



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

Appeal Number: IA/23455/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 7 October 2014**

**Oral Determination
Promulgated On 13
October 2014**

Before

UPPER TRIBUNAL JUDGE JORDAN

Between

GBENGA FEMI OLAJUBU

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T. Ogunnubi, TM Legal Services

For the Respondent: Mr P. Deller, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Nigeria who was born on 28 June 1974. He sought permission to reside in the United Kingdom as the husband of a Dutch citizen who is exercising Treaty rights in the United Kingdom. The application was refused on 14 May 2014. The Judge, in allowing the

appeal in August 2014, found that Nigerian law permitted proxy marriages. He was satisfied as to the procedures in relation to proxy marriages and came to the conclusion that the marriage was valid and properly registered. He considered that this sufficiently determined the appeal and allowed it.

2. The Secretary of State has appealed against that decision and in doing so has raised two cases of the Tribunal. The first is the case of **Kareem (Proxy marriages - EU law) [2014] UKUT 24** decided in January 2014 (pre-dating the determination in this appeal) and the second is the case of **TA (Kareem explained) Ghana [2014] UKUT 316**. In those cases it was determined that where an individual wishes to rely upon a marriage to a Union citizen but a marriage which is conducted outside Europe and is a proxy marriage, then in every case the validity of the marriage must be examined in accordance with the law of the Member State from which the Union citizen derives nationality.
3. In this case, however, there is an additional factor raised in the case of **TA** and that is, in addition to the claim based on marriage, the appellant also claimed that he was in a durable relationship as defined in Reg. 5 of the Immigration (European Economic Area) Regulations 2006. Upper Tribunal Judge O'Connor who determined **TA and Others** decided in that case that no sufficient consideration had been given to the question of a durable relationship. Accordingly he found that the decision made by the decision maker was not in accordance with the law and required the Secretary of State to make a fresh and lawful decision, a process sometimes described as 'remitting' the case back to the Secretary of State.
4. That is the situation that exists in the present appeal. Consequently whilst the question of the validity of the marriage was not properly addressed in the evidence by reason of the failure to adduce evidence as to whether this was a marriage which would be recognised by the Dutch authorities, it was also a case where a decision had to be made on the issue of Reg. 8(5) and a durable relationship. That was not done.
5. It follows that it is open to the appellant to raise with the Secretary of State what issues he wishes about the recognition of the proxy marriage in addition to any matters he wishes to raise as far as his claim to be involved in a durable relationship.
6. I find there was an error of law and direct that the matter goes back to the Secretary of State for a fresh decision to be made in accordance with the principles established in cases such as Abdi v SSHD [1996] Imm AR 148 (CA).

DECISION

The Judge made an error on a point of law and I re-make the decision in the following terms:

- (i) I set aside the decision of the First-tier Tribunal.

- (ii) The appeal is allowed to the limited extent that a decision on the appellant's application awaits a lawful decision of the Secretary of State.

A handwritten signature in black ink, appearing to read 'AJ Jordan', with a long horizontal stroke extending to the right.

ANDREW JORDAN
JUDGE OF THE UPPER TRIBUNAL
10 October 2014