



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

Appeal Number: IA/30407/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 19 February 2015**

**Determination
Promulgated
On 19 February 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE E B GRANT

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR TOSIN EMMANUEL FALADE

Respondent

Representation:

For the Appellant: Mr M Shilliday, Senior Presenting Officer

For the Respondent: No appearance

DETERMINATION AND REASONS

The Background to this Appeal

1. The respondent applied for a residence card as confirmation of the right to reside in the United Kingdom as the spouse of an EEA national exercising treaty rights in the United Kingdom. That application was refused and the respondent's appeal came before First-tier Tribunal Judge BA W Khan on 29 October 2014. The appeal was heard on the papers. The respondent did not attend or give evidence at his appeal. In a decision promulgated on 18 November 2014 the appeal was allowed.

2. The appellant sought permission to appeal arguing that the judge had made a material misdirection of law in failing to follow and apply **Kareem (Proxy marriages - EU law) [2014] UKUT 00024**.
3. Permission to appeal was granted by First-tier Tribunal Judge Murray on 6 January 2015 thus the matter came before me to determine whether the decision of Judge Khan contains an error of law.
4. The respondent did not attend the appeal hearing nor did he file submissions in response to the application for permission to appeal. No further evidence was heard from the respondent.
5. The appellant made an application pursuant to Rules 15 (2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 to adduce additional evidence which comprised an earlier refusal letter and an earlier determination of FTTJ Jones in IA/03083/2013 in which he found that the respondent had entered into a marriage of convenience. Because the respondent requested his appeal be determined on the papers the earlier determination had not been lodged with the appeal file. The appellant had endeavoured to notify the respondent's representative of the additional evidence for the error of law hearing but there were no telephone contact details supplied by Lannex Immigration and Legal Advice who had not represented the respondent at the appeal hearing before FTTJ Khan. I decided that the additional evidence should be admitted and granted the appellant permission to adduce the same.

The Decision of Judge A W Khan

6. The core findings of Judge Khan with regard to the customary marriage in Nigeria is set out at paragraphs 6 to 9 in which the Judge said the first thing for him to determine was whether the parties had entered into a customary marriage by proxy in Nigeria. He considered the registration document adduced and disagreed with the respondent that there was some information missing from it before going on to find that the respondent met the relevant requirements of Nigerian law under Part 7 section 42 of the Laws of the Federation of Nigeria 2004.
7. The Tribunal in **Kareem (Proxy marriages - EU law) [2014] UKUT 00024 (IAC)** have given guidance concerning the marriage of an EEA national to a non-EEA national. What the Judge was required to do was to assess whether the marriage contracted was recognised as valid in France. Kareem established 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.

8. In this case as can be seen from the decision, Judge A W Khan did not take into account **Kareem (Proxy marriages - EU law) [2014] UKUT 00024 (IAC)**. Had he done so I am satisfied that he could not have concluded that the appellant and the qualified person had shown they had contracted a valid marriage recognised by the laws of France which was a requirement for the marriage to be recognised in the United Kingdom.
9. Apart from falling into legal error in failing to apply and follow Kareem, arguably because the respondent requested this appeal be determined on the papers FTTJ Khan was not made aware of the earlier appeal before FTTJ Jones in which the respondent was found to have entered a marriage of convenience. Those findings should have formed the starting point of the assessment by FTTJ Khan. He cannot be criticised for failing to make findings on an issue of which he was unaware because neither party brought it to his attention. Nevertheless it is clearly relevant to the outcome of the appeal because the second application made by the respondent was in respect of his marriage to the same spouse and FTTJ Jones in the earlier appeal found that was a marriage of convenience a finding I adopt in this decision.
10. For all of these reasons I am satisfied that the judge erred in law for the reasons set out in the grounds seeking permission to appeal. In the circumstances I set aside the decision and remake the decision by dismissing the appeal.

Conclusions

11. The judge made an error of law and the decision is set aside.
12. I remake the decision dismissing the appeal.

Fee Award

13. The respondent's appeal has been dismissed there can be no fee award.

Signed

19 February 2015

Deputy Upper Tribunal Judge E B Grant