



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

Appeal Number: IA/14256/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 30th July 2015**

**Decision & Reasons
Promulgated
On 14th August 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE LEVER

Between

**CHIZOBA IVOR MBAEYI
(ANONYMITY NOT RETAINED)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Nizami
For the Respondent: Mr Bramble

DECISION AND REASONS

Introduction

1. The Appellant born on 12th December 1983 is a citizen of Nigeria. The Appellant had made application for a residence permit on the basis that he was a spouse of an EEA national exercising treaty rights. The Respondent

refused that application in June 2013 and a renewed application was also refused in July 2013. The Appellant made a further application for a residence card on the same basis on 24th August 2013. The Respondent had refused that application on 20th March 2014.

2. The Appellant had appealed that decision and his appeal was heard by First-tier Tribunal Judge Hamilton sitting at Richmond on 23rd October 2014. He had dismissed the appeal.
3. The Appellant had appealed that decision. The Respondent had opposed the application on 30th June 2015. Permission to appeal was granted by Upper Tribunal Judge Allen on 15th June 2015 on the basis that it was arguable the judge had not adequately given reasons for his finding that the Sponsor was the primary carer of the eldest child and that he had not taken into account the potential relevance of Regulation 15A(7)(b)(ii) of the 2006 Regulations.

Submissions

4. Miss Nizami had firstly made application for an adjournment as the Appellant was not present having thought the case was tomorrow and was prepared to travel from Southend to the hearing centre today. I indicated that I would only be dealing with the question of error of law today and therefore there would be no need in any event for any evidence from the Appellant. I further indicated it was likely to be a lengthy delay before the Appellant could arrive and there were other cases in a full list for the day. I accordingly refused the application.
5. It was submitted that the judge had provided inadequate explanations as to the conclusion that the mother was the primary carer and further that the judge had made no reference to Article 15A(7)(b)(ii). It was also noted that there had been an incorrect reference to Article 12 of the Citizen's Directive within the determination.
6. Mr Bramble accepted that the judge had made an error in not providing any adequate explanation as to his conclusions on care of the child. I indicated that I would provide a decision in writing. I now provide that decision.

Decision and Reasons

7. This was a case where the original application made by the Appellant was to be granted a residence card as a family member of an EEA national, namely his wife a Polish citizen, when it was said she was exercising treaty rights as a worker under Regulation 6 of the 2006 Regulations. The Respondent had refused that application as the Respondent did not accept that the Sponsor was in work and therefore she was not exercising treaty rights under Regulation 6.
8. On appeal before the First-tier Tribunal the Respondent was unrepresented due to the illness of the Presenting Officer. The judge had

found for properly reasoned conclusions that the EEA citizen spouse was not currently working as claimed and therefore was not exercising treaty rights under Regulation 6 of the 2006 Regulations.

9. However the judge had, perhaps understandably, gone on to consider the question of the children and in that respect whether or not there was any derivative right of residence applicable to the Appellant. At paragraph 49 the judge had found the EEA Sponsor to be the primary carer and that “the right to remain in the UK derived through Article 12 will not extend to the Appellant who is not the child’s primary carer”. At paragraph 48 the judge had referred to Article 12 of the Citizen’s Directive.
10. There appears to be no adequate reasons given for the judge’s findings that the EEA Sponsor mother was the primary carer. There is for example no finding that there may have been such gained from a shared responsibility of the children or in a different way. The reference to Article 12 of the Citizen’s Directive appears an error and perhaps should have been a reference to Article 12 of Regulation 1612/68. There is no reference to or consideration of the potential relevance of Article 15A(7)(b) (ii) of the 2006 Regulations as noted in the permission granting appeal. It was conceded by Mr Bramble that there was an error of law in this aspect of the case and that is a concession with which I agree.
11. I indicated at the hearing and I confirm that now, that the judge’s findings on fact in respect of Regulation 6 of the 2006 Regulations (whether the EEA citizen had been working at the time) should stand. The judge had carefully considered the documentation and oral evidence in this respect. She had given clear and sustainable reasons for reaching the conclusions at paragraphs 36 to 48 of the decision and those conclusions disclosed no error of law or unreasonableness in the conclusions reached.
12. The material error of law therefore relates specifically to the consideration of potential derivative rights of residence under Regulation 15A of the 2006 Regulations and the relevance and impact upon findings made in this respect as to the position of the non-EEA national Appellant. It is appropriate that as there is a need to make full and proper findings on fact in respect of this issue the case should be remitted back to the First-tier Tribunal for that matter to be fully considered.

Notice of Decision

13. I find that an error of law was made by the judge in the manner described and therefore set aside the decision of the First-tier Tribunal in so far as it relates to any potential derivative right of residence and direct that that aspect of this case is remade in the First-tier Tribunal.
14. Anonymity not retained.

Signed

Date

Deputy Upper Tribunal Judge Lever