



IAC-FH-AR-V1

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

Appeal Number: IA/50116/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 12 January 2016**

**Decision & Reasons Promulgated  
On 27 January 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MUTIAT AJOKE SALAMI  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Ms Fijiwala, Home Office Presenting Officer

For the Respondent: Mr Reynolds of Counsel, instructed by Daniel Aramide Solicitors

**DECISION AND REASONS**

1. This is an appeal against the decision of First-tier Tribunal Judge Wylie promulgated on 24 July 2015 brought with the permission of First-tier Tribunal Judge Frankish granted on 5 November 2015.
2. Although before me the Secretary of State for the Home Department is the appellant and Ms Salami is the respondent, for the sake of consistency with the decision of the

First-tier Tribunal I shall refer to the Ms Salami as the Appellant and the Secretary of State as the Respondent.

3. I am grateful for the helpful and realistic approach adopted by Mr Reynolds this morning who accepts the substance of the challenge brought by the Respondent to the decision of First-tier Tribunal Judge Wylie. In such circumstances it is unnecessary for me to rehearse in detail the immigration history and other factual circumstances of the Appellant, all of which are a matter of record and are in any event summarised in the decision of the First-tier Tribunal.
4. The principal issue in the appeal before the First-tier Tribunal was whether or not the Appellant was the 'extended family member' of her sister, Mujidat Ottun (who has been an Irish citizen since 2006), within the meaning of regulation 8(2) of the Immigration (European Economic Area) Regulations 2006.
5. The relevant family history and supporting evidence is summarised at paragraphs 7-11 of the decision of the First-tier Tribunal, and on this basis the First-tier Tribunal Judge accepted that the Appellant was indeed an extended family member of her sister within the meaning of regulation 8(2). This is not now disputed in the Respondent's challenge to the Upper Tribunal.
6. However, without more the First-tier Tribunal Judge then simply went on to allow the Appellant's appeal - stating erroneously that he did so under the Immigration Rules.
7. The reference to the Immigration Rules I would be content to consider to be nothing more than a slip, but there is a more fundamental error on the part of the First-tier Tribunal Judge. The Judge failed to have regard at all to regulation 17(4), and in this context I note the citation in the Respondent's Grounds of Appeal from the headnote of the case of **Ihemedu (OFMs - meaning) Nigeria [2011] UKUT 00340 (IAC)** which is in the following terms:

"Regulation 17(4) makes the issue of a residence card to an OFM/extended family member a matter of discretion. Where the Secretary of State has not yet exercised that discretion the most an Immigration Judge is entitled to do is to allow the appeal as being not in accordance with the law leaving the matter of whether to exercise this discretion in the Appellant's favour or not to the Secretary of State."
8. The judge failed to have regard to Regulation 17(4) and to apply the guidance in the case of **Ihemedu** and in that regard I am satisfied there was a material error of law. The judge should properly have only allowed the appeal to the limited extent identified in the passage quoted from **Ihemedu**. This matter is now to be corrected by the Upper Tribunal.
9. I set aside the decision of the First-tier Tribunal. There is no dispute as to the factual findings, and accordingly in remaking the decision I allow the appeal on the basis of those facts, acknowledging that the Appellant is the extended family member of her sister pursuant to regulation 8(2): but the appeal is only allowed to the extent of the

Respondent's decision being not in accordance with the law, and so the exercise of discretion under regulation 17(4) remains outstanding before the Secretary of State.

**Notice of Decision**

10. The decision of the First-tier Tribunal contained an error of law and is set aside.
11. I remake the decision in the appeal. The appeal is allowed: the Respondent's decision was not in accordance with the law and so the Appellant's application remains outstanding before the Secretary of State and requires to be determined in accordance with the law.
12. No anonymity direction is sought or made.

*The above represents a corrected transcript of an ex tempore decision given at the conclusion of the hearing.*

Signed:

Date: 25 January 2016

**Deputy Upper Tribunal Judge I A Lewis**