



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/43733/2013

THE IMMIGRATION ACTS

Heard at Field House
On 20th May 2014

Determination Promulgated
On 26th June 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

ANGELA SOLA OYEWOLE
(Anonymity Direction Not Made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Uzochina instructed by Patterson Solicitors
For the Respondent: Mr E Tufan, Home Office Presenting Officer

DETERMINATION AND REASONS

The Appellant

1. The application for permission to appeal was made by the respondent but for the purposes of this determination I shall refer to the parties as they were described before the First Tier Tribunal.

2. The appellant is a citizen of Nigeria, born on 28th November 1964 and she made an application on 17th January 2013 for a residence card as confirmation of a right to reside in the UK on the basis of a marriage or durable relationship with Austrian (EEA) national Benedict Faniku. This application was refused on 10th October 2013.
3. The respondent refused the appellant's application with reference to Regulations 6 and 7 of the EEA Regulations. The EEA family member had failed to provide evidence that the sponsor was a qualified person as set out in Regulation 6 or she was in a durable relationship with an EEA national in accordance with Regulation 8.
4. The detailed refusal letter stated that the appellant had not provided evidence to demonstrate she had registered her customary marriage within 60 days stipulated by The Births, Deaths, etc. (Compulsory Registration) Act CAP B9 laws of the Federation of Nigeria 2004. Accordingly it was not legally recognised as valid in Nigeria and thus could not be accepted as valid in the UK.
5. The application was also considered under Regulation 8(5) but the appellant had provided no evidence that she and her sponsor resided together as a couple at the same address prior to the date of their customary marriage certificate.
6. First-tier Tribunal Judge S J Pacey determined the matter on the papers on 22nd January 2014 and issued a determination on 7th February 2014. He accepted that there were HMRC documents indicating that the sponsor was self-employed and liable for national insurance contributions on the basis a letter from an accountant to this effect and the self-assessment tax calculation, as well as self-assessment statement of account.
7. The judge accepted that there was a certificate of registration of marriage which referred to registration on 24th January 2011 clearly within the time limit required for registration of 60 days. The judge therefore accepted the marriage certificate at face value. He stated "*I note what the respondent says about the appellant not being present at the marriage ceremony but that to my mind is inherent in marriages by proxy and is referred to in the affidavit from the father of the appellant.*"
8. An application for permission to appeal was submitted by the respondent on the basis that the determination failed to have any regard to the decision of the Upper Tribunal in **Kareem (Proxy marriages EU law) Nigeria [2014] UKUT 24**. The judge failed to make the findings required of him as to in particular whether this type of marriage is recognised in the EEA state of the sponsor, Austria.
9. In response the appellant stated that the grant of permission by Judge Williams was misconceived. The only issue before the Tribunal was an issue of fact as to whether the marriage was registered within 60 days of celebration. The respondent's reason for refusal letter raised no issue of law and no reliance was placed on **Kareem**. The respondent was fully aware of the promulgation of **Kareem** but failed to apply to amend, withdraw the reasons for refusal or place any reliance on **Kareem** and it was not open to raise this issue presently. The judge applied the first limb of **Kareem**

principles in that *“the respondent takes no issue with regards to the authenticity of the certificate and nothing on the face of it gives rise to reasonable doubts as to its reliability.”*

10. Having found that the marriage certificate was properly registered or issued by the competent authority the First-tier Tribunal Judge needed to take the matter no further.

The Hearing

11. Mr Tufan stated that **Kareem** had been determined and was published on 16th January 2014 and prior to the determination. The ratio as outlined in the head note at (g) stated that it should be assumed that without independent and reliable evidence that 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.
12. Mr Uzochina submitted that the issue before the judge was a question of fact and the question centred on whether the marriage certificate was valid and registered within 60 days.
13. The judge clearly found that the marriage was registered within 60 days and it can be seen from the documentation that the certificate was stamped by the Nigerian authorities. The marriage took place on 18th December 2010, the marriage was registered on 24th January 2011 and these are the dates given on the marriage certificate and it was stamped on 23rd April 2012 in London. The judge was entitled to decide a question of fact and the judge said nothing about the reliability.
14. In an instance it was issued by a competent authority and Mr Uzochina drew my attention to paragraph 68(d) of **Kareem**.
15. **Kareem** had, he submitted, two limbs and if there was no issue of the competence as to the body of issue of the certificate that was the end of it. It was possible to have a proxy marriage in Nigeria and the correct law was the 2004 Act. There was no requirement to apply the question as to whether the law was valid in Austria. The second limb of **Kareem** did not apply. It was only where marriage certificates were challenged that the laws needed to be considered. Under private international law a country where the marriage is celebrated is the key and in private international law if the marriage is good by the law of that country it is good all over the world. **Kareem** conflicted with the House of Lords which effectively confirmed that EEA law was not relevant.
16. Mr Tufan responded that this was a question of EU law and an EU citizen marrying another EU citizen. The case which was produced on **Oyewole** was not a reported decision and not a precedent.

Conclusions

17. I note that the judge identified that the appellant and sponsor had married and that he recorded that the certificate of marriage had been registered within 60 days and therefore was valid. Nonetheless I am bound by an Upper Tribunal reported decision Kareem which was promulgated prior to the issue of the determination in this case. No reference was made to Kareem by the Judge.
18. I do not accept that EEA law is irrelevant in this matter. The basis on which both appellant and sponsor are in the UK is European law and further to the European Economic Area Regulations 2006 are derived from European community law.
19. It is clear from paragraph 22 of Kareem that the question to be asked is whether the appellant is the spouse of a qualified person for the purposes of EU law and in that light it is important to seek to determine the legal system in which it is to be established whether the appellant was in a marital relationship. The question is whether according to Austrian law, as the sponsor in this case is Austrian, is whether the marriage would be regarded as having been celebrated in Nigeria or in the UK and thus whether a proxy or customary marriage will be recognised in Austria.
20. No evidence whatsoever was produced in relation to this.
21. Kareem confirms [13] that a marriage certificate issued by a competent authority will normally suffice as evidence that a marriage has been contracted the document must have legal status and it can only have legal status if it is issued by an authority with the power to create or confirm the facts attested. This will depend on identifying the authority with legal power to create such a document or confirm that a marriage has been contracted. There must be proof of the private international law of that country and such evidence will not only have to identify relevant legal provisions in that other country (Austria) but identify how they operate in practice. The legal system of the nationality of the Union citizen governs whether a marriage has been contracted Kareem [18].
22. In this instance there was no evidence of the relevant foreign law and thus the appellant must fail. There was no examination of the law of the member state with regards proxy marriages Kareem [17].
23. For completeness the determination produced by the appellant's representative in Oyekunle was dated June 2013 and predated Kareem and was not a reported decision AO (unreported determinations not precedents) Japan [2008] UKAIT 00056.
24. I find that the Judge did not follow Kareem and there was an error of law. I therefore set aside that determination and remake the decision.
25. Even if the point with regards Austrian law was not taken, Kareem confirms that Nigerian law makes provision about who can be a registrar and there was no evidence save for a stamp that the person who signed the certificate was a registrar.

[42] **Kareem**. Also noted in that judgement was that evidence provided by the British High commission suggested that no official certificates were issued to confirm customary marriages.

26. For the reasons given above I find that there was no evidence of a valid marriage contracted between the appellant and the sponsor.
27. The evidence which was put before me in relation to whether there was a durable marriage was strictly limited and even the submissions by the appellant's representative was that there was very limited evidence with which to establish a durable relationship.
28. I examined the documentation in relation to the address of the appellant and the sponsor and whether they could be linked at the same address. There was a paucity of evidence. I was provided with two statements from the Water Services dated 24th January 2012 and 4th March 2012 which had the name of the appellant recorded in small print on the document and two job centre letters to the appellant at the address of the sponsor dated 4th July 2013 and 21st June 2013. This is inadequate evidence on which to find a durable relationship. There were no cards, photographs or any other evidence which would found evidence of a relationship. I note the appellant stated in the submissions that she had been unable to obtain employment, bank accounts or other documentation or able to engage in "*any transaction that could generate correspondence to her home address*" but nonetheless on the evidence presented I am not satisfied that there is a durable relationship.
29. I also found the evidence supporting the claim that the sponsor was a qualified person further to Regulation 6 of the EEA Regulations to be insufficient. For the sponsor there was one accountant's letter dated 16th July 2012 from TEEAC accountants but with no attachments (save for a covering sheet entitled Financial Statement for 25 weeks for the period ended 5th April 2012), one Lloyds Bank statement dated November 2012 and a self assessment tax calculation for 2011-2012 and two statements from HMRC dated 30th March and 2nd June 2013 referring to National Insurance Contributions. The application was made in 2013 and the decision made in January 2013 and the decision in October 2013 and no up to date information was provided for the paper determination before the First Tier Tribunal Judge or before me. A self assessment for tax does not show that the sponsor was in fact working and nor do the national insurance contributions. I find that the sponsor has not shown that he was exercising treaty rights.
30. I find that the determination of the First-tier Tribunal Judge cannot stand as there was an error of law. I remake the decision and dismiss the appeal of the appellant against the decision of the respondent to refuse to issue a residence card.

Signed

Date 24th June 2014

Deputy Upper Tribunal Judge Rimington