



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

Appeal Number: EA/01547/2019

THE IMMIGRATION ACTS

**Heard at Bradford (via Skype)
On 12 February 2021**

**Decision & Reasons Promulgated
On 3 March 2021**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

GBENGA ADERANTI
(Anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Ferguson instructed by SLA Solicitors.

For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. By a decision dated 1 October 2020 another judge of the Upper Tribunal set aside a decision of the First-tier Tribunal and directed that the appeal remain in the Upper Tribunal for a rehearing. Following the retirement of that judge a transfer order has been made.

Background

- 2.** The appellant is a citizen of Nigeria born on 12 November 1968 who challenged the respondent's refusal to issue him with a residence card in recognition of a right to reside in the United Kingdom as the family member of an EEA national exercising treaty rights, dated 11 March 2019.
- 3.** The decision maker was not satisfied, inter alia, that the evidence provided supported the assertion that the proxy marriage undertaken between the appellant and EEA national was sufficient to establish the validity of that marriage.
- 4.** The specific reasoning set out in the decision under challenge is as follows:

You have provided documents issued in Lagos as evidence of your marriage. It states that the marriage took place on 22 September 2018 at 44 Emanuel High Street, Ojota, Lagos, Nigeria and that the marriage was registered on 25 September 2018 by Billy Sherifat Abosedede.

The documentation you have provided as evidence that your marriage was performed and registered legally in Nigeria is not accepted because it has not been signed by a competent authority, who is also a third party.

The Marriage Certificate issued by the Lagos State Government has been signed by the same person, Billy Sherifat Abosedede, who signed the Confirmation of Traditional Marriage document. As such, this cannot be used to verify that the marriage was performed and registered legally in Nigeria. This document would need to be signed by a competent authority, who is a third party.

In addition to this, you have only provided a Sworn Affidavit for yourself and not one for your sponsor.

As the evidence you have provided does not confirm your proxy marriage was valid, we are unable to confirm your 'family member' status as the spouse of your EEA or Swiss national sponsor. Your application has been refused for that reason.

If you are unable to prove that you are in a valid marriage you may wish to reapply instead as the extended family member of your EEA or Swiss national sponsor.

- 5.** The First-tier Tribunal dismissed the appellant's appeal but was found to have erred in law, for the following reasons set out in the Error of Law decision following citation of the documents relied upon by the appellant in support of his appeal:
 - 8.** Neither the Respondent nor First-tier Tribunal Judge Doyle asserted that these documents were false or that they had not been signed and stamped in the proper manner.
 - 9.** In *Cudjoe (Proxy Marriages - burden of proof)* [2016] UKUT 00180 (IAC) the Upper Tribunal found that:

"1. It will be for an appellant to prove that their proxy marriage was in accordance with the laws of the country in which it took place, and that both parties were free to marry. The burden of proof may be discharged by production of a marriage certificate issued by a competent authority of the country in which the marriage took place, and reliance upon the statutory presumption of validity consequent to such production. The reliability of

marriage certificates and issuance by a competent authority are matters for an appellant to prove”.

10. The Respondent has submitted that “statutes are open to be amended and their interpretation can be a question of case law in the country concerned”. As a consequence, it was also submitted that “it was open to the judge to conclude that the evidence provided by the appellant was insufficient”.
 11. However, this was not the basis on which First-tier Tribunal Judge Doyle dismissed the Appellant’s appeal. Firstly, he asserted that the Appellant could not merely rely on a photocopy of a statute. There is no requirement in case law for an Appellant to produce an expert report confirming the validity of his marriage. Furthermore, the Respondent has not asserted that the copy of the statute which the Appellant relied upon did not reflect current law in Nigeria.
 12. Furthermore, the Respondent asserted that there was no independent verification of the marriage. However, this ignored the fact that the Appellant had also provided an affidavit, sworn in the High Court, by his uncle who was present at the proxy marriage ceremony. In addition, he had provided a copy of the Form MCM.1 also signed by the on-call and properly certified.
 13. For all these reasons, I find that there were material errors of law in First-tier Tribunal Judge Doyle’s decision.
- 6.** The appellant’s case has always been that the documents provided are sufficient to prove that his proxy marriage was valid under the terms of Nigerian law. The original grounds of appeal provided evidence of the marital relationship/marriage, a Customary Marriage Certificate issued on 25 September 2018, a Confirmation of Marriage letter dated 25 September 2018, a sworn affidavit from the appellant’s uncle, and evidence of the completed registration of the marriage. The appellant also relied upon a letter from the Foreign & Commonwealth Office/British High Commission in Abuja dated 4 February 2013 confirming that local government in Nigeria is vested with the constitutional powers to make laws and register customary law marriages.
 - 7.** The appellant disputes the requirement relied upon decision maker for the marriage certificate to be signed by a competent authority who is also a third party; asserting that the person who did sign the documents (a Billy Sherifat Abosedo) had lawful authority to do so. Mr Diwnycz was asked at the hearing whether he had anything by way of case law or country material to support the assertion made by the decision-maker that the format of the documents provided meant the customary marriage had not been properly registered in accordance with the legal requirements in Nigeria. In his normal candid approach to such matters Mr Diwnycz confirmed that he had been unable to locate any authority to support a proposition that the concerns expressed by the decision-maker reflected a valid stance capable of establishing that the required burden had not been discharged.
 - 8.** I find in the absence of anything to counter the assertion made in the grounds of appeal and in light of the lack of any challenge to the weight that could be given to the marriage documents, that the appellant has discharged the burden of proof upon him to the required

standard to show he has undertaken a valid customary marriage recognised in Nigerian law and provided adequate evidence from an official with the capacity to do so confirming the marriage has been properly registered. On that basis the appeal must be allowed.

9. The remaining issue raised in the refusal relating to there only being one affidavit does not establish legal error sufficient to warrant the appeal being dismissed.

Decision

10. **I allow the appeal.**

Anonymity.

11. The First-tier Tribunal made no order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated 12 February 2021