



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

Appeal Number: EA/01393/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 28 February 2019**

**Decision & Reasons
Promulgated
On 15 March 2019**

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

**MR ADEDIRE ALIU BADRU
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Burrett, Counsel, Direct Access

For the Respondent: Mr T Lindsay, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Nigeria. His date of birth is 12 September 1982.
2. The Appellant made an application on 8 November 2017 for a permanent residence card under the European Economic Area (EEA) Regulations 2016 on the basis that he had a retained right of residence following his divorce from an EEA national, [NC], and that he qualified for permanent residence pursuant to Regulation 15(1)(f) of the 2016 Regulations. His application was refused by the Secretary of State on 18 January 2018. The Appellant

appealed against that decision. His appeal was dismissed by First-tier Tribunal (FTT) Judge Richards-Clarke following a hearing on 28 June 2018 in a decision that was promulgated on 9 July 2018.

3. The Appellant was issued with a residence card under the 2006 Regulations on 11 October 2013 on the basis that he was in a durable relationship with Ms [C]. The Respondent decided that there was no evidence that the Appellant was married as claimed. His marriage by way of proxy in Nigeria had never been accepted by the Home Office. The Respondent decided that the Appellant was not a family member of an EEA national and did not qualify for permanent residence.
4. The Appellant gave evidence before the FTT adopting his witness statement as evidence-in-chief. The Appellant's evidence was that he married Ms [C] in January 2009 by way of a proxy marriage in Nigeria. They remarried on 27 March 2012 again by way of a proxy marriage in Nigeria. The second marriage took place because the Respondent did not accept the validity of the first marriage in 2009. There was, as I understand, some evidence before the FTT that the 2012 marriage had taken place; however, the Appellant did not produce a certificate relating to the 2009 marriage. I was told by Mr Burrett that the Appellant has now obtained the original certificate, which, he asserts, was before the Family Court South West Divorce Unit. The thrust of the Appellant's case was that it had been accepted by the family court that the marriage in 2009 was valid because on 15 March 2017 it issued a decree absolute dissolving that marriage. This document was before the FTT.

The Decision of the FTT

5. The FTT made findings recorded at paragraphs 20 to 26 of the decision. The judge was not satisfied that the decree absolute issued by the family court established that the marriage in 2009 was in accordance with the laws of Nigeria. The Appellant did not produce his marriage certificate or indeed, as noted by the judge, any expert evidence to show that the 2009 marriage was in accordance with the laws of Nigeria. There was no reference to any evidence, from the Nigerian High Commission regarding the requirements to be met for a proxy marriage to be accepted as valid in Nigeria.
6. The judge concluded that he was not satisfied that the Appellant had discharged the burden of proof that the 2009 proxy marriage was in accordance with the laws of Nigeria. The Appellant was not a family member under regulation 7 and not able to qualify for a retained right of residence pursuant to regulation 10 (or permanent right of residence pursuant to Regulation 15).

The grounds of appeal

7. The grounds relied on by Mr Burrett assert that the decree absolute was evidence that the Appellant was legally married because the family court

must have been satisfied that there was a valid marriage before issuing a decree absolute.

Conclusions

8. Permission was granted by UTJ Grubb. He decided that on the material before him the ground was arguable. However, he went on to state:

“However, I enter these caveats: (1) the UT will no doubt be assisted by any material to support the contention that the English court’s decision is predicated on a conclusion that the marriage was valid in Nigeria; and (2) even if the marriage is ultimately accepted, the judge did not resolve the issue of whether the Appellant’s spouse was exercising treaty rights at the relevant time and which will have to be proved if he is to succeed in his appeal.”
9. The Appellant did not rely on any material as contemplated by UTJ Grubb in the grant of permission. There was no evidence that there has ever been a judicial finding that the marriage in 2009 was valid in accordance with the laws in Nigeria. A decree absolute is capable of supporting a marriage being in accordance with Nigerian law, but the weight to attach to it is a matter for the judge. The judge was entitled to conclude that the decree absolute was not sufficient to discharge the burden of proof in this case. There was no evidence before the FTT of the material before the family court. There was no evidence that the family court made findings of fact. There was no reason for the family court to go behind the agreement of the petitioner and respondent (to the divorce petition) that the marriage was valid. It was not an issue in the divorce proceedings.
10. Moreover, the decree absolute dissolved the 2009 marriage. It is not clear from the evidence that was before the FTT the status of the 2012 marriage and whether this was a matter brought to the attention of the family court. There was no evidence of the impact of this on the 2009 marriage and or the decree absolute.
11. The decision is lawful and sustainable. The weight to attach to the decree absolute was a matter for the judge. His findings are grounded in the evidence and adequately reasoned. The judge did not go on to make a finding about whether the EEA national was exercising treaty rights at the relevant time. However, the appeal, as the judge found, could not succeed because the Appellant was unable to establish that the marriage was in accordance with the laws in Nigeria.

Notice of Decision

The appeal is dismissed. The decision of the FTT to dismiss the Appellant’s appeal is maintained.

No anonymity direction is made.

Signed Joanna McWilliam
2019

Date 13 March

Upper Tribunal Judge McWilliam