



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/45129/2013

THE IMMIGRATION ACTS

Heard at Field House  
On 16<sup>th</sup> January 2015

Determination Promulgated  
On 20<sup>th</sup> January 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE LINDSLEY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MS OLABISI ROSELINE ADELAJA  
(NO ANONYMITY ORDER MADE)

Respondent

**Representation:**

For the Appellant: Mr S Osifeso, of Lannex Immigration & Legal Advice Services

For the Respondent: Mr T Melvin, Home Office Presenting Officer

**Interpretation:**

Ms H Ter Meulen, in Dutch

DECISION AND REASONS

*Introduction*

1. Although this is an appeal by the Secretary of State I will refer to the parties as they were before the First- tier Tribunal.

2. The appellant is a citizen of Nigeria born on 12<sup>th</sup> October 1972. She applied for a residence card on 15<sup>th</sup> May 2012 as the spouse of Mr Fritzgerald Alberto Hoyer, a citizen of the Netherlands born on 7<sup>th</sup> August 1970 who is said to be exercising Treaty rights in the UK. The couple had had a Ghanaian customary marriage by proxy on 21<sup>st</sup> October 2011. The application was refused on 8<sup>th</sup> October 2012. Her appeal against the decision was allowed by First-tier Tribunal Judge Handley in a determination promulgated on the 19<sup>th</sup> May 2014.
3. Permission to appeal was granted by Judge of the First-tier Tribunal Haynes on 2<sup>nd</sup> July 2014 on the basis that it was arguable that the First-tier judge had erred in law in failing to apply Kareem (Proxy marriages - EU law) [2014] UKUT 00024. I found that the First-tier Tribunal had erred in law on 22<sup>nd</sup> August 2014 for reasons set out in my decision with is appended at Annex A to this determination, and set the determination of Judge Handley aside in its entirety.
4. The matter came before me to remake the decision. The rehearing took place on 10<sup>th</sup> October 2014 and 16<sup>th</sup> January 2015. The hearing on 10<sup>th</sup> October 2014 was adjourned when it became clear that Mr Hoyer could not speak Spanish to a sufficient level to understand the interpreter. On 28<sup>th</sup> November 2014 there was a for mention hearing at which the respondent confirmed that she did not wish to re-interview Mr Hoyer with a Dutch interpreter prior to concluding the re-making hearing.
5. Mr Osifeso confirmed that the appellant was arguing only that she was entitled to a residence permit as a durable partner of Mr Hoyer under Regulation 8(5) of the Immigration (EEA) Regulations 2006 (henceforth the EEA Regulations) as she was not in a position to show that her Ghanaian proxy marriage was valid in the Netherlands, and thus could not meet the requirements for a residence card as a wife following Kareem (Proxy marriages - EU law).

#### *Evidence*

6. The appellant attended the Tribunal and gave evidence. She confirmed her name and address, and that her statement was true and correct and her evidence to the Tribunal. In her statement in summary she says as follows. She was raised in Nigeria and then relocated to the UK. She lives at Ethnard Road in Peckham with her husband Mr Fritzgerald Alberto Hoyer who was is a Dutch citizen working in the UK. They were married under the customary laws of Ghana (her second home) on 21<sup>st</sup> October 2011, and although they were not present they had a small party in the UK with friends and family members. They decided to have a big wedding party when they could afford it and when they were both able to travel. They were very disappointed by the refusal decision. She felt it was unfair to judge the relationship based on questions at interview as there had been problems for her husband with the Spanish interpreter and they were both nervous, not having experienced such a situation before.
7. In oral evidence the appellant added, in summary, as follows. She had found the interviewer had asked questions very fast at the interview and she felt unprepared and did not know what to say. She said that Mr Hoyer had lived at the address in

Ethnard Road before she had. Before she moved in with Mr Hoyer she had lived at Chillam House on the Old Kent Road. Mr Hoyer always went to work at 4am in the morning. Mr Hoyer's birthday was on 7<sup>th</sup> August 1970. This year she had made a cake and taken pictures, and cooked food. This was not done precisely on his birthday but on the Saturday after his birthday.

8. Her Nationwide bank statement was in her maiden name as she did not use a "married" name.
9. Mr Hoyer and she lived in a shared flat with others from Poland. She does not know the names of the other flat sharers, and had not noticed them on letters. The flat has three bedrooms and a shared kitchen and bathroom. There is a TV in the shared sitting room. She has shelf number one for her pots pans and food items in the kitchen. There is a washing machine in the flat. Their bedroom has black and brown curtains; a bed with sheets and duvet; no bedside table; no alarm clock; and no TV. She had brought a freezer for the flat.
10. She has a sister called Gloria who visited the UK but who lives in Nigeria. No other relatives have visited from Nigeria. She has no relatives in the UK. She has a friend in the UK called Miriam. Mr Hoyer has a friend called Daniel who visits – but the last time he was there was a long time ago for Mr Hoyer's birthday.
11. The photos taken on 5<sup>th</sup> October 2012 were taken on an outing where they saw funny things.
12. Mr Fritzgerald Alberto Hoyer attended the Tribunal and gave evidence through the Dutch interpreter whom he confirmed he understood. He confirmed his name and address, and that his statement was true and correct and his evidence to the Tribunal. In his statement, in summary, he says as follows. He is very much in love with the appellant who has shown herself to be a caring and gentle wife compared to his previously relationships. He found it difficult to answer the questions at interview because of problems with the Spanish interpreter and because he found the interview context strange and difficult.
13. In oral evidence he added as follows. He had first come to the UK in 2003. He was last in the Netherlands in 2014, before his birthday in about June. He went to visit his two children there. His children live with their mother, to whom he was never married. He first met the appellant in August 2011 in a supermarket. He understood the appellant thought they had met in August 2010 but he thought it was August 2011.
14. They had started to live together in October 2011. They had lived together only at Ethnard Road. The accommodation was a one bedroom flat with living room on the ground floor. Above them lived a couple but he did not know them. He and the appellant rented the flat. He did not know the woman they rented from as the appellant made all the arrangements with money. He knew nothing about the tenancy agreement, rent book or rent payment receipts as the appellant made these arrangements. The rent was £500 a month. The appellant had lived there before he

had: he had joined her there when they started to cohabit, so the appellant had sorted out the tenancy agreement with the landlord etc. He gives the appellant money to pay the landlord.

15. His pet name for the appellant is “mummy” and hers for him is “Bato”. Bato is a Spanish word with no particular meaning. He thought it was normal that his surname was on the birthday cake rather than his pet name. He denied that the cake picture had been taken to make it look like a genuine relationship. No witnesses had come to the Tribunal to confirm their relationship was genuine, although he did have a friend. He had not asked a friend to come as he had not been told this was needed by the Tribunal. The appellant was interested in African cooking. She also did a bit of sport. She does not drink alcohol. They had celebrated her birthday on 12<sup>th</sup> October. A male cousin of his wife and friends had come around. The cousin was called Jahlove. His wife gets on well with Jahlove, who is about 46 years old. He did not know Jahlove’s status in the UK. He had given his wife £50 for her birthday. He did not know what she had done with the money. He did not know her favourite perfume, and did not buy women perfume. He did not know about the appellant’s friends in the UK but there were some at the birthday party.
16. He and the appellant had not really celebrated Christmas. He was a Catholic by upbringing. He thought, but was not sure, that his wife was probably a Catholic too. She goes to church but only rarely but he could not be more precise about how often he meant. They had not married legally in the UK as he believed they could not do this.
17. The appellant had her parents in Nigeria. She had family in Ghana. They had got married in proxy as this was the appellant’s idea, and his also because they could not go to the Netherlands to marry or marry in the UK. They had not made enquiries at a registry office in the UK however. The appellant’s mother had got the papers for the Ghanaian marriage. Her parents were living in Ghana.
18. The appellant had not given him money to come to the Tribunal: they both had Oyster cards. He was being truthful that he was in a genuine relationship with the appellant.

#### *Submissions*

19. Mr Melvin submitted that he relied upon the refusal letter dated 5<sup>th</sup> October 2013. In summary this document says as follows. It incorporates the entire marriage interview (conducted with the Spanish interpreter), and high-lights with shading the responses said to be inconsistent.
20. It was not credible that they would marry in Ghana as neither is a Ghanaian national.
21. It is noted that the appellant and Mr Hoyer were unable to recall any important memorable events in their life together as husband and wife. They could not name each other’s friends and could not answer how they spent birthdays together. They could not say what they had done the day before the interview or in the days before

the interview. It was contended that photographs provided are “staged” and noted that Mr Hoyer said pictures of the appellant’s sister Gloria were a friend called “mammy”. Mr Hoyer said a man in the pictures was a friend of his called Paou, whereas the appellant said he was a friend of her sister Gloria from Nigeria.

22. Mr Hoyer did not know about previous applications for a residence card or that he was married to the appellant in a country other than the UK. He did not know the appellant’s nationality or where she was born. It was not believed that Mr Hoyer lived with the appellant as he did not know the train station used to travel to the interview and could not name the road/area of the Asda in which the appellant and he claimed to have met. He did not know how much rent was paid for the flat, or how or when he moved his belongings into the flat.
23. The appellant did not know about a large scar in an intimate area of his body that Mr Hoyer claimed to have. She also did not know the name of the company or gym he works for.
24. It was contended that the appellant and Mr Hoyer had rehearsed the answers to questions and gave these rather than answer the questions put to them, for instance the appellant gave the bus number which Mr Hoyer used to go to work rather than giving the name of the gym when asked that question.
25. Mr Melvin pointed to further discrepancies in the evidence at the Tribunal. The appellant said the relationship began in 2010 where as Mr Hoyer said 2011. The appellant had said at interview that Mr Hoyer had lived there before she moved in but before the Tribunal Mr Hoyer had said the opposite. The appellant and sponsor were also very vague in their evidence: Mr Hoyer did not know full names for the appellant’s cousin or his status in the UK; Mr Hoyer did not know what the appellant bought with her birthday money; Mr Hoyer did not know the appellant’s religion or how often she went to church.
26. In addition there was no witness evidence despite their being said to be friends of the couple and a cousin of the appellant in the UK.
27. There was very little evidence which showed that the couple lived at the same address. The only joint correspondence was a telephone bill. There was no tenancy agreement. The photographs of the cake were not good evidence as it was not convincing that the cake had Mr Hoyer’s surname and initials on it rather than his pet name.
28. This was a relationship claimed simply to obtain an EU residence card for the appellant and the appeal should be dismissed.
29. Mr Osifeso made oral submission and relied upon his skeleton argument. He submitted that the appellant and Mr Hoyer were lawfully married by the proxy marriage in English law. The marriage simply was not one which could afford the appellant an EU residence card due to the decision of the Tribunal in Kareem (Proxy marriages – EU law). It was however significant in considering whether the couple

were in a durable relationship to consider that they were married. The couple were clear on the date they started to cohabit in October 2011 and knew each other's dates of birth. The interview responses of Mr Hoyer are not to be relied upon because of problems with the Spanish interpreter, and generally weight should not be given to the interview as the appellant and Mr Hoyer were nervous. There was evidence to show they cohabited: BT bills, bank statements and Mr Hoyer's payslips. Mr Osifeso submitted that there were no serious or material contradictions in the evidence.

30. I pointed out that there were a lot of contradictions in the evidence of the appellant and Mr Hoyer: some of which had been correctly identified by Mr Melvin, and that I would have to consider this in making my decision. I did this so Mr Osifeso was aware that this would be my starting point and so he could make further submissions if he so wished. He asked that I consider the case of Papajorgji (EEA spouse - marriage of convenience) Greece [2012] UKUT 00038.
31. At the end of the hearing I reserved my determination.

### *Conclusions*

32. The only question in this appeal is whether the appellant qualifies for consideration as to whether an EEA residence permit should be issued to her by the respondent as a durable partner under Regulation 8(5) of the EEA Regulations. There is no human rights appeal in this case, and no submissions have been made under Article 8 ECHR by either party. The Secretary of State argues that the appellant is not entitled to a residence card as her supposed durable relationship is in fact one of convenience, and a sham. The appellant has conceded that she cannot succeed in relation to her original contention that she was entitled to a residence permit as a spouse under Regulation 12 of the EEA Regulations.
33. I am satisfied that Mr Hoyer is a Dutch national as I have seen a copy of his passport and this is not contested by the respondent. I am also satisfied that he is a qualified person exercising Treaty rights in the UK as a worker as I have seen extensive evidence of his work in the form of employer's letters, payslips, bank statements showing payments in of salary and a letter from HMRC.
34. It is for the appellant to show on the balance of probabilities that she is in a durable relationship with Mr Hoyer. However I accept that she only need show her relationship is not one of convenience if the respondent raises evidence to support this allegation, in accordance with the Tribunal decision in Papajorgji. It is clear in this case that the respondent does contend that the appellant's relationship is a sham on the basis of the lack of evidence to support it and the inconsistent answers at interview and before the Tribunal. It is therefore for the appellant to respond to this evidence which I find meets the test set out in Papajorgji justifying reasonable suspicion that the marriage/ relationship was entered into predominantly to secure residence rights. I have considered the evidence as a whole to assess whether the appellant has shown she has, on the balance of probabilities, a durable relationship with Mr Hoyer and whether the evidence as a whole shows that the relationship is one of convenience.

35. I will not place any weight on answers given by Mr Hoyer at interview through a Spanish interpreter as these could be confused due to his having insufficient ability in the Spanish language to answer questions reliably. It was quite clear he was not sufficiently fluent in Spanish to give evidence before the Tribunal, whereas he was fully able to do so in Dutch. I appreciate that the appellant may have been nervous at interview but I do not find this a reason why she would not have been able to give correct answers at interview or if there were errors for this reason that these would not have been specifically corrected in her witness statement. As such I take note of the answers she gave at interview none of which were specifically said to be wrong in her witness statement.
36. I do not find the appellant has shown on the balance of probabilities that she is in a durable relationship with Mr Hoyer. This is for the following reasons.
37. The appellant and sponsor have failed to provide detailed coherent statements or oral evidence setting out their relationship from its start to the current day.
38. The evidence the appellant and sponsor have given is full of significant inconsistencies. Some examples are as follows. There is doubt as to whether the relationship started in 2010 (evidence of the appellant) or 2011 (evidence of Mr Hoyer). The appellant was not aware that Mr Hoyer had travelled back to Holland to see his children in June 2014 (his evidence to the Tribunal); she stated at interview that he had never been back there since 2010. The appellant and Mr Hoyer gave contradictory evidence about the address they both say they have lived at since 2011. The appellant said at interview that Mr Hoyer had lived there and she had moved in when they started to cohabit, whereas Mr Hoyer said in his evidence to the Tribunal that he knew nothing about the landlord and tenancy agreement as the appellant had made these arrangements as she had lived there before he moved in when they started to cohabit. The appellant said Mr Hoyer does not have friends at the interview, but then claimed he had one called Danny in her evidence before the Tribunal. Before the Tribunal the appellant said their flat had three bedrooms and a sitting room whereas Mr Hoyer said it had one bedroom and a sitting room. The appellant said in evidence to the Tribunal she had no relatives in the UK and none who had visited her from abroad bar her sister Gloria, where as Mr Hoyer said she had a male cousin in the UK called Jahlove.
39. Mr Melvin also correctly submits that Mr Hoyer did not know things about the appellant which might be expected of a couple in an intimate relationship which Mr Hoyer has described in glowing terms in his witness statement. He did not know what his wife had spent her birthday money on and more importantly he was very uncertain of his wife's religious faith despite the fact that he said she attended church from time to time and being able to say he was a Catholic by upbringing.
40. The appellant and Mr Hoyer have produced a few photographs to support their claim to be in a durable relationship. There are photographs of Mr Hoyer's birthday in August 2014. Mr Melvin rightly points out it is unusual to put initials and a surname on a birthday cake when Mr Hoyer claims in evidence to the Tribunal that

the appellant calls him by a pet name. In evidence to the Tribunal in October 2014 (thus only a couple of months after the event) the appellant said that the event did not take place exactly on Mr Hoyer's birthday but instead on the Saturday afterwards, however the photographs of the event are all clearly marked with the date as 7<sup>th</sup> August 2014 which was a Thursday. There are a few other photographs of the appellant and Mr Hoyer in central London on 5<sup>th</sup> October 2012; in a canteen on 6<sup>th</sup> November 2011 and of them on 3<sup>rd</sup> March 2011 in what looks like a backyard, a street and a sitting room. There are notably none of the celebration the appellant claims took place after the proxy marriage.

41. As Mr Melvin has submitted there is absolutely no family endorsement of the relationship and no statements or letters from friends. This is despite both parties naming friends in the UK and friends apparently featuring in the photographs; and the appellant having one or two relatives who have been in the UK, and it being said that her relatives arranged the proxy wedding in Ghana. There are no photographs of the proxy wedding or detailed affidavits. I also note that the witnesses on the marriage certificate are not the same as the names of the fathers and mothers on the statutory declaration. There are no letters from the mothers and fathers or of these witnesses despite the fact that they are said to have carried out this proxy marriage and thus to have heavily endorsed the relationship. There was no coherent explanation as to why the appellant and Mr Hoyer married by proxy in Ghana rather than Nigeria: it was said it was her "second home" but this was not explained further.
42. The documentary evidence of cohabitation is also very sparse. There is a letter from Mr Hoyer's employer Enterprise Services - Fitness First dated 9<sup>th</sup> May 2012 giving Ethnard Road as his address but it states that the writer has no personal knowledge of Mr Hoyer as she is in a payroll processing department; one of his payslips from this company has been copied on the reverse showing this address too. He is now employed by Compass Services UK Ltd and it is clear that they use this address as there are payslips and HMRC documents to Ethnard Road for 2014. Mr Hoyer's Lloyds TSB bank statements for the period November 2011 to August 2013 are also addressed to Ethnard Road. He also has provided a TSB statements from November 2013 to April 2014 to this address. The appellant's Nationwide FlexAccount statements from February 2012 to August 2013 are also addressed to Ethnard Road. There are joint BT bills from December 2011 to July 2014. None of this evidence shows anything more than it is possible that they both live at Ethnard Road, which is by all accounts a flat with at least two rooms which could be used as bedrooms; and by the appellant's account one which is a multi-occupancy dwelling. There is no joint tenancy agreement or any evidence that there is shared financial or other personal commitments.
43. On the basis of the sparse account of their relationship; the contradictions in their evidence; the lack of knowledge by Mr Hoyer regarding the appellant; and the lack of any significant corroboration of their relationship through other evidence I find that the appellant and Mr Hoyer cannot be considered credible witnesses in relation to their claimed durable relationship.



44. Having considered all of the evidence I am not satisfied that the appellant and Mr Hoyer are in the genuine intimate relationship they claim. I do not find that they have a durable relationship or that they have cohabited as a couple since 2011 as they have claimed. I find that the evidence as a whole indicates that the relationship is one of convenience. Thus the appellant has not therefore shown that she can satisfy Regulation 8(5) of the EEA Regulations.

**Decision**

1. The First-tier Tribunal erred in law.
2. The determination of the First-tier Tribunal is set aside.
3. The appeal is remade dismissing the appeal under the EEA Regulations.

No anonymity direction is made.

Signed

Date 19<sup>th</sup> January 2015

Judge Lindsley  
Deputy Upper Tribunal Judge

**TO THE RESPONDENT**  
**FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 19<sup>th</sup> January 2015

Judge Lindsley  
Deputy Upper Tribunal Judge

**Annex A:**

**DETERMINATION AND REASONS**

*Introduction*

1. Although this is an appeal by the Secretary of State I will refer to the parties as they were before the First- tier Tribunal.
2. The appellant is a citizen of Nigeria born on 12<sup>th</sup> October 1972. She applied for a residence card on 15<sup>th</sup> May 2012 as the spouse of Mr Fritzgerald Alberto Hoyer, a citizen of the Netherlands born on 7<sup>th</sup> August 1970 who is said to be exercising Treaty rights in the UK. The couple had had a Ghanaian customary marriage by proxy on 21<sup>st</sup> October 2011. The application was refused on 8<sup>th</sup> October 2012. Her appeal against the decision was allowed by First-tier Tribunal Judge Handley in a determination promulgated on the 19<sup>th</sup> May 2014.
3. Permission to appeal was granted by Judge of the First-tier Tribunal Haynes on 2<sup>nd</sup> July 2014 on the basis that it was arguable that the First-tier judge had erred in law in failing to apply Kareem (Proxy marriages – EU law) [2014] UKUT 00024.
4. The matter came before me to determine whether the First-tier Tribunal had erred in law.

*Submissions*

5. Mr Duffy relied upon the grounds of appeal. He also argued that Judge Handley had erred in law because he had referred to the wrong reasons for refusal letter. Whilst the appellant had been refused on 8<sup>th</sup> October 2012 another reasons for refusal letter had been issued, following the interview with the appellant and Mr Hoyer, on 5<sup>th</sup> October 2013. This essentially refused the appellant on grounds that her marriage was also one of convenience as well as being legally invalid.
6. Mr Osifeso accepted that Judge Handley had erred in law as he had not assessed the validity of the appellant's marriage with Mr Hoyer under Dutch law in accordance with Kareem and also the subsequent case of TA and Others (Kareem explained) [2014] UKUT 316. He had not seen the reasons for refusal letter dated 5<sup>th</sup> October 2013 however.

*Conclusions*

7. The First-tier Tribunal had erred in law in failing to be guided by Kareem in the determination of this appeal.
8. There was no evidence in the Tribunal file that the refusal letter of 5<sup>th</sup> October 2013 had been provided to the Tribunal or the appellant prior to the Upper Tribunal hearing on 22<sup>nd</sup> August 2014 so it could not be said that the First-tier Tribunal had erred in law in failing to refer to this document.

9. Judge Handley states that the responses of the appellant and Mr Hoyer to the questions at the marriage interview, as set out in the interview record form, were broadly consistent at paragraph 13 of his determination. However this evidence cannot properly be dealt with so briefly: there are some consistent answers but others regarding fundamental matters which on the face of the record do not appear reconcilable.
10. In the circumstances of the appeal not having been determined in accordance with the legal guidance provided by the Upper Tribunal with respect to proxy marriages and with factual issues arising from the marriage interview having been determined without sufficient reasons I find it appropriate to set the determination of Judge Handley aside with no findings preserved.
11. Given the lack of evidence that the refusal letter of 5<sup>th</sup> October 2013 had been served on the appellant prior to the hearing in the Upper Tribunal, and the fact that the appellant and her husband were not in attendance, I found it appropriate to adjourn the re-making hearing, particularly as Mr Osifeso requested this and Mr Duffy had not objection to this course. Both parties were happy for the appeal to be re-made in the Upper Tribunal.

#### Decision

12. The decision of the First-tier Tribunal involved the making of an error on a point of law.
13. The decision of the First-tier Tribunal is set aside.
14. The re-making hearing is adjourned to Friday 10<sup>th</sup> October 2014 at 2pm

#### Directions

1. A hearing of 2 hours is required.
2. A Spanish interpreter is required.
3. The appellant is to file with the Tribunal and serve on the respondent a bundle of documents for this hearing by 3<sup>rd</sup> October 2014. This bundle is to include statements by the appellant and her husband responding to the most recent refusal letter from the respondent dated 5<sup>th</sup> October 2013; material concerning the validity of their marriage in Dutch law; and any documentary evidence the appellant wishes to rely upon to show cohabitation/ a durable relationship with her husband.
4. Both the appellant and her husband, Mr Hoyer, are to attend the Tribunal hearing on Friday 10<sup>th</sup> October 2014 to give oral evidence.

Deputy Upper Tribunal Judge Lindsley  
26<sup>th</sup> August 2014