



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

Appeal Number: IA/31933/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 3 June 2014**

**Determination  
Promulgated  
On 7 July 2014**

**Before**

**UPPER TRIBUNAL JUDGE ALLEN**

**Between**

**MR BENJAMIN EDOBOR EBIKUELUYE**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr R Ugoh of Liberty & Co Solicitors

For the Respondent: Ms S L Ong, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. This is the appellant's appeal against the respondent's decision of 26 June 2013 refusing to grant a residence card. He had made his application on 20 September for a residence card on the basis of being the spouse of the sponsor who is a person exercising treaty rights in the United Kingdom as

a citizen of France, and the parties said that they had married in a customary marriage by proxy in Nigeria on 16 September 2011.

2. In the Reasons for Refusal Letter the respondent considered that since there was no evidence that the couple were present at the marriage ceremony and resident in Nigeria before the wedding the marriage had not been conducted in accordance with the Nigerian Marriage Act and therefore dismissed the application and also addressed Article 8 issues.
3. The judge considered that the main issue of contention was the validity of the alleged marriage between the parties, noted what the respondent said about this, noted evidence put in on behalf of the appellant which was a certificate of registration, commented that there was nothing before him to show whether the French Republic recognised proxy marriages such as that apparently entered into by the appellant and with regard to any argument under Regulation 8(5) of a durable relationship the appellant told him that he came to the United Kingdom under a student visa, had never actually studied, had met the sponsor at a party in November 2010 and they had moved in together the following month and he was unable to produce any document that showed both their names as living together at the same premises. So he dismissed the appeal.
4. Permission to appeal was granted on the basis that the judge had arguably erred in providing a lack of reasoning for preferring what was said in the US State Department Report about the validity of proxy marriages in Nigeria as opposed to what was said by the local registrar.
5. That issue has essentially fallen away today. There is reference in the grounds to the COI Report about proxy marriages being recognised under Nigerian customary law as a form of customary law marriage and that is endorsed in the decision of the Upper Tribunal in Kareem and Ms Ong very properly does not seek to argue against that joint agreement on the evidence.
6. So it is clear that proxy marriages are recognised under Nigerian customary law as a form of customary law marriage but as Ms Ong rightly says, an ancillary matter to that is the point that is the main issue in Kareem and one can summarise the conclusion on that in paragraph 17:

“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”

and this is the starting point in this decision.

7. Back at paragraph 5 one can see the addressing of the assumption that for the purposes of EU law a Member State can use its own legal order to

determine whether or not a person is married to another, and the reason why that is not correct and the difficulties that are inherent in that approach and then the conclusion at paragraph 17 and then in paragraph 18 that the legal system of the nationality of the Union citizen must itself govern whether a marriage has been contracted.

8. The judge noted here whether as a matter of original observation or as a consequence of Kareem [2014] UKUT 24 (IAC) that it had not been shown by the appellant that proxy marriages of this kind are recognised by the French Republic and therefore the appeal could not succeed on that basis.
9. The two other matters are first the matter of the Regulation 8(5) issue and there the evidence was somewhat scant, as the judge said. There is a little more to it than the appellant himself seems to have accepted because there is a British Gas bill in the joint names of the couple from 10 December 2013 but otherwise there was evidence relating to payslips and other matters referring to the sponsor who unfortunately could not be at the hearing because her mother was ill in Nigeria and she had gone to visit her.
10. But I think that it was open to the judge to find that Regulation 8(5) had not been shown to be satisfied in this case in that the evidence was simply lacking in that regard, and in light of the findings about it not being shown that there was a durable relationship and about the difficulties of showing the validity of the marriage, the brief findings on Article 8 I think were properly made also, and for all these reasons therefore I consider that he was entitled to dismiss the appeal as he did, and so his decision is upheld.

Signed

Date

Upper Tribunal Judge Allen