



**(IMMIGRATION AND ASYLUM CHAMBER)
IA/46440/2013**

**UPPER TRIBUNAL
APPEAL NUMBER:**

THE IMMIGRATION ACTS

Heard at: Field House

On: 31 July 2014

Prepared: 11 August 2014

**Determination
Promulgated**

On: 12 August 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR KHADIM NDIAYE

Respondent

Representation

For the Appellant: Mr C Avery, Senior Home Office Presenting Officer

For the Respondent: No representative and no appearance

DETERMINATION AND REASONS

1. I shall refer to the appellant as the Secretary of State for the Home Department and to the respondent as "the claimant."
2. On the day of the hearing, namely 31st July 2014, the claimant's solicitors sent a fax informing the Tribunal that the claimant wishes to withdraw his appeal against the decision of the Secretary of State to refuse his application for a residence card. The solicitor stated that the claimant had only given them instructions that morning. The solicitors requested that their letter be accepted as a formal notice of withdrawal.

3. I am satisfied that the claimant has been given notice of the hearing. I consider that it is in the interests of justice to proceed with the hearing, notwithstanding his failure to attend the hearing.
4. The claimant is a national of Senegal, born on 19th May 1978. His appeal against the decision of the respondent refusing his application made on 5th April 2013 for a residence card in accordance with the Immigration (EEA) Regulations 2006 ("the 2006 Regulations") was allowed under the Regulations but dismissed on human rights grounds in a determination promulgated by the First-tier Tribunal Judge on 25th April 2014.
5. The Judge found the claimant to be an unreliable witness. There was no evidence to confirm the claim that his brother had sent money to him in Senegal and accordingly the Judge did not find evidence that he was dependent on his brother whilst in Senegal. He found that he was probably living with his brother and dependent on him in the UK.
6. On 18th June 2014, First-tier Tribunal Judge Shimmin granted the Secretary of State permission to appeal against the First-tier Tribunal Judge's determination.
7. It was contended that the Judge had erred in that he had found that there was no evidence of dependency or membership of the EEA National's household by the claimant prior to his arrival in the UK and as such, the claimant could not meet Regulation 8(2)(a) of the 2006 Regulations. Judge Shimmin found that the grounds of appeal disclosed an arguable error of law.
8. No Rule 24 response was received from the claimant. He has throughout been represented by solicitors.
9. Both parties were directed to prepare for the hearing on the basis that, if the Upper Tribunal decides to set aside the determination of the First-tier Tribunal, any further evidence including supplementary oral evidence, that the Upper Tribunal may need to consider if it decides to re-make the decision can be so considered at that hearing.
10. No such evidence has been forthcoming.
11. On 25th July 2014 the appellant's solicitors sent to the Tribunal a copy of the appellant's grounds of appeal before the First-tier Tribunal.
12. Mr Avery relied on the reasons for appealing.
13. In an application by an extended family member for a residence card to join the EEA National who is resident here under the 2006 Regulations, he must show qualification as such before arrival in the UK- **Moneke**

(EEA - OFMs) Nigeria [2011] UKUT 000341 (IAC). Moreover, **Dauhoo (EEA Regulations - Reg 8 (2) [2012] UKUT 79 (IAC)** provides that under the scheme set out in Regulation 8(2) of the 2006 Regulations, a person can succeed in establishing that he or she is an extended family member in any one of four different ways, each of which requires proving a relevant connection both prior to arrival in the UK and in the UK.

14. The First-tier Tribunal Judge expressly found that there was no evidence of such dependency or membership of a household prior to the claimant's arrival in the UK. In the circumstances, the appeal should have been dismissed with reference to Regulation 8(2)(a). I accordingly set aside the determination of the First-tier Judge.
15. Having set aside the decision of the First-tier Tribunal, I would ordinarily re-make it. However, the claimant, as already noted, has given instructions to his solicitors to withdraw his appeal against the decision of the Secretary of State to refuse his application for a residence card. The notification sent to the Tribunal was requested to be accepted as a formal notice of withdrawal.
16. I find that the appellant has formally requested to withdraw his appeal. In the circumstances, I record that the appeal is withdrawn and pursuant to paragraph 17(3) of the Asylum and Immigration Tribunals (Procedure) Rules 2005, the Tribunal must serve on the parties a notice that the appeal has been recorded as having been withdrawn.

Summary of Decisions

Having found that there was an error of law by the First-tier Tribunal, I set aside that decision.

The claimant has subsequently withdrawn his appeal against the decision of the Secretary of State refusing to grant him a residence card. Accordingly, a notice that the appeal has been recorded as having been withdrawn must be served on both parties.

No anonymity direction made.

Signed

Dated: 11 August 2014

C R Mailer
Deputy Upper Tribunal Judge