



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

Appeal Number: IA/49003/2013

THE IMMIGRATION ACTS

Heard at North Shields

**On 4th April, 2014
Signed 15th May, 2014**

**Determination
Promulgated
On 16th May 2014**
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Before

Upper Tribunal Judge Richard Chalkley,

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

IDOWU ANJOKWU

Respondent

Representation

For the appellant: Mrs H Rackstraw, a Senior Home Office Presenting Officer.

For the respondent: Mr MA Bhutyan, a solicitor's clerk with Messrs. Haque & Hausmann, solicitors

DETERMINATION AND REASONS

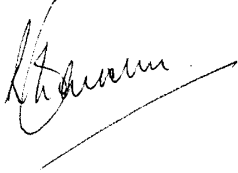
1. The appellant is the Secretary of State for the Home Department and in this determination I refer to her as "the claimant". The respondent is female, a citizen of Nigeria and was born on 9th December, 1975.

2. The claimant appeals against the determination of First Tier Tribunal Judge Fox, promulgated on 14th February, 2014 supposedly allowing the appeal of the respondent against the decision of the claimant, taken on 8th November, 2013 to refuse to issue a Residence Card under Regulation 15A(2) and 15A(4) of the Immigration (European Economic Area) Regulations, 2006 (“the regulations”).
3. The claimant’s grounds of appeal point out that at paragraphs 13 to 16 of the determination the First Tier Tribunal Judge appears to have made findings that the respondent is not entitled to a Residence Card, but then, at paragraphs 17 to 19 of the determination says that the respondent should have been granted Residence Card. Further, the First Tier Tribunal Judge says at paragraph 18 of the determination that the appeal is allowed on human rights grounds under Article 8.
4. Mr Bhutyan told me that his client was not present but was on her way. He confirmed, however, that he had no objection to the error of law issue being dealt with in her absence. Mr Bhutyan confirmed that there was no Reply under Rule 24 and that is accepted that the determination does contain errors of law.
5. Mrs Rackstraw invited me to remake the determination, dismissing the appeal since the respondent could not bring herself within the regulations; she could not satisfy Regulation 15A(2) or 15A(3). Mr Bhutyan accepted that the regulations are not satisfied in terms of the respondent being a qualified person and although she cannot qualify under Article 8 because she could not satisfy the Immigration Rules, he suggested that she could succeed under Article 8 jurisprudence.
6. However, the First Tier Tribunal Judge considered the appellant’s Article 8 appeal in paragraph 16 of the determination. Section EX of Appendix FM does not apply and the judge found that there were no “insurmountable obstacles” presented to her on the evidence before her. I believe that given the judge’s findings at paragraphs 13 to 16 of the determination, what the judge said at paragraphs 17 to 20, were simple errors on her part which she failed to correct when correcting and approving her determination.
7. I am satisfied that Mr Bhutyan was entirely correct to agree that the claimant was entitled to have her appeal against the First Tier Tribunal Judge’s decision under the Immigration Rules allowed in all the circumstances. I am satisfied that the respondent cannot succeed in her human rights Article 8 appeal, given the judge’s findings.
8. Having carefully read the determination of the First-tier Tribunal and the grounds of application, I am satisfied that the determination of Judge Fox does contain an error on a point of law as identified in paragraph 3 above. The making of the previous decision involved the making of an

error on a point of law. I set aside the previous decision. My decision is that **the respondent's appeal be dismissed.**

Decision

The respondent's appeal is dismissed.

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

Upper Tribunal Judge Chalkley