



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/00788/2019

THE IMMIGRATION ACTS

Heard at Field House
On 13 September 2019

Decision & Reasons Promulgated
On 23 September 2019

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

MR ADMOLA AZEEZ ADERIBIGBE
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R O Ojukotola, of SLA Solicitors

For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is a challenge by the Appellant against First-tier Tribunal Judge Mensah (“the judge”), promulgated on 7 June 2019, by which she dismissed the Appellant’s appeal against the Respondent’s decision of 31 January 2019, refusing to issue a residence card under the Immigration (European Economic Area) Regulations 2016, as amended.

2. In an application made on 29 December 2018, the Appellant had sought a residence card on the basis that he was a family member of an EEA national (“the Sponsor”), Ms [PW], a citizen of the Netherlands. The family relationship arose out of a claimed proxy marriage said to have taken place in Nigeria on 23 June 2018, it being apparently registered on 28 June of that year. In refusing the application the Respondent acknowledged that proxy marriages would be considered valid in the United Kingdom provided that it had taken place in compliance with the relevant laws and customs of the country in question, in this case Nigeria.
3. Having referred to the documentary evidence that had been provided by the Appellant, the refusal letter goes on to state as follows:

“The Home Office has carefully reviewed all documentation you have provided, however there is no evidence this marriage has been conducted within the laws of Nigeria by a competent third party and as there is no evidence that the person signing the aforementioned documents ‘Billy Sherifat Abosede’ has the relevant qualifications, has the relevant authority to validate the marriage, that marriage is legal within the local government and also within the laws of Nigeria.”

The judge’s decision

4. For reasons of his own, the Appellant elected to have his appeal to the First-tier Tribunal decided without an oral hearing. Thus, the matter came before the judge “on the papers”.
5. The judge identified the single issue in the case before her as being whether the Appellant could show that he had entered into a valid customary proxy marriage with the Sponsor. Reference is then made to the decision of the Upper Tribunal in Kareem (Proxy marriages - EU law) [2014] UKUT 24 (IAC).
6. The judge relied on that decision in two respects. First, on the question of whether the laws of the Netherlands recognised proxy marriages; second, as to whether the various requirements for proxy marriages under Nigerian law had been complied with. In considering the documentary evidence and its compliance with Nigerian law, the judge noted that the marriage certificate omitted certain relevant information, for example the parties’ marriage, their usual place of residence, nationalities, and name of the persons who consented to the marriage. She also noted that the Appellant had failed to provide any independence evidence and that the signatory of the marriage certificate and a confirmatory letter dated 28 June 2018 was in fact a registrar under the relevant law, and that there was no explanation as to why this individual had issued a marriage certificate and/or the confirmatory letter when evidence from the British High Commission apparently stated the contrary (in other words, that such confirmatory letters/certificates were not in fact issued).
7. At paragraph 14 of her decision the judge states:

“Given the lack of evidence under Dutch law regarding a presumption of validity, absent clear independent evidence to show such certificates are issued, in light of the missing information in the marriage certificate and absent evidence regarding the authority of the person signing the documents to act as a registrar, I find this appeal fails.”

The grounds of appeal and grant of permission

8. The grounds of appeal assert that the judge was wrong to have applied Kareem in respect of the laws of other EU member states. This was because the Court of Appeal in the case of Awuku [2017] EWCA Civ 178 had overturned that aspect of the Upper Tribunal’s decision in Kareem. The grounds also assert that the judge had failed to consider the contents of a form (Form MCM.1) which contained the evidence missing from the marriage certificate.
9. Further, the grounds complain that the judge had failed to “cite the relevant Nigeria law that imposes a legal requirement for a third party/independent confirmation beyond the Mushin Grade ‘A’ Customary Court Registrar” and had failed or misunderstood evidence from the British High Commission.
10. Permission to appeal was granted by First-tier Tribunal Judge Grant on 17 July 2019.

Decision on error of law

11. at the outset of the hearing, and in light of Awuku, Mr Bramble accepted that the judge had erred in relying on Kareem insofar as it related to the issue of recognition of proxy marriages under the laws of the other EU member state, in this case the Netherlands. However, it was submitted that this error was immaterial.
12. Mr Ojukotola submitted that there was no requirement for the Appellant to have provided evidence to show that the person claiming to be the registrar was who he said he was. He confirmed that there was no such additional evidence from the Appellant. He suggested, by way of analogy, that if a marriage certificate created in the United Kingdom, duly signed by a registrar, there would be no need to adduce evidence to prove that that person was in fact a registrar.
13. When asked to clarify his position on this issue, Mr Ojukotola put his case in the following way: “There was no requirement for a competent third party under the law and there was no need for Mr Abosede [the signatory of the two documents in question] to have relevant qualifications.” He confirmed that a registrar from the Customary Court did have to sign the relevant documents. Finally, it was submitted that the letter from the British High Commission dated 4 February 2013 simply did not support the conclusion reached by the judge in respect of the issuance of certificates.

14. In addition to his position on Kareem, Mr Bramble acknowledged that the British High Commission letter may have been misinterpreted by the judge. However, the reasons for refusal letter had clearly put the issue of the signatory's status in issue. It had not been accepted that that individual was in fact a registrar. Mr Bramble noted that there had been no evidence from the Appellant in response to this issue being raised by the Respondent from the outset.
15. I conclude that there are no material errors of law in the judge's decision such that it should be set aside under section 12(1)(a) of the Tribunals, Courts and Enforcement Act 2007.
16. There is an error in respect of the Kareem issue: there was no need for the Appellant to show that proxy marriages are recognised under Dutch law (although they are). This error is clearly not of itself material, given that the judge went on to consider the issue of the marriage in the context of Nigerian law.
17. It is the case that the marriage certificate was missing a good deal of relevant information. However, the MCM.1 form did appear to contain the relevant information. It is right to say that the judge did not specifically address this item of evidence. I would also accept that the British High Commission letter of 4 February 2013 does not support the conclusion that confirmatory letters/certificates are not issued by the Nigerian authorities.
18. Thus far, there are shortcomings in the judge's decision. However, an important finding of the judge was that the Appellant had failed to show, by way of evidence, that the signatory of the marriage certificate and the confirmatory letter (and indeed the MCM.1 form) actually held the status of registrar under relevant Nigerian law. Mr Ojukotola has accepted that these documents had to have been signed by such an individual, although his argument was that there was no need for them to have what he described as "relevant qualifications".
19. As far as I can see, there was no evidence, at least no independent evidence, to support the contention that the "registrar" in question did not require any qualifications or, by implication, did not have to be a properly appointed official. It appears to be the case that the individual had to be what is described as the "registrar of a Customary Court or Area Court". The signatory of the relevant documents was said to be a "court registrar". Therefore, if the status of the particular signatory had not been a live issue in the appeal, the judge may well have materially erred in concluding as she did, and the Appellant's challenge would probably be made out.
20. However, the status of Mr Abosede had clearly been put in issue by the Respondent in the reasons for refusal letter (see above). On any view, that should have put the Appellant on notice as to the case that he had to meet on appeal, given that the burden of proving that the proxy marriage was in accordance with Nigerian law fell upon her (see Cudjoe (Proxy marriages: burden of proof) [2016] UKUT 180 (IAC)).

21. As mentioned earlier, the Appellant adduced no additional evidence from any credible source to show that the signatory on the relevant documents had in fact been a registrar of a Customary Court or Area. In light of this, I conclude that the judge was entitled to find as she did on this particular issue. It follows that as it was open to the judge to find that the signatory was not an appropriate official, the Appellant had in turn failed to show that the documents had been issued by a “competent authority”, with the further consequence that he had failed to show that a proxy marriage was undertaken in accordance with relevant Nigerian laws. On this basis, the Appellant could not show that she was a family member of the Sponsor and her appeal was correctly dismissed by the judge.

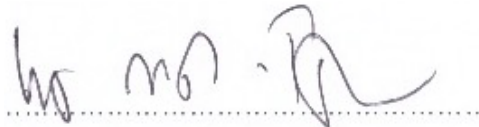
Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

The decision of the First-tier Tribunal shall stand.

The Appellant’s appeal to the Upper Tribunal is dismissed.

No anonymity direction is made.



Signed

Date: 17 September 2019

Upper Tribunal Judge Norton-Taylor