



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/28519/2012

THE IMMIGRATION ACTS

Determined at Field House
without an Oral Hearing
On 27th March, 2014

Determination Promulgated
On 08th April 2014

Before

UPPER TRIBUNAL JUDGE CHALKLEY

Between

ABISOYE OYEYEMI OKUTUBO

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS

1. The appellant is a citizen of Nigeria, who was born on 22nd June, 1979.
2. I regret that I have no information concerning the appellant's immigration history, because that has not been supplied by the respondent.
3. On 16th April, 2012, the appellant made an application for the issue of a residence card as confirmation of the appellant's right of residence under European Community Law as the spouse of an EEA national exercising treaty rights in the United Kingdom. The appellant adduced evidence to show that she had on 10th January, 2012 married Mr Janis Veselovs, a Latvian

national, by proxy marriage in Nigeria. The appellant's spouse was said to be exercising treaty rights within the United Kingdom.

4. The respondent was concerned as to whether or not the appellant was actually married and concluded that she was not. The appellant appealed the respondent's decision to the First-tier Tribunal and her appeal was heard by First-tier Tribunal Judge Deni Matthews who, in a determination promulgated on 22nd February, 2012, dismissed the appeal both on immigration grounds and on human rights grounds.
5. The appellant challenged that decision asserting that the marriage by proxy was valid in Nigeria and complaining that the judge failed to attach significant weight to the appellant's letter of attestation, because it contained grammatical errors and contained gender errors and, as a result the judge concluded that the appellant was not married to the sponsor and concluded that there was insufficient evidence to enable the judge to conclude that the parties were in a durable relationship. The grounds suggested that the judge had thereby erred.
6. I granted permission to appeal on 16 April, 2013, because a Presidential panel were about to consider the validity of proxy and customary marriages in Nigeria. Subsequently, the Tribunal have promulgated its decision in *Karim (proxy marriages – EEU law)* [2014] UKUT 24 (IAC). That makes it clear that in EU law the question of whether a person is in a marital relationship is governed by the marriage laws of the Member States. Given that the appellant is married to a Latvian national and derives her right of residence from him, it was important that the judge should be appraised at the law of Latvia, so that she could decide whether, according to Latvian law, the marriage would be regarded as having been celebrated in Nigeria or the United Kingdom, the appellant and her claimed spouse having been present in the United Kingdom at the time of the marriage in Nigeria. The appellant choose not to place any evidence relating to Latvian law before the judge.

6. The head note to *Karim* says:-

“ A person who is the spouse of an EEA national who is a qualified person in the United Kingdom can derive rights of free movement and residence if proof of the marital relationship is provided.

b. The production of a marriage certificate issued by a competent authority (that is, issued according to the registration laws of the country where the marriage took place) will usually be sufficient. If not in English (or Welsh in relation to proceedings in Wales), a certified translation of the marriage certificate will be required.

c. A document which calls itself a marriage certificate will not raise a presumption of the marriage it purports to record unless it has been issued by an authority with legal power to create or confirm the facts it attests.

d. In appeals where there is no such marriage certificate or where there is doubt that a marriage certificate has been issued by a competent authority, then the marital relationship may be proved by other evidence. This will require the Tribunal to determine whether a marriage was contracted.

e. In such an appeal, the starting point will be to decide whether a marriage was contracted between the appellant and the qualified person according to the national law of the EEA country of the qualified person's nationality.

f. In all such situations, when resolving issues that arise because of conflicts of law, proper respect must be given to the qualified person's rights as provided by the European Treaties, including the right to marry and the rights of free movement and residence.

g. It should be assumed 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.

h. These remarks apply solely to the question of whether a person is a spouse for the purposes of EU law. It does not relate to other relationships that might be regarded as similar to marriage, such as civil partnerships or durable relationships.”

7. I have concluded that the First-tier Tribunal Judge did not err in law. The evidence before the judge did not establish whether the marriage which was contracted between the appellant and her spouse was according to the national law of Latvia, that being the EEA country of the qualified person's nationality. The judge quite properly went on to consider the appellant's rights under Regulation 85 of the Immigration (European Economic Area) Regulations and concluded that there was insufficient evidence of a durable relationship. This appeal is dismissed.



Upper Tribunal Judge Chalkley