



IAC-FH-NL-V1

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

Appeal Number: IA/33875/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 14 July 2015**

**Decision & Reasons Promulgated  
On 30 July 2015**

**Before**

**THE HONOURABLE MR JUSTICE COLLINS  
UPPER TRIBUNAL JUDGE LINDSLEY**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**ZUAWU MOHAMMED ABUBAKAR  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr L Tarlow, Home Office Presenting Officer

For the Respondent: None

**DECISION AND REASONS**

1. This is an appeal by the Secretary of State against the decision of First-tier Tribunal Judge Saunders given on 15 December 2014 whereby she allowed the appeal by the respondent who is a citizen of Ghana against the refusal of the Secretary of State to grant him a residence card as a family member of a French national, Ms Obaga-Obiang, whom he had he said married by proxy in Ghana. The issue which was material to the appeal was whether the proxy marriage, which was said to be a Ghanaian

customary marriage, was one which was valid and recognised so as to enable the appellant to be treated as a family member, or an extended family member, and thus was entitled to, or potentially eligible for, to a residence card in accordance with the relevant European Union Regulations.

2. The First-tier Tribunal accepted that the proxy marriage was a lawful marriage under Ghanaian law, and that the respondent had produced the necessary documentation, and allowed the appeal. However the Secretary of State appealed on the basis that the Immigration Judge had not properly considered in reaching her conclusion whether the marriage was valid under the laws of the country of the partner's nationality, that is France.
3. On 20 March 2015 my colleague, Judge Lindsley, found that the First-tier Tribunal had erred in law and gave directions in a decision which is appended to this one as Annex A. She concluded that the re-making of the appeal should be adjourned so that the respondent could produce material or evidence which showed that he had a durable relationship with the lady in question or that the French authorities would recognise the marriage and thus was her spouse in EU law. When the appeal was heard Ms Obaga-Obiang was not present because she had to attend to family business and so was perfectly reasonably abroad at the time. In fact her father had died and the funeral had been on 16 March 2015.
4. The respondent conceded that the French authorities would not recognise the marriage and so we awaited evidence which showed that this was indeed a durable relationship. It was not a matter which has been dealt with below beyond a finding that there was documentary evidence which indicated the respondent and Ms Obaga-Obiang had lived at the same address since April 2012, or indeed directly by the Secretary of State in the refusal letter. Some further evidence was submitted for a hearing which took place on 27<sup>th</sup> May 2015 in the form of short written statements from Ms Obaga-Obiang and friends, however there was no attendance on this occasion by any of these people - indeed there was further evidence that Ms Obaga-Obiang remained abroad for on-going medical and family reasons. The matter was once again adjourned to a date when it was anticipated that Ms Obaga-Obiang would be able to attend.
5. However no one attended the hearing before us, neither the respondent nor Ms Obaga-Obiang, and there can be no doubt as far as we are aware that notice of this hearing date was properly given. We cannot find that the short written statements, emails, further evidence of a joint address from bills and passport copies suffice to show that the respondent is in a genuine and subsisting durable relationship with Ms Obaga-Obiang without supporting oral evidence particularly from Ms Obaga-Obiang.
6. It is, we suppose, possible that there is a good reason why the respondent has not attended today and so we will not regard this order as final for a period of 21 days. The respondent must be notified by the court that the

Home Office has been allowed on the basis of non-attendance but he then has the opportunity to explain in writing within 21 days of receipt of such a notice from the court as to any reason why he failed to attend today, and if it appears to be a good reason then the matter will have to be reconsidered but subject to that this appeal must be allowed.

**Notice of Decision**

1. The decision of the First-tier Tribunal involved the making of an error on a point of law.
2. The decision of the First-tier Tribunal is set aside.
3. The appeal is re-made dismissing the appeal under the EEA Regulations.

No anonymity direction is made.

Signed

Date 21<sup>st</sup> July 2015

A handwritten signature in black ink, appearing to read 'Hon. Justice Collins', with a horizontal line underneath.

pp Mr Justice Collins

## **Annex A**

### **DECISION AND DIRECTIONS**

#### *Introduction*

1. This is an appeal by the Secretary of State but I will refer to the parties as they were before the First-tier Tribunal.
2. The appellant is a citizen of Ghana born on 2<sup>nd</sup> September 1983. He applied for an EU residence card as the spouse of Ms Grace Diandra Obaga-Obiang, a citizen of France born on 28<sup>th</sup> April 1990 who is said to be exercising Treaty rights in the UK. The application was refused on 19<sup>th</sup> August 2014 on the basis that the Secretary of State was not satisfied that the appellant and Ms Obaga-Obiang had contracted a valid Ghanaian proxy marriage and on the basis that the application for a residence card under Regulation 7 of the Immigration EEA Regulations 2006 (henceforth the EEA Regulations) could not succeed in accordance with Kareem (Proxy marriages - EU law) [2014] UKUT 00024. The appeal against the decision was allowed by First-tier Tribunal Judge Saunders in a determination promulgated on the 15<sup>th</sup> December 2014.
3. Permission to appeal was granted on the 25<sup>th</sup> January 2015 by Judge of the First-tier Tribunal Ford on the basis that it was arguable that the First-tier judge had erred in law as Judge Saunders had not made any findings as to the validity of the appellant's marriage in French law as she was required to do by Kareem.
4. The matter came before me to determine whether the First-tier Tribunal had erred in law.

#### *Submissions*

5. Ms Savage relied upon the ground of appeal that the guidance in Kareem had not been followed and so the First-tier Tribunal had erred in law. She did not rely upon the second ground which stated that that the First-tier Tribunal was not entitled to make a finding about the appellant and Ms Obaga-Obiang cohabiting as the Secretary of State had not dealt with the issue as to whether the appellant and his wife were also in a durable relationship.
6. I explained to the appellant that I accepted that the First-tier Tribunal had indeed made the legal mistake argued for by the Secretary of State. I set out my reasons in writing below.

#### *Error of Law - Conclusions*

7. In accordance with Kareem and perhaps more explicitly in TA and Others (Kareem explained) [2014] UKUT 316 the determination of whether there is a marital relationship for Regulation 7 of the EEA

Regulations must always be examined in accordance with the laws of the Member State from which the Union citizen obtains nationality.

8. Judge Saunders made valid findings about the validity of the appellant and Ms Obaga-Obiang's marriage in accordance with Ghanaian law but did not consider whether there was evidence before her as to whether it was valid in French law. There was no evidence before the First-tier Tribunal that the appellant's marriage to Ms Obaga-Obiang was valid in French law
9. I therefore find that Judge Saunder's erred materially in law in allowing the appeal under Regulation 7 of the EEA Regulations as she had no evidence that the appellant's proxy marriage to Ms Obaga-Obiang was valid in French law.

### *Conclusions -Adjourning the Remaking of the Appeal*

10. The appellant clearly contended that he has a durable relationship with Ms Obaga-Obiang in his application (he underlines this on his form at 3.16). He appealed on grounds which asserted that he is also entitled to a residence permit as an extended family member due to being in a durable relationship in accordance with Regulation 8(5) of the EEA Regulations.
11. Ms Saunders made a finding, which she was entitled to do and which accorded with the evidence before her, that the appellant and Ms Obaga-Obiang had cohabited since April 2012. She did not make a finding as to whether they were in a durable relationship however, and thus the First-tier Tribunal has not fully addressed this basis of appeal.
12. The Secretary of State did not challenge any of the findings of Judge Saunders so whilst I set aside her decision I do not set aside the findings she made in her determination.
13. It was agreed that it was appropriate to adjourn the remaking hearing as the appellant produced a letter from his wife stating that she had travelled to Congo to attend her father's funeral. It was agreed that evidence from Ms Obaga-Obiang was highly relevant to whether the appellant and she were in a durable relationship.
14. At the hearing a new date of 26<sup>th</sup> May 2015 was given to the parties but this is in fact a day on which the Tribunal is not sitting so a date of 27<sup>th</sup> May 2015 has been allocated. I explained to the appellant that he could succeed in his appeal on that day either by showing his proxy marriage was valid in French law or by showing he had a durable relationship (which might be described as a genuine and subsisting cohabitating romantic relationship) with Ms Obaga-Obiang.

### Decision

15. The decision of the First-tier Tribunal involved the making of an error on a point of law.
16. The decision of the First-tier Tribunal is set aside but the findings of Judge Saunders are preserved.
17. The remaking hearing is adjourned to Wednesday 27<sup>th</sup> May 2015.

#### Directions

1. Any further evidence the appellant wished to adduce either to show that his proxy marriage is valid in French law or to show that he and Ms Obaga-Obiang are in a durable relationship should be filed with the Tribunal and served on the Secretary of State at the address at the top of the notice of hearing by Wednesday 20<sup>th</sup> May 2015.
2. Such evidence might include: a document from the French Consulate stating whether they recognise the validity of the proxy marriage between the appellant and his wife; a signed statement from Ms Obaga-Obiang setting out the history of the relationship between her and the appellant from the time they met to the present; signed letters or statements from friends or family confirming whether they view the relationship between the appellant and Ms Obaga-Obiang as genuine and their reasons for their opinions. (This evidence would be of greater assistance to the Tribunal if these friends/family also attended the Tribunal to give oral evidence).

Deputy Upper Tribunal Judge Lindsley  
20<sup>th</sup> March 2015