Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/21333/2012

THE IMMIGRATION ACTS

Heard at Field House	**Oral Determination**
On 5 June 2014	**Promulgated On 15th July 2014**

Before

UPPER TRIBUNAL JUDGE JORDAN

Between

MRS ETINOSA HELEN IKPONMWOSA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr L. Youssefian, D J Webb & Co., Solicitors
For the Respondent: Mr L. Tarlow, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Rimington whose determination was promulgated on 4 January 2013. The issue before the First-tier Tribunal was whether the appellant was entitled to recognition as a person married to an EEA national.

2. The appellant applied for a residence card as confirmation of a right of residence as the family member of an EEA national who was himself a

qualified person. The appellant's spouse is a German national exercising treaty rights in the United Kingdom.

3. The Secretary of State took the view that the appellant had failed to produce a valid marriage certificate as evidence that the appellant was related as she claimed as a spouse of an EEA national. Accordingly the application for a residence card was refused.

4. It was decided by Judge Hall sitting as a Deputy Judge of the Upper Tribunal in a determination made on 9 March 2013 that there was an error of law and the determination of Judge Rimington was set aside.

5. Since the decision was made by Judge Hall we have the decision of the Upper Tribunal in **Kareem (Proxy marriages - EU law) Nigeria [2014] UKUT 24 (IAC)**. That appeal was decided on 16 January 2014. It was a case which dealt with circumstances which are not dissimilar from the circumstances in our present case in that it concerned a proxy marriage conducted in Nigeria.

6. In the case of this appellant the proxy marriage was conducted in Lagos State and in the Agege local government area. It is said it was conducted on 19 November 2011. The application is made on the basis that this is a valid marriage. In support of the application there was produced a marriage certificate which indicated that the marriage was performed according to native law and custom and that was signed on behalf of the chairman of the local government council and was stamped by the customary court.

7. There is also a document at page 5 in the bundle which is said to be a confirmation of a customary marriage between the two persons signed by the president of the Grade A customary court. In addition, at page 6 there is a letter from the registrar seeking to confirm that there was a customary marriage between the parties and, in it, it is said,

> "We repeat our previous statement that the couple are validly married in Nigerian law".

8. There are similar documents, all suggesting that the marriage was conducted appropriately in accordance with customary law. In addition to that there is a letter from the Benin Traditional Council which speaks of the way that marriages can be conducted in order for them to be a valid marriage.

9. There is a document from Chief Ekaette Edem who confirms that the parties were married according to native law and custom on 19 November 2011. Finally, in addition to this material, there is a document from a legal practitioner who speaks about the validity of customary marriages.

10. This is plainly material which is capable of establishing that this was a customary marriage that was lawfully conducted in accordance with the law of the state in which it was celebrated in 2011.

11. The point, however, that arises as a result of the judgment in **Kareem** is whether it is sufficient to rely upon that marriage certificate (or evidence of a valid marriage) or whether it is necessary to go another stage and to adduce evidence that the marriage is a marriage which would be recognised by the German authorities, the spouse being a national of Germany.

12. The relevant principles of law are set out in the italicised headnote at*:*

> *(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.*
> *…*
> *(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.*

13. The reasoning behind the decision in **Kareem** emerges from the decision itself. In paragraph 7 the panel noted that:

> 7. "Member states do not share a common definition of spouse, each state defining marital relationships for itself. For example, in several member states a person cannot be a spouse if of the same sex as the partner whilst the other member states describe such a person as a spouse."

In paragraphs 17 and 18 the following passages occur:

> "17. Spouses' rights of free movement and residence are derived from a marriage having been contracted and depend on it. In light of the connection between the rights of free movement and residence and the nationality laws of the member states, we conclude that, in a situation where the marital relationship is disputed, the question of whether there is a marital relationship is to be examined in accordance with the laws of the member

state from which the Union citizen obtains nationality and from which therefore that citizen derives free movement rights.

18. The same conclusion may readily be reached by a different route. Within EU law, it is essential that member states facilitate the free movement and residence rights of Union citizens and their spouses. This would not be achieved if it were left to a host member state to decide whether a Union citizen has contracted a marriage. Different member states would be able to reach different conclusions about that Union citizen's marital status. This would leave Union citizens unclear as to whether their spouses could move freely with them and might mean that the Union citizen could move with greater freedom to one member state than to another. Such difficulties would be contrary to fundamental EU law principles."

14. Having looked at the evidence in this particular appeal, the difficulty that the Tribunal faces is that it does not matter what the United Kingdom government consider as to the status of the marriage between the appellant and her husband because neither are British citizens. Accordingly it cannot bind any third country as to whether or not there has been a valid marriage.

15. The German authorities may take an entirely and radically different view as to whether their national is married. Accordingly there may be a fundamental divergence of view as to whether the appellant's spouse is married and whether rights of free movement are being exercised. In those circumstances there would potentially be a distinction between what the German government and what the United Kingdom government consider to be a valid marriage.

16. In my judgment the simple meaning of the decision in **Kareem** is that in order to avoid such a divergence of status there has to be some evidence where as in this case the marriage is the subject of controversy from the German state as to whether this is recognised as a valid marriage according to German domestic law. Mr Youssefian on behalf of the appellant suggests that if the Tribunal finds this is a valid marriage certificate issued by the competent authority that is sufficient, that is all that is required to be produced in accordance with paragraph b. of the italic words. The obligation to seek evidence from the EU State whose national the sponsor is does not arise where the Tribunal finds the marriage has been properly evidenced.

17. That reasoning, however, flies in the face of what the Tribunal was saying in paragraphs 17 and 18 of **Kareem.** In my judgment that overlooks what is set out in paragraph g. of the italicised words that where there is a dispute there should be sufficient evidence to discharge the burden of proof that the marriage is recognised in Germany.

18. In these circumstances I do not consider it is enough simply to produce a marriage certificate which the United Kingdom authorities may well consider to be valid. It is for the appellant, in order to establish a valid proxy marriage, to establish that, being married to a German national, the marriage is recognised in Germany.

19. At the hearing before me, the appellant's representative also makes a further point: there has been a considerable period of time when the parties have been living together in a durable relationship, and the application ought to be extended in order to admit this factor to be considered as an alternative basis of a right to remain. In my view, that cannot be right. As a matter of fact the Secretary of State this afternoon does not have the file; Mr Tarlow, who appears on behalf of the Secretary of State, cannot be expected to form a judgment as to whether or not there has been a durable relationship giving rise to an alternative right to remain.

20. Whilst this appeal has been adjourned in order for the case to be considered fully, it does not seem to me that it is either appropriate or proper to have an application made on a different basis considered under the umbrella of this appeal which was an appeal based on the fact that the appellant was claiming she had contracted a valid marriage with an EU citizen.

21. For these reasons I consider that this appeal must fail. It does not of course carry with it a removal decision and it is open to the appellant to provide the necessary evidence either as to a valid, recognised marriage or as to a remodelled application on the basis of a durable relationship. Both must remain until another day.

ANDREW JORDAN
UPPER TRIBUNAL JUDGE