



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

Appeal Number: IA/50195/2013

THE IMMIGRATION ACTS

Heard at Birmingham

On 21st January 2015

**Decision & Reasons
Promulgated**

On 2nd February 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**SALOME EKAMA ONWUMELU
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr I Ikechukwa of Almond Legals

For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant appeals against a determination of Judge of the First-tier Tribunal Moore (the judge) promulgated on 10th December 2012. The Appellant had appealed against the Respondent's decision to refuse to issue a residence card.
2. The refusal was dated 15th November 2013, and the reasons for refusal was that the Appellant had applied for a residence card as the extended family member of an EEA national pursuant to regulation 8 of The Immigration (European Economic Area) Regulations 2006 (the 2006

Regulations). The application was refused with reference to regulation 8(2)(a) and (c). The Respondent contended that the Appellant had failed to provide sufficient evidence that he was dependent upon or residing with an EEA national prior to entering the United Kingdom, and had failed to provide evidence that since entering the United Kingdom he had continued to be dependent upon, or residing with an EEA national.

3. The judge dismissed the appeal, finding that the Appellant had not proved that she was dependent upon an EEA national prior to coming to the United Kingdom and therefore regulation 8(2)(a) was not satisfied.
4. The Appellant applied for permission to appeal to the Upper Tribunal contending that the judge was wrong in law to have considered regulation 8 of the 2006 Regulations, and should have considered regulation 7 as the Appellant was the family member of an EEA national, and not an extended family member. The judge had erred in law by considering the wrong regulation.
5. Permission to appeal was granted by Judge of the First-tier Tribunal Chambers, and on 2nd October 2014 the Respondent lodged a response pursuant to rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008 indicating that the application for permission to appeal was not opposed, as both the judge, and the original decision maker had erred in law in considering regulation 8, when it was clear that regulation 7(c) of the 2006 Regulations applied.
6. At the hearing before me Mr Mills accepted that the judge had erred in law as contended in the grounds, and as accepted in the rule 24 response and suggested that the decision of the First-tier Tribunal should be set aside, and remitted to be considered afresh by the First-tier Tribunal.
7. Mr Ikechukwa did not oppose this suggestion.
8. I agreed that an error had been made both by the original decision maker and by the judge in considering regulation 8 rather than regulation 7 of the 2006 Regulations and therefore I set aside the decision of the First-tier Tribunal. No findings are preserved.
9. In deciding whether to remit to the First-tier Tribunal I considered paragraph 7 of the Senior President's Practice Statements which provides as follows;
 - 7.1 Where under section 12(1) of the 2007 Act (proceedings on appeal to the Upper Tribunal) the Upper Tribunal finds that the making of the decision concerned involved the making of an error on a point of law, the Upper Tribunal may set aside the decision and, if it does so, must either remit the case to the First-tier Tribunal under section 12(2)(b)(i) or proceed (in accordance with relevant Practice Directions) to re-make the decision under section 12(2)(b)(ii).
 - 7.2 The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that;

- (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
- (b) the nature or extent of any judicial fact-finding which is necessary in order for the decision and the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

7.3 Re-making rather than remitting will nevertheless constitute the normal approach to determining appeals where an error of law is found, even if some further fact-finding is necessary.

- 10. In my view the requirements of paragraph 7.2(a) and (b) are met, in that the First-tier Tribunal has not considered the Appellant's case under the correct regulation, and initial fact-finding needs to be carried out.
- 11. Therefore with the consent of both parties, the appeal is remitted to the First-tier Tribunal so that it may be decided afresh.
- 12. The parties will be advised in due course of the hearing date. The appeal will be heard at Sheldon Court, Birmingham, by a First-tier Tribunal Judge other than Judge Moore. It is understood that no interpreter will be required at the hearing. If this is not the case the Appellant's representative must notify the Tribunal immediately.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law such that it is set aside. The appeal is allowed to the extent that it is remitted to the First-tier Tribunal.

Anonymity

There was no order for anonymity made by the First-tier Tribunal. There has been no request for anonymity and the Upper Tribunal makes no anonymity order.

Signed

Date **21st January 2015**

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT FEE AWARD

No fee award is made by the Upper Tribunal. The fee award will need to be considered again when the First-tier Tribunal has heard this appeal.

Signed

Date **21st January 2015**

Deputy Upper Tribunal Judge M A Hall