



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/04360/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 10 December 2013**

**Determination
Promulgated
On 16 December 2013**

Before

UPPER TRIBUNAL JUDGE MOULDEN

Between

**MISS ADEBUKOLA MISTURA BALOGUN
(Anonymity Direction Not Made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: the appellant did not appear and was not represented
For the Respondent: Mr G Saunders a Senior Home Office Presenting
Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Nigeria who was born on 18 November 1987. She has been given permission to appeal the determination of First-Tier Tribunal Judge Canavan ("the FTTJ") who dismissed her appeal against the respondent's decision of 28 January 2013 to refuse to recognise her claimed right of residence as a family member of an EEA national under the provisions of the Immigration

(European Economic Area) Regulations 2006 ("the 2006 Regulations").

2. The appellant claimed to have entered the UK on 31 December 2010 with entry clearance as a visitor. She appears to have overstayed. She said that she married her partner, Imants Janupe who is a Latvian citizen, in a proxy marriage ceremony in Nigeria by native law and custom on 12 March 2012. She said that they had been living together since their marriage and her husband was in full-time employment in the UK.
3. The respondent refused the application because she was not satisfied that the appellant had produced sufficient evidence to show that she met the requirements of regulation 7 of the 2006 Regulations. The respondent did not believe that the proxy marriage was a valid marriage or that to refuse the application would result in a breach of the appellant's Article 8 human rights. The appellant appealed and asked that the appeal be determined on the papers without an oral hearing. This is what the FTTJ did, in the determination promulgated on 24 April 2013.
4. The FTTJ observed that it was difficult to decide a technical legal issue such as that arising in this appeal without oral evidence or submissions and on very limited evidence relating to the legal framework for marriages in Nigeria. She assessed the evidence before concluding that there was nothing in the Nigerian Marriage Act 1990 to support the appellant's contention that a proxy marriage contracted under native law and custom would be viewed as a valid marriage for the purposes of that Act. There was nothing to show that the marriage had been registered under the Marriage Act 1990. Even if there were provisions for proxy marriage within the local customary law in the appellant's home area she had failed to produce evidence to show what these were or whether they had been met. Whilst her father's affidavit stated that the marriage had been conducted with the consent of both parents it was not clear what involvement if any the husband's parents had in the marriage. It was highly unlikely that they had been in Nigeria.
5. The FTTJ concluded that the appellant had failed to produce sufficient evidence to show that she had contracted a valid marriage for the purpose of the 2006 Regulations. She went on to consider whether the appellant could meet the requirements as an extended family member rather than a spouse. The appellant had chosen to have the appeal determined without a hearing which meant that she and her husband had not had the opportunity to provide evidence with sufficient detail to establish the history and nature of their relationship. After setting out the evidence which had been supplied the FTTJ concluded that whilst there was some evidence that they had been living at the same address in February 2013 they had not, on the balance of probabilities, provided enough evidence to show that they were in a durable relationship.

6. Finally, the FTTJ considered the appeal on Article 8 human rights grounds concluding that there was insufficient evidence to show that family life had been established or as a consequence, that the decision would amount to an interference with that family life. She dismissed the appeal under the 2006 Regulations and on human rights grounds.
7. The appellant applied for permission to appeal which was refused by a judge in the First-Tier Tribunal. On renewal to the Upper Tribunal it was granted on the basis that it was likely that the frequently encountered issue of Nigerian proxy marriages would be addressed by the Upper Tribunal and general guidance provided. I have made enquiries and whilst I am aware that such a case has been heard the determination has not yet been promulgated or reported. I have not been asked to and I can see no good reason to delay the determination of this appeal to await this.
8. The appellant's representatives have sent a letter to the Tribunal indicating that neither they nor the appellant would be attending the hearing before me due to availability, presumably this means unavailability, of funds.
9. Mr Saunders submits that the FTTJ did not base her decision on just one paragraph in the reports before her but dealt with it far more thoroughly. She looked at all the country information before her and made a proper assessment. Rather than limiting her consideration to regulation 7 of the 2006 Regulations she went on to consider the alternative possibility of extended family membership under regulation 8 and Article 8 human rights grounds. The grounds of appeal to the Upper Tribunal do not suggest that these conclusions were flawed in any way. There was no error of law. I was asked to uphold the decision.
10. Paragraph 1 of the grounds of appeal is misconceived. In paragraph 10 the FTTJ accepted that the Nigerian Marriage Act 1990 made reference to customary marriage but only in a way which indicated that a marriage under the Act could be contracted in addition to a customary marriage so long as it was to the same person. This does not support the contention that the Marriage Act 1990 recognised customary marriages either generally or in the absence of another form of marriage specifically recognised by the Act. The ground makes no reference to the important point made by the FTTJ in the same paragraph namely that there was nothing in the Marriage Act 1990 which supported the appellant's contention that a proxy marriage contracted under native law and custom would be viewed as a valid marriage for the purpose of that Act.
11. Paragraphs 2 and 3 of the grounds of appeal submit that the FTTJ ignored paragraph 24.19 of the COIR report dated 6 April 2011 and failed to give any or adequate reasons for not taking this into

account. It is not correct to state that this was ignored. There is clear reference to it in paragraphs 3 and 8. The appellant relies on extracts from paragraph 24.19 quoted in paragraph 4 of her representative's skeleton argument at page 16 in the bundle submitted to the FTTJ. Whilst this makes reference to three forms of marriage in Nigeria, one of which is customary marriage, it does not, as the appellant suggests, indicate that customary marriages conducted by proxy are recognised as valid marriage is under Nigerian civil law. This is the point made by the FTTJ in paragraph 10.

12. The grounds failed to address further points made by the FTTJ which provided indications that there was no valid marriage. There was no evidence that the marriage had been registered under any provision of the Marriage Act 1990, there was no evidence that at least one of the parties to the marriage was resident in the area where the marriage was conducted, there was no evidence of what the local customary law was in this area or that the appellant's marriage met its requirements. Furthermore, there was no evidence to support the appellant's father statement that the marriage was conducted with the consent of both parents and no evidence that the husband's parents attended.
13. I find that there is no error of law and I uphold the decision.

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Signed
Upper Tribunal Judge Moulden

Date 11 December 2013