



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: EA/00050/2021**

THE IMMIGRATION ACTS

**Heard at Field House
On 11 January 2022**

**Decision & Reasons Promulgated
On 27 January 2022**

Before

**UPPER TRIBUNAL JUDGE KEBEDE
DEPUTY UPPER JUDGE TRIBUNAL HARIA**

Between

**MR GURVIR SINGH
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: None

For the Respondent: Mr Kotas, Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. The appellant is an Indian national. He appeals, with permission granted by First - tier Tribunal Judge Ford, against the decision of First - tier Tribunal Judge G. A Black promulgated on 12 May 2021 dismissing his appeal under the Immigration (EEA) Regulations 2016 against a decision of the respondent to refuse to issue him with a residence card as the spouse of an EEA national.

2. The appellant applied for an EEA residence card as the spouse of Leila Gombos a Hungarian national in an application of 27 October 2020. His application was made on the basis of a marriage conducted through proxy in India. In support of his application he produced his marriage certificate.
3. The respondent refused the appellant's application on 25 November 2020 as the respondent did not accept the document provided as evidence of the marriage because India does not recognise proxy marriages.
4. The appellant appealed against the respondent's decision. The appeal was listed to be determined on the papers and came before Judge Black. The judge dismissed the appeal. In so doing, she found that matters of foreign law are questions of fact for the Tribunal to determine and that it is for the appellant to prove the facts relied on. Judge Black noted that whilst the appellant had provided some evidence confirming the marriage took place there was no evidence from a competent authority to confirm that a proxy marriage in India was valid.
5. The appellant sought permission to appeal to the Upper Tribunal on the grounds that the Judge had failed properly to consider the grounds of appeal and the preliminary argument of appeal, together with the documents provided including the marriage certificate, memorandum of marriage, affidavit of the head of the village and the confirmation letter from the Registrar of marriages, all of which showed that the marriage was legally valid in India.
6. Permission was granted in the First - tier Tribunal on 11 June 2021. The respondent filed a rule 24 response resisting the appeal.
7. The matter was listed for hearing and came before this panel.
8. The hearing was listed to start at 2:30. The appellant did not attend the hearing and was not represented. The Respondent was represented by Mr Kotas. The Tribunal having allowed time for the late attendance of the appellant checked the file and confirmed the Notice of Hearing had been served properly on the appellant. The Tribunal had not been notified of any reason for the appellant not attending the hearing.
9. The Home Office Presenting Officer was able to provide the Tribunal with a telephone number for the appellant. The Tribunal clerk called the number provided but there was no response.
10. In the circumstances the Tribunal proceeded with the hearing in the absence of the appellant on submissions only.
11. The appellant's case is that he is lawfully married to Leila Gombos and that the marriage took place on 13 March 2020 and was registered on 16 March 2020 at the registrar office of SAS Nagar (Mohali). The marriage was conducted by proxy in Mohali India.

12. Mr Kotas relied upon the respondent's Rule 24 response and referred the panel to the headnote in TA and Others (Kareem explained) Ghana [2014] UKUT 00316 (IAC) which states:

"Following the decision in Kareem (proxy marriages - EU law) [2014] UKUT 24, the determination of whether there is a marital relationship for the purposes of the Immigration (EEA) Regulations 2006 must always be examined in accordance with the laws of the Member State from which the Union citizen obtains nationality."

13. Mr Kotas submitted that the issue was as recognised by Judge Black in the last paragraph of her decision that there was no evidence to show whether a proxy marriage is recognised by Hungarian Law. Further and for completeness Mr Kotas submitted that the letter from the Civil Registration Services of S.A.S NAGAR- MOHALI- PUNJAB, merely states that the marriage is valid. This is a statement without an explanation of the relevant provisions and on what basis the marriage is valid bearing in mind the respondent specifically stated that proxy marriages are not recognised in Indian law. Mr Kotas submitted that the findings were open to Judge Black on the evidence.

Discussion

14. In Cudjoe (Proxy Marriages - burden of proof) [2016] UKUT 00180 (IAC) the Upper Tribunal found that:

"1. It will be for an appellant to prove that their proxy marriage was in accordance with the laws of the country in which it took place, and that both parties were free to marry. The burden of proof may be discharged by production of a marriage certificate issued by a competent authority of the country in which the marriage took place, and reliance upon the statutory presumption of validity consequent to such production. The reliability of marriage certificates and issuance by a competent authority are matters for an appellant to prove

2. The means of proving that a proxy marriage was contracted according to the laws of the country in which it took place is not limited to the production of a marriage certificate, as is recognised in Kareem (Proxy marriages - EU law) [2014] UKUT 00024 (IAC)."

15. The issue before the First - tier Tribunal was whether the evidence produced by the appellant supported the assertion that the proxy marriage undertaken between the appellant and EEA national in India was sufficient to establish the validity of that marriage.

16. The Upper Tribunal in Kareem [2014] gives the following guidance:

"a. A person who is the spouse of an EEA national who is a qualified person in the United Kingdom can derive rights of free movement and residence if proof of the marital relationship is provided.

b. The production of a marriage certificate issued by a competent authority (that is, issued according to the registration laws of the country where the marriage took place) will usually be sufficient. If not in English (or Welsh in relation to proceedings in Wales), a certified translation of the marriage certificate will be required.

c. A document which calls itself a marriage certificate will not raise a presumption of the marriage it purports to record unless it has been issued by an authority with legal power to create or confirm the facts it attests.

d. In appeals where there is no such marriage certificate or where there is doubt that a marriage certificate has been issued by a competent authority, then the marital relationship may be proved by other evidence. This will require the Tribunal to determine whether a marriage was contracted.

e. In such an appeal, the starting point will be to decide whether a marriage was contracted between the appellant and the qualified person according to the national law of the EEA country of the qualified person's nationality.

f. In all such situations, when resolving issues that arise because of conflicts of law, proper respect must be given to the qualified person's rights as provided by the European Treaties, including the right to marry and the rights of free movement and residence.

g. It should be assumed that, without independent and reliable evidence about the recognition of the marriage under the laws of the EEA country and/or the country where the marriage took place, the Tribunal is likely to be unable to find that sufficient evidence has been provided to discharge the burden of proof. Mere production of legal materials from the EEA country or country where the marriage took place will be insufficient evidence because they will rarely show how such law is understood or applied in those countries. Mere assertions as to the effect of such laws will, for similar reasons, carry no weight.

17. In this case, it is clear that Judge Black considered all the evidence, since at paragraph 4 of the decision she referred specifically to the evidence, including the preliminary argument of appeal and the documents provided, the marriage certificate, the memorandum of marriage, affidavit of the head of the village and the confirmation letter from the Registrar of marriages.
18. At paragraph 8, Judge Black considered the marriage certificate and found it to be at odds with the preliminary argument which stated that the marriage took place on 3.6.2020 and was registered on 5.6.2020.
19. At paragraph 9, Judge Black stated again that she had considered all the evidence. Judge Black correctly sets out the law at paragraphs 10 and 11 and has applied the law to the facts and found that the appellant has not provided evidence to show that proxy marriages are lawful and valid in India.

20. The burden of proof is on the appellant. Judge Black clearly had doubts as to the marriage certificate and as stated in Kareem [2014] *“It should be assumed that, without independent and reliable evidence about the recognition of the marriage under the laws of the EEA country and/or the country where the marriage took place, the Tribunal is likely to be unable to find that sufficient evidence has been provided to discharge the burden of proof. Mere production of legal materials from the EEA country or country where the marriage took place will be insufficient evidence because they will rarely show how such law is understood or applied in those countries. Mere assertions as to the effect of such laws will, for similar reasons, carry no weight.”*
21. As clarified by the Court of Appeal in Awuku v SSHD [2017] EWCA Civ 178, *“In the law of England and Wales the general rule is that the formal validity of a marriage is governed by the law of the country where the marriage was celebrated (“the lex loci celebrationis”)*”.
22. Contrary to the assertion in the grounds, there is nothing in the documents before the First-tier Tribunal which demonstrated that proxy marriages are valid in India. Judge Black properly found that to be the case and was entitled to conclude as she did. We reject the assertion that Judge Black erred in law.

DECISION

23. The making of the decision of the First - tier Tribunal did not involve an error on a point of law. We do not set aside the decision. The decision to dismiss the appeal stands.

Signed



Deputy Upper Tribunal Judge Haria
January 2022

Dated 12