



IAC-FH-CK-V1

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

Appeal Number: IA/51109/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 25 January 2016
Given extempore**

**Decision & Reasons Promulgated
On 5 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR BASTOS HOWARD JONES
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Ms A. Fijiwala, Senior Home Office Presenting Officer

For the Respondent: Mr R. Subramanian, Counsel instructed by Lambeth Solicitors

DECISION AND REASONS

1. The respondent (hereinafter “the claimant”) is a citizen of Nigeria born on 25 December 1964. He came to the UK in July 2008 as the spouse of an EEA national to whom he has been married since 2001. On 5 October 2014 he applied for a permanent residence card as confirmation of the right to reside in the UK. The Secretary of State refused the application on the basis that the claimant’s spouse has not been exercising treaty rights for a continuous period of five years.

2. The claimant then appealed and his appeal was heard by First-tier Tribunal Judge Cockrill. The First-tier Tribunal found that the claimant's spouse was not exercising treaty rights and consequently the claimant was not entitled to a permanent residence card as a consequence of his relationship with her.
3. However, the First-tier Tribunal then considered whether the claimant was entitled to a permanent residence card because of his relationship with his wife's eldest son, a German national born in October 1994 who has been living with the claimant in the UK since 2008 as part of the family unit and has been exercising treaty rights as a worker and a student. The First-tier Tribunal concluded that the claimant was entitled to a permanent residence card because he was a family member of his wife's son such that Regulation 15(1)(b) of the Immigration (EEA) Regulations 2006 ("the 2006 Regulations") was satisfied.
4. The grounds of appeal submit that the First-tier Tribunal misdirected itself as to the proper application of Regulation 15(1)(b) as the claimant cannot bring himself within the description of a family member under Regulation 7 in relation to his stepson.

Consideration

5. Having heard submissions from Ms Fijiwala and Mr Subramanian, it is clear that this appeal turns on the interpretation of Regulations 7 and 15 of the 2006 Regulations.
6. Regulation 15(1)(b) stipulates the circumstances in which a family member of an EEA national will acquire a right to residence in the UK permanently. The question, therefore, is whether the claimant is a family member of his stepson, who is the relevant EEA national.
7. It is important to keep in mind that Regulation 15(1)(b) requires that the claimant must be a family member of his stepson and it is not sufficient to satisfy the Regulation to show that the stepson is a family member of the claimant. The significance of this distinction becomes clear when we consider how family member is defined in Regulation 7.
8. I turn now to Regulation 7. Regulation 7(1)(a) provides that a person's spouse is his family member. The claimant clearly is not his stepson's spouse. Regulation 7(1)(b) provides that (in certain circumstances) a person's direct descendants or that of his or her spouse are family members. The claimant is not his stepson's direct descendant (or the direct descendent of his step-son's spouse). It is true that the claimant's stepson is the direct descendant of the claimant's spouse, but that relationship does not satisfy Regulation 15(1)(b), which, as I have explained, requires that the claimant must be the family member of an EEA national, not the other way around. Regulation 7(1)(c) provides that a person's dependent direct relatives in his ascending line are family

members but the claimant is not a dependant of his stepson and therefore the claimant cannot avail himself of subsection (1)(c).

9. It is therefore my conclusion that the First-tier Tribunal made a material error of law in finding that the claimant satisfied Regulation 15(1)(b) by way of a relationship with his step son as he is not a family member as defined in the 2006 Regulations. As the claimant is unable to satisfy the requirements of Regulation 15 I remake the decision and dismiss the appeal.

Notice of Decision

- a. The appeal is allowed.
- b. The decision of the First-tier Tribunal involved the making of a material error of law.
- c. I remake the decision of the First-tier Tribunal by dismissing the appeal.
- d. No anonymity direction is made.

Signed



Deputy Upper Tribunal Judge Sheridan

Dated: 2 February 2016