



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

Appeal Number: IA/31354/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 27 July 2017**

**Decision &  
Promulgated  
On 10 August 2017**

**Reasons**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN**

**Between**

**OMODOLAPO TEMITAYO SOLOMON  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr. M. West, Counsel instructed by Harrison Morgan Solicitors

For the Respondent: Mr. T. Wilding, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Cooper, promulgated on 4 January 2017, in which he dismissed the Appellant's appeal against the Respondent's decision to refuse to grant a

residence card as confirmation of his right to reside in the United Kingdom.

2. Permission to appeal was granted by Designated First-tier Tribunal Judge McCarthy as follows:

“The judge did not make findings about whether the appellant’s proxy marriage was lawful under Nigerian law and he did not make any finding about whether the marriage was recognised in England and Wales. The judge also decided that he did not have jurisdiction to consider whether the appellant was in a durable relationship.

It is arguable, given the Court of Appeal’s judgment in Awuku v Secretary of State for the Home Department [2017] EWCA Civ 178 that the judge erred in the approach he took. In addition, it is arguable that the judge erred in his refusal to consider the issue of durable relationship since the Upper Tribunal’s decision in Sala (EFMs: Right of Appeal) Albania [2016] UKUT 411 (IAC) limited the right of appeal but not the grounds of appeal once a person has established that he has a right of appeal, as in this case.”

3. In the Rule 24 response the Respondent stated as follows:

“The grounds of appeal do not expressly cite Awuku v Secretary of State for the Home Department [2017] EWCA Civ 178. They do however assert that the First-tier judge erred in failing to address the validity of the appellant’s marriage in Nigeria. The instant determination was heard and promulgated prior to Awuku. The Respondent is of the view that the appeal should be remitted to the First-tier Tribunal for a fresh hearing.”

4. In the light of this concession from the Respondent, and in the light of the case of Awuku, at the hearing I set the decision aside as it involved the making of a material error of law. I remitted the appeal to the First-tier Tribunal to be reheard.

### **Error of Law**

5. As stated in the Rule 24 response, the judgment of Awuku had not been promulgated prior to the decision of the First-tier Tribunal. The Appellant had appealed against the decision to refuse him a residence card as the family member of an EEA national. The judge relied on the case of Kareem (Proxy marriages – EU law) [2014] UKUT 00024 (IAC), setting out the relevant parts of the head note at [27].
6. At [30] the judge found that there was nothing before him to confirm that the marriage by proxy was a valid marriage under Hungarian law. He therefore found that he was not satisfied that the parties were validly married for the purposes of Regulation 7 [31]. He did not address the validity of the Appellant’s marriage in Nigeria.

7. I have considered the case of Awuku, in particular paragraphs 18 to 21. Paragraph 21 makes it clear that there is no need to defer to the law of the state of nationality of the EEA national, in this case, Hungary. The domestic law rules of private international law apply in ascertaining whether a proxy marriage is a valid marriage.
8. The Court of Appeal found in Awuku that the Upper Tribunal were wrong in finding that a proxy marriage had to be shown as valid in the state of nationality of the EEA national. Doing so displaced international law, and there was no provision in EU law for the recognition of marriage in this way. The judge cannot be criticised for following the case of Kareem, but the case of Awuku has now held that this was wrongly decided. The decision involves the making of a material error of law in finding that the Appellant did not qualify under Regulation 7 as he had not shown that his marriage was valid under Hungarian law.
9. Further, the judge did not go on to consider whether the Appellant had a right to reside under Regulation 8. The judge cited the case of Sala. However, as acknowledged by Mr. Wilding before me, and as stated in the grant of permission to appeal, the case of Sala limited the right of appeal, not the grounds of appeal. The Appellant had a right of appeal to the First-tier Tribunal as he had applied on the grounds that he was a family member under Regulation 7. As he had a right of appeal, it was for the judge to consider any basis on which he might qualify for a residence card under the Regulations. The case of Sala does not prevent the First-tier Tribunal from considering whether an appellant is in a “durable relationship” under Regulation 8 when he already has a right of appeal. Therefore, by failing to consider whether the Appellant had a right to reside under Regulation 8, the judge made a material error of law.

### **Notice of Decision**

10. The decision involves the making of a material error of law and I set the decision aside.
11. The appeal is remitted to the First-tier Tribunal to be reheard.
12. The First-tier Tribunal is to consider whether the Appellant qualifies for a residence card under Regulation 7. If it is found that the Appellant does not meet the requirements of Regulation 7, the First-tier Tribunal must proceed to consider whether the Appellant qualifies as an extended family member under Regulation 8.
13. No anonymity direction is made.

Signed

Date 10 August 2017

Deputy Upper Tribunal Judge Chamberlain

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