



**Upper Tribunal
(Immigration and Asylum Chamber)
EA/09084/2016**

Appeal Number:

**Heard at Field House
On 8 June 2017**

**Decision & Reasons
Promulgated
On 19 June 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

Appellant

**AANU CHRISTIANA OLAWUNMI ADEYI
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Ms K. Pal, Home Office Presenting Officer

For the Respondent: Not represented

DECISION AND REASONS

1. The respondent (hereinafter “the claimant”) is a citizen of Nigeria born on 16 April 1987 whose application for a Derivative EEA Residence card under Regulation 15A(4A) of the Immigration EEA Regulations 2006 (“the 2006 Regulations”) was refused by the Secretary of State.
2. The claimant appealed to the First-tier Tribunal where her appeal was considered by Judge Boylan-Kemp without an oral hearing. The decision is dated 25 November 2016 and was promulgated on 29 November 2016.

3. The judge found that the requirements of Regulation 15A(4A) were met and that consequently the claimant had a derivative right of residence in the UK.
4. The grounds of appeal contend that on 15 November 2016 the Secretary of State sent by fax to the First-tier Tribunal a supplemental reasons for refusal letter along with a letter from the Passport Office concerning the revocation of the claimant's son's British passport but that no reference to these documents was made in the decision.
5. The letter from the Passport Office referred to in the grounds of appeal is a letter dated 11 August 2016 to the claimant from HM Passport Office stating that her son has no entitlement, or statutory right, to have a UK passport, that his passport should not have been issued, and that it has now been revoked.
6. Before me, Ms Pal reiterated the arguments made in the grounds of appeal.
7. Ms Adeyi was not represented. She stated that she had not seen the letter of 11 August 2016 from the Passport Office. I gave her an opportunity to review it. She submitted that the only reason she had made the application was that she had wanted to attend a funeral in Nigeria and had mislaid her residence card. She stated that she had submitted to the Secretary of State everything required to obtain the residence card.
8. Reading the decision as a whole, it is clear that the judge did not take into consideration the letter of 11 August 2016 from the Passport Office that was submitted by the Secretary of State on 15 November 2016. Whether this was a mistake by the judge or (as is more likely) was because the document was not on the file when the judge considered the matter, the result is the same: the decision was made without having regard to material evidence. This is a material error of law and the decision cannot stand.
9. In order to succeed under Regulation 15A(4A) the claimant must show, inter alia, that she is the primary carer of a British citizen. The only evidence before me on the question of the claimant's son's citizenship is a copy of a British passport and a letter from the Passport Office stating that this passport has been revoked as the claimant's son has no entitlement to it. In these circumstances, I am not satisfied that, on the balance of probabilities, the claimant's son is a British citizen. I therefore find that the requirements of Regulation 15A(4A) are not met and that, consequently, the claimant has not established that she has a derivative right of residence in the UK.

Decision

14. The First-tier Tribunal made a material error of law and the decision is set aside.

15. I remake the decision by dismissing the claimant's appeal.

Signed



Deputy Upper Tribunal Judge Sheridan