirmation of his right to reside in the UK as the Spouse of an EEA citizen exercising treaty rights.
3. The refusal was on the basis that the Appellant could not establish that he was a family member of the EEA citizen because the marriage certificate produced dated 31 January 2015 related to a marriage conducted under Nigerian Native Law and Custom and proxy marriages were not permitted under Nigerian Law.
4. The First-tier Tribunal Judge decided the case on the papers. The Judge concluded that while such a marriage was permitted under Nigerian Law the Appellant had failed to establish that proxy marriages were lawful in Hungary the country of nationality of the EEA spouse. In reaching that conclusion he applied the guidance found in Kareem (proxy marriages – EU law) [2014] UKUT 24.
5. At the hearing before me Mr Bates confirmed the contents of the Rule 24 Notice that it was conceded that in the light of Awuku v SSHD [2017] EWCA Civ 178 Kareem had been wrongly decided and there was no requirement to establish that the proxy marriage was lawful in Hungary.
6. The advocates were content for me to remake the decision.

Error of Law

7. I am satisfied that the Judge was in error in applying Kareem in the light of the decision in Awuku. Where a case is found to be legally flawed, the reasons for so finding will have existed both before and after its notification. The error is effectively replicated in the decision which followed it and so there would be an error of law in that decision too.

Remaking the Decision

8. I therefore set aside the decision of Judge Samimi and given that no other issues were taken in this case the Appellants appeal must succeed.

CONCLUSION

9. **I therefore found that an errors of law has been established and that the Judge's determination must be set aside.**

Decision

10. There was an error on a point of law in the decision of the First-tier Tribunal with regard to Article 8 such that the decision is set aside

11. I remake the appeal.

12. I allow the appeal under the EEA Regulations 2006.

Signed

Date 29.9.2017

Debra Birrell

Deputy Upper Tribunal Judge Birrell

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make a fee award of the fees paid as the decision was based on an assertion that proxy marriages are not legal in Nigeria an issue that has never been pursued.

Signed

Debra Birrell

Deputy Judge of the Upper Tribunal

Date 29.9.2017