



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

**Appeal Number: IA/36761/2013  
IA/36769/2013  
IA/36791/2013  
IA/36795/2013**

**THE IMMIGRATION ACTS**

**Heard at FIELD HOUSE  
On 13.1.2015**

**Decision & Reasons Promulgated  
On 22.1.2015**

**Before**

**DEPUTY JUDGE OF THE UPPER TRIBUNAL GA BLACK**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**SOI + 3 CLAIMANTS  
(ANONYMITY DIRECTION MADE)**

Claimant

**Representation:**

For the Claimant: Mr Avery (Senior Home Office Presenting officer)

For the Respondent: Mr A Magsood (Legal representative)

**DECISION AND REASONS**

- 1.** This is an appeal by the Secretary of State. For ease of reference I shall refer to the parties as the "Secretary of State" and the "Claimant".
- 2.** The main Claimant, SOI is a citizen of Nigeria and her date of birth is 14.11.1995, the second Claimant is JCI whose date of birth is 22.10.1999, the third Claimant is HCI whose date of birth is 27.11.1996 and the fourth

Claimant is NII whose date of birth is 5.12.2002. At the time of the application, made under Regulations 6 and 17 Immigration (EEA) Regulations 2006 ("EEA Regs"), the Claimants were under 18 years except for SOI who was 18 years of age, but all were in full time education. She made an application together with her siblings for residence cards as family members of an EEA citizen, their father RSP, a Dutch national. Their mother is RI whose date of birth is 5.6.1983, and she is also a citizen of Nigeria who was granted a 5 year residence card valid until 1<sup>st</sup> December 2015. The Claimants were granted EEA family permit entry clearance from 22.10.2011 for one year. Their applications for residence cards were refused on 27<sup>th</sup> August 2013.

3. The Secretary of State appeals against a decision promulgated on 10<sup>th</sup> October 2014 by First-tier Tribunal (Judge T Jones) in which the appeals were allowed under the Immigration (EEA) Regulations 2006 with reference to Regulation 6 EEA Regs., and in which the Tribunal found that there was evidence to show that the EEA citizen was a qualified person (employed) and exercising Treaty Rights.

### **Grounds of application**

4. The Secretary of State submitted in ground 1 that there were factual errors such that the Judge failed to show he had applied anxious scrutiny to the decision. Ground 2 argued that there was no evidence on which the Tribunal could have found that the Claimants father was exercising Treaty rights as a worker at the date of hearing on 26<sup>th</sup> September 2014 (**Boodhoo & another (EEA Regs: relevant evidence) [2013] UKUT 00346(IAC)**). Their enquiries revealed that he left employment on 30<sup>th</sup> June 2013 and it was the Claimants evidence that he left the matrimonial home on 2nd December 2013 and had not been heard of since. Divorce proceedings were commenced.

### **Permission**

5. Permission was granted by First-tier Judge Shimmin on 24<sup>th</sup> November 2014 on ground 2 only. It was arguable that the Tribunal erred in finding evidence on which to conclude that the EEA sponsor was employed exercising Treaty Rights at the date of the hearing.

### **Error of law hearing**

6. The matter came before me for consideration of error of law in the decision and reasons. Submissions were made by both representatives. Mr Avery in the main relied on the grounds of application. Mr Magsood responded that the date of hearing was not the required time at which the evidence must be established. There was evidence that the sponsor was working until the end of June 2013 and that the Tribunal relied on the Claimants' mother's oral evidence that the sponsor appeared to be going

out to work from the home up until December 2013, when he left. He submitted that in any event the Tribunal needed to have regard to the derivative rights of the children who are in education.

### **Decision and reasons**

- 7.** Firstly, I observe that the Tribunal referred to RI as the first Appellant when she was not in fact a party to these proceedings but called as a witness. Although this formed the basis for ground 1, permission was not granted on this ground, but I do find it of some limited relevance to the Tribunal's decision. Furthermore I observe that the Secretary of State relied on two grounds for refusal; the first that the Claimants failed to produced evidence of the identity or a valid passport for the EEA national. No reference was made to this issue in the Tribunal's decision and none was raised before me. I proceed on the basis that this was no longer the subject of any challenge.
- 8.** The background to the appeal is that RI, the Claimants mother, was granted a residence card as an EEA family member (spouse) valid until 1.12.2015. It was argued in the grounds of appeal before the First-tier Tribunal that she had retained a right of residence having lived with an EEA national from 26.3.2010 until 2.12.2013, and that the Claimants ought to have been granted residence cards in line with her. Further the grounds of appeal submit that the application was made on the basis that the Claimants are direct descendant relatives and dependents of an EEA national's spouse. It was not disputed that the Claimants were financially dependent on their mother who was employed and had no recourse to public funds since her arrival in the UK in 2010. The Claimants are enrolled in full time education. The grounds of appeal argued that Article 8 family life is engaged.
- 9.** I am satisfied that there was no reliable evidence upon which the Tribunal could sustain a finding that the sponsor was a "qualified" person either since 2nd December 2013, at which point the sponsor left the matrimonial home, or at the date of the hearing. The date of hearing is the relevant time for consideration of the evidence. I am satisfied that there was no direct evidence before the Tribunal to show that the sponsor was in employment and a qualified person beyond 30th June 2013. The evidence establishes that he was employed at the date of application but not at the date of decision or thereafter. Clearly the Tribunal found the Claimants mother to be a credible witness but her evidence as to his employment can only amount to supposition. She believed that her husband was going out to work. There was no additional evidence relied on or referred to that supported the witness' belief that her husband was in fact working until he left the family home, for example financial evidence. Further there was no documentary evidence to show that he was employed or even living in the UK exercising Treaty Rights at the relevant time. The focus of the reasons

for refusal and indeed the Tribunal's decision was the issue under Regulation 6.

**10.** The Tribunal has materially erred for the reasons given above. As Regulation 6 was not met there can be no entitlement to a residence card under Regulation 17 EEA Regs. However, that is not an end of the matter, as it is clear that further consideration ought to have been given to the circumstances of the Claimants and their mother under Regulation 15A EEA Regs, namely derivative rights of residence. There was no consideration of this issue by either the Secretary of State nor the Tribunal and which was raised in the grounds of appeal. It may well be that in light of the Tribunal's mistake in identifying the Claimants mother as the main Appellant the waters were muddied. It is not necessary for a further hearing before this Tribunal as I propose to remake the decision having received further written submissions. Accordingly I have decided to set aside that part of the decision made that Regulation 6 is met. I direct that the parties do file and serve within 14 days of the date of issue of this decision written submissions on the applicability of Regulation 15/15A EEA Regs and Article 8 family and private life.

### **Decision**

**11. There is a material error of law in the decision and that part relating to Regulation 6 is set aside. In order to remake the decision I direct that both representatives do file and serve within 14 days of the date of issue of this decision written submissions on the application of Regulation 15A and Article 8.**

### **Direction Regarding Anonymity - rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014**

Unless and until a tribunal or court directs otherwise, the Claimants are granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings. Three of the Claimants are under the age of 18 years.

Signed

Date 15.1.2015

Judge GA Black  
Deputy Judge of the Upper Tribunal

**TO THE RESPONDENT**  
**FEE AWARD**

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No fee award applicable

Signed

Date 15.1.2015

Judge GA Black  
Deputy Judge of the Upper Tribunal