



Upper Tribunal  
Immigration and Asylum Chamber

Appeal Number: EA/05270/2016

THE IMMIGRATION ACTS

Heard at Field House  
On 30 August 2018

Decisions & Reasons Promulgated  
On 11 September 2018

Before

Upper Tribunal Judge Kekić

Between

Oluwasola Adara  
(anonymity order not made)

Appellant

and

Secretary of State for the  
Home Department

Respondent

Representation

For the Appellant:

Dr V Onipede of Counsel instructed by London South Law  
Chambers

For the Respondent:

Ms A Everett, Senior Home Office Presenting Officer

Determination and Reasons

**Background**

1. The appellant is a Nigerian national born on 30 December 1981. She seeks a residence card as the spouse of an EEA national whom she married by proxy in Nigeria on 18 March 2011. They met in January 2011 and their relationship

is said to have commenced on 20 February 2011. The appellant's last period of leave as a student expired on 1 October 2009 and three subsequent tier 4 applications were refused followed by two unsuccessful applications for a residence card.

2. The respondent refused her application on the basis that a valid marriage certificate had not been provided. It was noted that the certificate of a proxy marriage pertained to marriages under the Nigerian Marriage Act of 1914 which precluded such marriages. The Act required one of the parties to have been living in the district in which the marriage was celebrated for at least fifteen days preceding the issue of the certificate and for the certificate to be signed by the parties (ss. 11(1)(a), 26 and s. 28). The respondent considered that this suggested the certificate was fraudulently obtained. The durability of the relationship was considered as an alternative but in the absence of reliable evidence of cohabitation and/or a relationship prior to the marriage, the respondent considered that this had not been established. The application was therefore refused under reg. 7 and 8(5).
3. The appeal came before First-tier Tribunal Judge M B Hussain at Hatton Cross on 7 March 2018. The appellant declined the opportunity of an oral hearing and the appeal was determined on the papers. The judge considered the evidence but concluded that a proxy marriage was excluded from recognition as a marriage under the Marriage Act of Nigeria and that the relationship was not durable. Accordingly, the appeal was dismissed.
4. In her grounds, the appellant argued that the judge had not considered s.35 of the Nigerian Marriage Act 1990. She also refers to the Country Information report of 2011 which refers to proxy marriages as being acceptable and valid in Nigeria. It is argued that there was adequate evidence of cohabitation before the judge and that the Regulations do not require a relationship to have lasted two years in order to be durable.
5. Permission to appeal was granted by First-tier Tribunal Judge Hollingworth on 2 July 2018 on the basis that the judge may have erred in his findings on the validity of the marriage.
6. There has been no Rule 24 response from the respondent.

### **The hearing**

7. I heard submissions from both parties at the hearing before me on 30 August 2018. The appellant did not attend.
8. At the start of the proceedings, I pointed out to the parties that although the appellant's evidence was that the marriage had taken place on 18 March 2011

(as stated on the marriage certificate and in the witness statements), the supporting affidavits of the witnesses stated that it had taken place on 11 March 2011. I asked for an explanation. Dr Onipede suggested that the 18 March could have been the date of the registration of the marriage rather than the date on which the marriage occurred. Whilst that does not seem likely to me, given what is said on the certificate, he was without instructions as the appellant had not attended and he did not ask for time to take instructions or seek an adjournment. I, therefore, proceeded on the basis of the evidence I had.

9. Dr Onipede relied on his skeleton argument. He submitted that there were two issues for determination; one was whether the customary/proxy marriage was valid and recognised in Nigeria and the other was whether the relationship was durable. The relevant law was s. 33 of the Nigerian Marriage Act and Regulations 7 and 8 of the EEA Regulations 2006. Reliance was also placed on the COI report of 2013. Dr Onipede submitted that the COI report confirmed the validity of customary marriages (at 23.22, 23.26 and 23.27). He submitted that no expert evidence was required and that if the Tribunal accepted that the marriage was valid, the appeal should be allowed.
10. With respect to the second issue, Dr Onipede submitted that the judge had not considered all the evidence. There had been adequate evidence before him of cohabitation dating from the marriage and covering at least a two-year period. Had the judge considered the evidence, he would have reached a different conclusion. His decision should, therefore, be set aside.
11. In response, Ms Everett submitted that there was a lack of clarity about the validity of the marriage, notwithstanding the COI report which reported that customary marriages did take place but was unclear about whether they were valid (at 24.18). It was accepted that three types of marriages took place in Nigeria (at 24.15) but just because customary marriages were undertaken, that did not mean they were valid (24.19 and 24.20). she submitted that proxy marriages had ceased to be valid (24.21). Expert evidence would, therefore, have assisted the judge on this issue.
12. With respect to the second matter, Ms Everett submitted that even if all the evidence had not been considered by the judge, it could not result in a different outcome. Ms Everett accepted that she had not noticed the anomaly in the dates of the marriage I had pointed out. She submitted, however, that it only served to further support the respondent's case.
13. Dr Onipede repeated his submission that the marriage was valid. He pointed to 23.27 of the COI report. He asked that I set aside the decision of the judge and re-make the decision on the evidence before me. I note, again, that there was no request for an adjournment based on the anomaly I identified in the marriage documents.

14. That completed submissions. I then reserved my determination which I now give with reasons.

### **Findings and conclusions**

15. I have carefully considered all the evidence before me and the submissions that have been made by both parties. I would state at the outset that the evidence has been poorly presented. Given that various sections of the Marriage Act have been relied upon, it would have been helpful to have had a copy of the entire Act but only excerpts have been provided. The respondent refers to the Nigerian Marriage Act of 1914 and the appellant to that of 1990. As I am unable to conduct my own research and have not been assisted in this by the parties, I have no way of knowing, without copies of both acts, whether the sections referred to by the respondent are also contained in the subsequent Act or whether the 1990 Act encompasses some, part or all of the 1914 Act. I note that whilst the grounds maintain that a copy of the Marriage Act was placed before the First-tier Tribunal Judge (at 1(i)), that is not correct. What he was given was a single page excerpt (at p. 83 of the appellant's bundle received on 6 July 2016) of the Marriage Act but there is no information as to which year the Act relates to. The page reproduces ss. 33-35 under the heading of invalid marriages.
16. It would also have been helpful to have had a schedule of the evidence regarding cohabitation so that it would have been easier to see what periods were covered by the evidence which, I have to say, is rather haphazardly presented and is not even in chronological order. No original documents have been adduced; they are all photocopies. There is no detailed index of the documents. They are adduced under very lazy headings; for example, such as "cohabitation" and "other relevant documents". Such sloppy presentation is not acceptable particularly when the bundle is a large one.
17. The COI report of June 2013 was not placed before the First-tier Tribunal Judge and he did not, therefore, have sight of it, although he did have extracts from the 2011 report. The more recent report has been relied on before this Tribunal and, as Ms Everett did not raise any objections to its admission, I do not exclude it from my consideration.
18. The issues before the First-tier Tribunal as set out in the appellant's skeleton argument and repeated by Dr Onipede in his submissions are said to be twofold; (1) the validity of the proxy marriage and (2) the durability of the relationship. In fact, these are alternatives. The second comes in to play if it is not accepted that a valid marriage has occurred. I should also point out at this stage that the respondent had also raised the issue of the marriage certificate having been fraudulently obtained but that is tied in with the first issue. It

follows, however, that I must also consider whether the certificate has been issued by a competent authority.

19. I deal first with whether the appellant and her spouse have contracted a valid marriage. As stated the evidence of the marriage and its validity is not without problems. Copies of the relevant Marriage Acts have not been provided and were not provided to the First-tier Tribunal Judge. Dr Onipede's submissions refer to s. 33 of the 1914 Act (see 7(i) of the skeleton argument) but the extract provided does not specify where it is taken from (CHECK). It is maintained that Judge Hussain wrongly concluded (at paragraph 8) that proxy marriages are excluded from recognition as marriages but what he in fact said was that the sections provided did not indicate that customary marriages included proxy marriages and whilst Dr Onipede used the terms interchangeably, I have not been referred to any part of either the 1914 or the 1990 Act which confirms proxy marriages are included within the customary marriage category.
20. The evidence is contradictory and confusing. The COI report of 2013, which essentially contains much of the information in the 2011 report, also observes that the information is contradictory. It notes that the US State Department Reciprocity Schedule recorded that proxy marriages had ceased to be valid although they still occurred (at 23.26) but that a letter from the Foreign and Commonwealth Office reported that proxy marriages were fairly common practice and were recognised under Nigerian customary law as a form of customary law marriage (23.27). It is further reported that customary law marriages are legally binding where celebrated in accordance with the native law and custom of the particular community. I also note that all such marriages must be registered within a specific period of the celebration.
21. On the basis of this evidence, notwithstanding that it is far from satisfactory and consistent, I am prepared to accept that Judge Hussain erred in finding that proxy marriages were not valid in Nigeria.
22. Turning to the question of whether the First-tier Tribunal Judge properly considered the alternative issue of the durability of the claimed relationship, I have to concur with Dr Onipede that the judge failed entirely to consider the large bundle of evidence adduced. His almost non-existent consideration at paragraph 10 of the determination consists of a single sentence in which he agrees with the respondent. There is absolutely no reference to the additional evidence or to any reasons for supporting the respondent's decision. This is wholly unacceptable and amounts to an error of law. It is material as consideration of the additional evidence may have led to a different outcome.
23. For these reasons I set aside the decision of First-tier Tribunal Judge Hussain.

24. Dr Onipede asked that I re-make the decision on the basis of the available documentary evidence. This having been a paper case, I agree to do so. There has been no suggestion that the appellant wants an oral hearing.
25. For the reasons given above at paragraphs 19-20 I find that on the balance of probabilities, a proxy marriage comes under the category of customary marriage and is valid in Nigeria. It follows that it is recognised in the UK; indeed, there was no submission from the respondent that it would not be. That is, however, not the end of the matter.
26. Whilst the respondent raised concerns over the validity of the certificate, these were based on the premise that such a marriage was invalid and therefore a certificate would not have been issued. As set out above, however, I identified a new and severely damaging issue to the parties at the start of the hearing; the fact that there was an inconsistency as to the date of the marriage.
27. It has always been the appellant's evidence (as presented in her application and in the representations of her solicitors) that the marriage took place on 18 March 2011. Indeed, according to the marriage certificate itself, that was the date on which it occurred. However, this does not explain why in the supporting sworn affidavit from the individual who presided over the marriage states that the marriage took place on 11 March 2011.
28. I have considered Dr Onipede's submission that the certificate refers to the date of registration but that is not what the certificate itself states. Plainly, it records the date of the marriage as 18 March and indeed that accords with the written evidence of the appellant and of her sponsor. This raises concerns about the reliability of the documentary evidence produced in respect of the marriage.
29. Whilst I have therefore accepted that proxy marriages are valid in Nigeria, if properly undertaken, I am not satisfied that the documents adduced in respect of the appellant's marriage are reliable. I am therefore not satisfied that any marriage took place. I reach this conclusion having put the date issue to the parties at the start of the hearing and noting that despite this issue, Dr Onipede asked that I remake the decision on the basis of the evidence before me. It is not for me to insist that the appellant explain the inconsistency. This is her documentary evidence and was submitted in support of her appeal. The inconsistency was brought to the attention of her representative, but no adjournment was sought and no further hearing was requested. In the circumstances, the only conclusion I can reach is that the documents as to the marriage are unreliable.
30. I also note that according to the appellant (on her application form at 5.17) and the marriage certificate itself, the marriage took place in Lagos, but the sworn affidavit of the individual who presided over the ceremony states it occurred

at the Palace of Ibogun Sowunmi, Ogun State. I accept that this is not a matter I had noticed at the hearing and so was unable to point it out, but it arises from the appellant's own evidence which is before me and on which I was asked to make my decision. even without this point, however, for the reason identified above, I am not satisfied that the marriage documents are reliable.

31. I now turn to the second alternative limb of the appeal. There is no definition in the EEA Regs of 'a durable relationship' and I was not referred to any case law to assist. It is the respondent's guidance however that generally a period of two years is required to establish that a relationship is durable and this appears to be accepted by the appellant who repeatedly refers to it in her statement and to her representatives who refer to it in their written "legal submissions".
32. The parties are said to have commenced their relationship on 20 February 2011, just over a month after meeting in January 2011. although Dr Onipede stated they began to cohabit from the date of their marriage, this is contradicted by the appellant's application form which gave the date of the commencement of cohabitation as 1 April 2011. No explanation is given for why they waited some two or three weeks to begin living together or why the appellant waited some years to make her application for a residence card.
33. At the date of the application to the respondent in October 2015, the couple had allegedly been cohabiting for over four years. Yet there was only one document in joint names that was adduced to cover that period of time - a BT bill for December 2011. The remaining documentary evidence is sparse. There are four Santander bank statements for the appellant covering three months in 2012 and five HSBC statements covering three months in 2011 and two months in 2012. Four undated advertisement letters are adduced, one DX letter dated 26 February 2013, three NHS letters of 2013 and one from 2014. For the sponsor, there is even less. Advertising bank letters are submitted for July, August and December 2011 and January 2013. there are TSB statements to cover three months in 2015 and two Lloyds Bank statements issued in February 2012 and June 2012. An undated advert from Vanquis Bank, a Sun Life advertisement of June 2012 complete the bundle of documents submitted to the respondent. This is sparse documentary evidence to cover a four and a half year period. There were no personal documents, no statements from the appellant or sponsor, no photographs, no supporting statements, no evidence of outings or holidays and no tenancy agreement. It is hardly surprising that the respondent concluded that a durable relationship had not been established.
34. Additional documentary evidence was, however, adduced to the First-tier Tribunal. I have considered this along with that already submitted. I also have regard to the fact that by the date of the determination of the First-tier Tribunal, the appellant and sponsor had allegedly lived together for seven years. If that is so, it is remarkable how impersonal the documentary evidence continues to

be. There are pay slips which give no address. There are some bank statements for both the appellant and sponsor which provide addresses but no new documents in joint names. The same BT bill for December 2011 is adduced which was before the respondent. Given that the evidence was criticized by the respondent and that the absence of evidence in joint names was noted, nothing new has been submitted to show any personal or financial commitment. There is still no tenancy agreement and still no supporting statements from friends. Copies of three photographs are adduced (two taken on the same date) but without passport photographs to compare these to, I cannot say that they are of the sponsor and the appellant. I am not told when they were taken. The impression left by the nature of the evidence is that the appellant and sponsor could be living as co-tenants in the same property. There is certainly nothing before me to suggest that they are in a relationship, still less that it is a durable one.

35. For all these reasons, the appeal does not succeed.

### **Decision**

36. I set aside the decision of the First-tier Tribunal because it made material errors of law. I re-make the decision and dismiss the appeal.

### **Anonymity order**

37. There has been no request for an anonymity order at any stage and I see no reason to make one.

**Signed:**



**Dr R Kekić**  
**Judge of the Upper Tribunal**

6 September 2018