



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

Appeal Number: IA/09061/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 26 February 2015**

**Determination Promulgated  
On 26 March 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE APLEYARD**

**Between**

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

Appellant

**and**

**MR KEVIN KWARE AGAS  
(ANONYMITY ORDER NOT MADE)**

Respondent

**Representation:**

For the Appellant: Ms Petterson, Home Office Presenting Officer.

For the Respondent: Mr. O. Omoniruvbe, Legal Representative.

**DECISION AND REASONS**

1. No application for anonymity had been made in these proceedings and there is no reason why such an order should be made.
2. The appellant in this case is the Secretary of State for the Home Department. However, for the sake of clarity, I shall use the titles by which the parties were known before the First-tier Tribunal, with the

Secretary of State referred to as “the respondent” and Mr Agas as “the appellant”.

3. The appellant is a citizen of Nigeria, born on 20 November 1980. He applied for a residence permit as the family member of his sponsor pursuant to Regulation 9(2) of the Immigration (European Economic Area) Regulations 2006. The appellant also claimed to have a derivative right of residence. His application was refused and following a hearing at Taylor House Judge of the First-tier Tribunal Tipping found that he met the requirements of Appendix FM and allowed the appeal on Article 8 grounds.
4. The respondent sought permission to appeal and on 16 January 2015 Judge of the First-tier Tribunal Colyer gave his reasons for granting such permission. They state:-

- “1. The Respondent seeks permission to appeal, in time, against a decision of the First-tier Tribunal (Judge Tipping) who, in a determination promulgated on 25<sup>th</sup> September 2014, dismissed the Appellant’s appeal against the Respondent’s decision to refuse his application for a residence permit as a dependent family member of an EEA citizen pursuant to the immigration (European economic area) regulations 2006 and allowed the Appellant’s appeal under article 8 of the European convention on human rights.
2. The Grounds for applying to the upper tribunal submit that the judge has misdirected himself with reference to factually incorrect findings. For example paragraph 14 the finding of appellant failing to qualify under paragraph E-LTRP 1.7 of appendix FM whereas the refusal was under E-LTRP 1.2 and S-LTR 1.7 and such decision recorded ‘there is no right of appeal against this refusal’. The appellant did not appeal against this decision.
3. Paragraph 4 of the decision and reasons is said to be factually incorrect as seen from the reasons for refusal letter. The respondent invited the appellant to make an application should he wish. This is a materially different proposition from that indicated by the judge which was essentially that the appellant fails for want of one requirement under eligibility.
4. The respondent refers to the case of Lamichhane [2012]. It is submitted that there is no section 120 notice served in this appeal.
5. The respondent refers to the case of Weiss [2010]. It is submitted this application was not made on the prescribed form.
6. It is submitted that the judge erred in considering and subsequently allowing the appeal under appendix FM.

7. In the alternative the judge in assessing the appellant's family and private life misdirected himself in fact and proceeded on the wrong premise incorporating a decision that was not subject to a right of appeal and which did not appear in the reasoning of the immigration decision of 29 January 2014 which generated this right of appeal.
  8. The grounds disclose an arguable error of law."
5. Thus the appeal came before me today.
  6. At today's hearing Ms Petterson relied upon the grounds submitting that it was not open to the judge to allow the appeal under Appendix FM in all the circumstances and that he should have either allowed the appeal to the limited extent that it be remitted back to the respondent for consideration of Article 8 or dismissed the appeal outright.
  7. Mr Omoniruvbe accepted that that was the position but on the basis only that the appeal should have been allowed to the limited extent that it be remitted for a lawful decision to be made.
  8. Ms Petterson agreed that the appeal before me should proceed on that basis.
  9. On my own analysis and taking into account all the grounds of appeal I too am satisfied that the judge has materially erred and that in the circumstances it was incumbent upon him to allow this appeal to the limited extent that it be remitted back to the respondent for a lawful decision to be made.

### **Notice of Decision**

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision.

I remake the decision in the appeal by allowing it to the limited extent that it is remitted back to the respondent for a lawful decision to be made.

No anonymity direction is made.

Signed

Date 25 March 2015

Deputy Upper Tribunal Judge Appleyard