



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Number: IA/52901/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 8 January 2015**

**Determination Promulgated
On 15 January 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHAERF

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**TIMOTHEW AKINBOBOYE
(ANONYMITY ORDER NOT MADE)**

Respondent

Representation:

For the Appellant: Mr T Melvin, Specialist Appeals Team

For the Respondent: Mr K Akomolede, Nathan Aaron, solicitors

DECISION AND REASONS

The Respondent

1. The Respondent to whom I shall refer as the Applicant, is a citizen of Nigeria whose date of birth is given as 18 April 1989. On 24 April 2009 he entered into a marriage by proxy conducted in Nigeria with Ms Marie Misa, a French citizen said to be exercising Treaty rights in the United Kingdom.

2. On 20 May 2013 the Applicant applied for a residence card on the basis of his marriage under Regulation 7 of the Immigration (European Economic Area) Regulations 2006 as amended (the 2006 Regs.).
3. On 30 November 2013 the Respondent (the SSHD) refused the application. She stated that an individual named Timothy Olawaseun Akinboboye whose date of birth was given as 18 April 1986 had been issued with a student visa on 30 August 2004 as disclosed by the Applicant's passport and considered that he and the Applicant were one and the same person. The Respondent noted the Applicant had previously used the name of Abel Solomon of Ethiopian nationality and referred to two earlier applications for residence cards under the 2006 Regs. made by the Applicant which had been refused.
4. The Applicant and Ms Misa had been interviewed and the SSHD noted a number of material discrepancies in their answers. The SSHD also considered the Nigerian proxy marriage had not been properly registered in accordance with Nigerian national law. The SSHD went on to consider the application under Regulation 8 of the 2006 Regs., treating the Applicant as claiming to be the unmarried partner of Ms Misa.
5. On 12 December 2013 Notice of Appeal was lodged under Regulation 26 of the 2006 Regs. and Section 82 of the Nationality, Immigration and Asylum Act 2002 as amended. The Grounds of Appeal asserted the proxy marriage was valid under Nigerian law and that a failure to register it under Nigerian law did not invalidate it. The Applicant and Ms Misa were in a subsisting and durable relationship. The Applicant denied ever using another identity for the purpose of facilitating entry to the United Kingdom. The grounds also made a claim under Article 8 of the European Convention.

The First-tier Tribunal's Determination

6. By a determination promulgated on 8 October 2014 Judge of the First-tier Tribunal Griffith referred to the determination in *Kareem (Proxy Marriages - EU Law) [2014] UKUT 24*. She was not satisfied the Applicant had shown his proxy marriage was recognised as valid under United Kingdom law and went on to consider the Applicant's claim as an unmarried partner under Regulation 8 of the 2006 Regs. She was satisfied the Applicant and Ms Misa were in a durable relationship which had subsisted for a number of years and allowed the appeal under Regulation 8(5).
7. The SSHD sought permission to appeal on the basis the Judge had erred in law because she had not taken account of Regulation 17(4) which reserves to the SSHD a discretion whether to issue a

residence card to a person found to be an extended family member under Regulation 8.

8. On 25 November 2014 Judge of the First-tier Tribunal T R P Hollingworth granted permission to appeal.

The Upper Tribunal Hearing

9. The Applicant lodged a response under Rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008 as amended. He opposed the application for permission to appeal, asserting that the grounds for permission were nothing more than a disagreement with the First-tier Tribunal Judge and reiterating that the application was originally made by the Applicant as the husband of an EEA national exercising Treaty rights under Regulation 7 of the 2006 Regs.
10. The Applicant and his wife attended the hearing. He pointed out that the grounds for permission to appeal to the Upper Tribunal were based exclusively on the Judge's failure to consider Regulation 17(4). Mr Akomolede quite rightly accepted that the point was unarguable. Mr Melvin raised again the issue of the durability of the Applicant's relationship with Ms Misa and the lack of evidence as to his entry to the United Kingdom. Mr Akomolede pointed out that the Judge had found the Applicant credible.

Findings and Consideration

11. The Applicant had accepted that the Judge had erred in law in failing to take account of Regulation 17(4). I find this to be a material error of law. I noted there was no cross-appeal from the Applicant only the Procedure Rule 24 response already mentioned.
12. In the circumstances the determination must be set aside insofar as the Judge failed to remit the matter to the SSHD to consider the exercise of discretion in favour of the Applicant following the Judge's findings about the nature and durability of his relationship with Ms Misa. Consequently, I remit the appeal to the Secretary of State to consider in relation to Regulation 17(4) in the light of the Judge's findings of fact.

Anonymity

13. There was no request for an anonymity order. Having considered the papers in the Tribunal file and heard the appeal, I find that there is no need for such an order.

Notice of Decision

The determination of the First-tier Tribunal contained an error of law insofar as it failed to take account of the

provisions of Regulation 17(4) of the Immigration (EEA) Regulations 2006 as amended.

The matter is remitted to the Secretary of State to consider the exercise of her discretion under Regulation 17(4) in the light of the Judge's findings of fact.

No anonymity direction is made.

Signed/Official Crest

Date 14. i. 2015

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal

TO THE RESPONDENT: FEE AWARD

The appeal of the Applicant has been allowed in part and I have considered whether a fee award should be made. Having regard to the information available to the SSHD at the time her decision was made, I do not find it appropriate to make a fee award in favour of the Applicant.

Signed/Official Crest

Date 14. i. 2015

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal