Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA 30877 2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 2 May 2014	**On 26 June 2014**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

CHUKWUEMEKA JOHN EMORDI

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr R Ojukotola, legal representative from SLA Solicitors
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal by a citizen of Nigeria against a decision of the First-tier Tribunal dismissing his appeal against the decision to refuse him a residence card confirming his right to reside in the United Kingdom as the husband of an EEA national. His wife is a citizen of France. The Secretary of State was not satisfied that the appellant and his purported wife were in fact married at all in a way recognised in relevant law.
2. The appellant asked for the case to be dealt with on the papers which is a remarkable way of disposing of a case of this complexity and I am not in the least surprised that the First-tier Tribunal Judge, without the assistance of legal representation from either side, erred.
3. The clear fault of the First-tier Tribunal Judge was to take points against the appellant about which he neither had notice nor could possibly have reasonably anticipated. For example, he found that the evidence was not credible and that the marriage was not shown to be not one of

convenience and he dismissed the appeal. These findings might be an apt description of the alleged marriage but they are quite unfair in a case where the only point of contention identified by the respondent was the actual validity of the marriage. If the judge was considering making such findings he should have given the parties notice.

4. If I was satisfied that the marriage could not possibly be valid I would not be taking the course that I am but there is evidence before me which makes me think that it might be valid. There is some evidence to show that proxy marriages by customary law are valid in Nigeria provided that they are registered in a particular way and there is some evidence before me that registration has taken place here.

5. It is a matter for the appellant to decide how to prove his case but for my part it will be altogether more satisfactory if a properly qualified person learned in the laws of Nigeria and suitably experienced prepared a statement based on an examination of the evidence including the documents and expressed an opinion about the validity of the marriage. If such a document is produced and served properly on the Secretary of State in advance of the hearing it would be very difficult to go behind it unless the Secretary of State produces good contrary evidence. Conversely if such a document is missing it is the kind of omission that might be of considerable concern to a judge deciding the appeal.

6. There is an additional difficulty in this case arising from the decision of this Tribunal in **Kareem (Proxy marriages - EU law) [2014] UKUT 00024 (IAC)** which was promulgated about the time that this decision of the First-tier Tribunal was made. In **Kareem** the Tribunal decided that a proxy marriage to an EEA national is not to be recognised as a qualifying marriage unless it can be shown to be valid not only in the country of origin of the non-EEA national but also in the country of nationality of the EEA national, in this case in France.

7. Mr Ojukotola said that he is aware of the decision in **Kareem**. Indeed he was involved in the case at some stage when he was working for a different firm of solicitors. He said that it is the subject of challenge but in anticipation that it would be raised he has started the process of gathering necessary evidence to show that the marriage is recognised in France.

8. Whether or not **Kareem** had actually been promulgated by the time the First-tier Tribunal decided the case I am satisfied it would be wrong to say that the appellant should have anticipated the decision when he made his application. I am satisfied that it is right in this case to give the appellant an opportunity of addressing the requirements identified in **Kareem**.

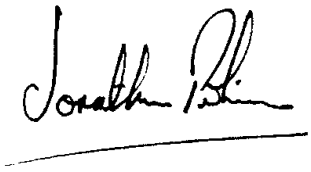
9. It follows that the First-tier Tribunal has erred in law and I set aside its decision. This is not a case that could be properly dealt with by me today. It is one of those rare cases where I am satisfied it is right to give the appellant an opportunity to better his evidence although, as will be explained to him, it can only be evidence relating to facts that predated the decision.

10. I give no further directions. It is for the First-tier Tribunal to decide how it conducts its affairs but it seems to me that this is a case where a Case Management Review hearing at an early stage would be in everybody's interests. It seems to me that this is more likely to be a case based on law and the correct interpretation of documents than on oral evidence but that is not necessarily the case, it may be oral evidence will be necessary too.

11. It follows therefore that I make a decision that the decision of the First-tier Tribunal is wrong in law. I set it aside and I rule that the case be decided again in the First-tier Tribunal.

12. I am very grateful to Mr Ojukotola who clearly is well-informed about matters relating to this case and some other cases and he has been most helpful.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



Dated 25 June 2014