



Upper Tribunal

**(Immigration and Asylum Chamber)
EA/02927/2019 (P)**

Appeal number:

THE IMMIGRATION ACTS

Decided Under Rule 34

On 24 August 2020

**Decision & Reasons
Promulgated**

On 26 August 2020

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

PETER OKORO OSAKWE

(ANONYMITY ORDER NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS (P)

1. The appellant, a citizen of Nigeria with date of birth given as 16.3.83, appealed to the Upper Tribunal with permission against the decision of the First-tier Tribunal promulgated 27.9.19, dismissing his appeal against the decision of the Secretary of State, dated 6.6.19, to refuse his application made on 11.4.19 for an EEA Residence Card as the family member of an EEA national exercising Treaty rights in the UK, pursuant to the Immigration (EEA) Regulations 2016, as amended.

2. First-tier Tribunal Judge Osborne granted permission to appeal on 20.2.20, finding it arguable that the judge failed to consider material evidence, namely a letter, dated 7.8.19, from Ebonyi State Local Government Council.
3. For the reasons set out in my error of law decision promulgated 13.3.20 and summarised below, I found an error of law in the making of the decision of the First-tier Tribunal requiring it to be set aside and remade at a resumed or continuation hearing in the Upper Tribunal.
4. I also issued directions for the appellant to lodge with the Tribunal and serve on the respondent clear copies of all documents he now wishes to rely on, together with a further witness statement setting out in clear terms the process of proxy marriage and registration in Nigeria. Those documents and his statement were received by the Tribunal on 23.3.20.
5. On 4.5.20 the Upper Tribunal issued my directions, dated 31.3.20, proposing in the light of the COVID-19 pandemic to remake the decision in the appeal without any further hearing, pursuant to Rules 34 and 15(1)(e), on the basis of the documents then before the Upper Tribunal. My directions provided a timetable for further submissions by either party, if deemed appropriate, together with any further evidence to be relied on. That timetable has now expired.
6. On 5.8.20, the Upper Tribunal received an email from the appellant, not legally represented, agreeing to the remaking of the decision without any further hearing. He indicated that he had no other submissions to make and relied on his documents and statement received by the Tribunal on 23.3.20.
7. There has been no response to the directions from the respondent. However, I have the respondent's Rule 24 reply, dated 30.1.20, opposing the application for permission to appeal to the Upper Tribunal.
8. I have had regard to the Senior President of Tribunals' Practice Direction, *Pilot Practice Direction: Contingency Arrangements in the First-tier Tribunal and the Upper Tribunal*, to the *UTIAC Presidential Guidance Note No 1 of 2020, Arrangements during the COVID-19 pandemic*, and to rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended).
9. I have taken account of the view expressed by the parties as to whether to hold a hearing and the form of such a hearing. Neither party has opposed the error of law issue being resolved on the papers without a hearing. Both parties have submitted detailed written submissions such that the Upper Tribunal is able to proceed with a full understanding of the arguments of each party. In the circumstances and for the reasons outlined, I am satisfied that it is appropriate to

determine this appeal without a hearing. I therefore proceed to consider and determine this appeal on the papers.

10. I have carefully considered the decision of the First-tier Tribunal, dismissing the appeal in the light of the written submissions, documentary evidence, and the grounds of appeal against the respondent's refusal reasons.
11. This case concerns an application for an EEA Residence Card, which turns on the validity of a proxy marriage in Nigeria between the appellant and a French national, both of whom remain in the UK. The respondent's refusal decision erroneously maintained that such proxy marriages are unlawful in Nigeria. The appeal against the respondent's refusal to issue an EEA Residence Card was dismissed in the First-tier Tribunal.
12. The appellant claimed marriage to an EEA (French) national, Karina Boutouil, in Nigeria on 15.10.18. The appellant admits that neither he nor his purported spouse were in Nigeria at the time of the alleged marriage, but rely on the marriage having been executed by proxy. The respondent considered the Nigerian Marriage Act 1914, which requires the parties to a marriage to be present to sign the certificate in front of the Registrar. In consequence, the application was refused.
13. The First-tier Tribunal concluded that there were a number of 'irregularities' in the documentation and that the appellant failed to provide sufficiently probative evidence that the purported marriage is valid in law in Nigeria. The appeal was therefore dismissed.
14. The grounds of appeal to the Upper Tribunal asserted that the judge erred in law in not considering the letter of 7.8.19, referred to above, and relied on Awuku v SSHD [2017] EWCA Civ 178 for authority that marriages conducted under customary rights by proxy are lawful. The letter, at page 31 of the appellant's bundle before the First-tier Tribunal, purports to emanate from the Ebonyi State Local Government Council, confirming that the "traditional marriage ceremony" was successfully registered on 15.10.18. It adds, "In the absence of marriage certificate for marriages performed under the native laws customs and traditions of Akaeze in Ivo Local Government Area of Ebonyi State Nigeria we do issue "form E" as confirmation that marriage has been duly registered." It adds that form E was issued to Peter Okoro Osakwe Snr, representing the appellant. Form E appears to be the document headed Marriage Certificate and has a reference to form E at the top right.
15. The First-tier Tribunal considered Awuku but concluded that because of irregularities on the face of the marriage certificate the marriage is not valid. It was suggested that it was open to the appellant to have obtained sufficiently probative evidence such as confirmation in writing

from the Nigerian authorities that the marriage is valid. “That has not happened and I am not satisfied that he has shown that he is validly married to his sponsor under Nigerian law,” the judge stated.

16. However, the FTT decision contained no specific reference to the letter from the Ebonyi State Local Government Council, which explained the process of proxy marriage and the issue of the certificate on registration.
17. The respondent’s Rule 24 response, dated 30.1.20, asserted that, although the August letter was not specifically mentioned, it is clear from the decision as a whole that it was considered and found not to assist the appellant. It was pointed out that even if a letter from the Nigerian High Commission has been put in evidence, it would not have negated the several inconsistencies identified by the First-tier Tribunal. It should be noted that the Rule 24 reply did not maintain the stance taken in the refusal decision that Nigerian proxy marriages are not valid in the UK.
18. In my error of law decision, I found that Nigeria permits proxy marriages, contrary to the assertion in the refusal decision. In Kareem (Proxy marriages – EU law) [2014] UKUT 23 (IAC), the Upper Tribunal made a number of findings in relation to the constituent requirements of a proxy marriage in Nigeria. Although the requirement in this decision that the marriage must be valid by the marriage laws of the EEA national’s own Member State was found by the later decision of Awuku to be in error, the Court of Appeal decision in Kareem did not undermine the Upper Tribunal’s findings as to the mechanics of a valid proxy marriage in Nigeria.
19. It follows that, in principle, provided the lawful requirements are complied with, a Nigerian proxy marriage can and will be regarded by this country as valid even though the parties to the marriage were in the UK at all relevant times.
20. However, at [36] onwards of Kareem the Upper Tribunal noted evidence from the High Commission that proxy marriages can only be accepted as valid in Nigerian law if conducted according to customary law; that a Nigerian citizen can marry a foreigner by proxy under customary law in a ceremony that is held in Nigeria; that the validity of a customary marriage in Nigeria does not depend on it being registered within 60 days; and that no certificates are issued in respect of customary marriages by any recognised official body and no official records are kept.
21. The Upper Tribunal also noted evidence in the Nigerian Births, Deaths, etc (Compulsory Registration) Act 1992. Part V of the 1992 Act relates to the registration of customary marriages or divorces. This legislation appears to have been amended and supplemented by a

Statutory Instrument in 1996. Part VII of the 1996 legislation indicates that there is a requirement that a customary marriage should be registered within sixty days and that certain details are to be provided and included in any certificate issued. The details required for registration are the names of the bride and groom, their marital status, their occupations, their ages, their States of origin, the address of their usual place of residence, their nationalities, the name of the persons who consented to the marriage and the respective relationship of those persons to the bride and groom. The certificate should include "most of these details" together with the registration number, the date of marriage, the date of registration and the signature of the court registrar. The Upper Tribunal in Kareem did not know the reasons for the conflict in evidence but concluded that the certificate before them did not include the necessary evidence in any event and, in so far as it was registered, had not been registered in the 60 day period. In addition the tribunal said "... we are aware that the same Nigerian laws make provision about who can be a registrar. We have no evidence that the person who signed the certificate or the court order was a registrar." The Tribunal then dismissed the appeal.

22. It is clear from the above that the decision of the respondent refusing the application was in error in stating that Nigerian law does not recognise proxy marriages. It was also clear to me that the Ebonyi State Local Government Council letter of 7.8.19 was not considered by the FTT. Further, after hearing the appellant's explanation at the error of law appeal hearing before me, I concluded that the FTT had misunderstood the process by which a proxy or customary marriage is made. However, it was also clear that the appellant in his submissions to me at that hearing was relying on documentation that did not appear to have been put before the First-tier Tribunal, including a power of attorney from his partner and her family authorising a named person to sign at the registration of the marriage in her place.

23. Whilst the judge found that the marriage certificate at page 29 of the appellant's bundle had a number of inconsistencies on the face of it, the appellant explained another document in the bundle which I found to be highly relevant. In essence, as explained by the appellant, once the customary marriage is performed, it is registered in two ways. The first is by Form C, which records the tax paid on the bride price dowry. This document in the bundle and is dated the same day as the proxy marriage. The appellant then referred me to a green booklet, which is rather badly copied in the appellant's bundle. The appellant went on to explain that when the marriage is registered both the booklet and the marriage certificate (form E) are issued. When the original was examined, I could see that the booklet explains four different types of marriage covered by registration, and that included customary marriage, referred to as CUS. It appeared to me that

whichever form of marriage has been entered into, the registrar can issue only one marriage certificate. The necessary details to meet the legal formalities for a valid marriage are entered in the green booklet, including certain information which the marriage certificate format does not provide for. I find that this explains the inconsistencies or discrepancies identified by the First-tier Tribunal Judge.

24. As a result of the submissions before me, I was satisfied that the First-tier Tribunal had misunderstood the various documents provided by the appellant and that this failure amounted to a material error of law. Therefore, I set the decision aside and proposed to remake the decision. However, it transpired that the appellant wished to rely on some further documents to further explain the registration process, which documents he did not have with him, but said he had sent to Manchester Civil Justice Centre. I therefore adjourned the remaking of the decision to a further date for those documents to be provided and for the appellant to make a witness statement setting out in clear terms the process of registration of proxy marriage for which he contends.
25. As stated above, those documents have now been received. I note that they are date stamped by Manchester CJC on 26.2.20 and by Field House on 23.3.20. This explains why they were not available to me at the Upper Tribunal error of law appeal hearing on 13.3.20. Other documents appear to have been received at Field House on 18.3.20. I have carefully considered all these documents, as well as the appellant's statement of 13.2.20 and the subsequent but undated statement received on 18.3.20.
26. These documents include a power of attorney to allow the appellant's partner to be represented at the proxy marriage in Nigeria. Her mother also consented to the marriage and had nominated someone at the proxy marriage to represent the family. This person has sworn an affidavit accepted the role of representative of the appellant's partner and her family. The ceremony itself was performed on 28.9.18. The appellant's explanation of the procedure, which I requested from him not only makes sense but appears consistent with the legal requirements. This is supported by a document from the Traditional Prime Minister of the Umoihe Autonomous Community, dated 28.9.18, setting out the process step-by-step. This is summarised again in clear terms in the appellant's most recent witness statement.
27. Following the proxy marriage ceremony, on 15.10.18 the appellant's father went to register the marriage, as required. As a result he was issued by the Registrar with Form E, which is the marriage certificate, together with a green booklet which, as stated above, sets out the different forms of marriage accepted. I am satisfied that this procedure is accurately described and that Form E is the only certificate issued

once the marriage has been formally registered. Form C, as explained, is issued by the local council for the purpose of paying the tax on the bride price or dowry. This is confirmed by the Nigerian lawyer's letter dated 26.11.19. I am satisfied that the endorsement in the Form E certificate 'CUS' referred to the customary marriage. The appellant subsequently had the marriage verified by the Nigerian High Commission in London, confirmed by the letter dated 17.2.20.

28. Considering the evidence as a whole, even though the First-tier Tribunal Judge may have had legitimate concerns about the reliability of some of the documentation, including the supposed verification of the marriage by the Nigeria High Commission, I am satisfied that the explanation made by the appellant is consistent with the documentation now available to the Tribunal and which all makes sense. He has, in my view, adequately explained all the matters of concern to the First-tier Tribunal, including omissions or apparent incomplete parts of the marriage certificate. I am satisfied that the appellant has done all he could reasonably be expected to do to demonstrate that the proxy marriage was lawfully entered into in Nigeria and is, therefore, to be recognised as valid in the UK.
29. It follows that the appellant's status as a family member of an EEA national has been established on the balance of probabilities, so that he is entitled to the Residence Card sought.

Decision

The decision of the First-tier Tribunal involved the making of an error of law;

I set aside the decision;

I remake the decision in the appeal by allowing it;

I make no order for costs;

I make no anonymity direction.

Signed: DMW Pickup

Upper Tribunal Judge Pickup

Date: 24 August 2020

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper

Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.

3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent" is that appearing on the covering letter or covering email