Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: EA/02187/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 21 September 2018	**On 17 October 2018**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

JULIET EKOMA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms J Victor-Mazeli instructed by Bridges Solicitors
For the Respondent: Ms Z Kiss, Home Office Senior Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a national of Nigeria. She appealed to a Judge of the First-tier Tribunal against the Secretary of State's decision of 13 January 2017 refusing her application for a residence card as a family member of an EEA national. The judge dismissed her appeal. The judge appears at one point to have been under the impression that the appellant's application was on the basis of seeking to show a retained right of residence following the breakdown of her marriage. In fact, it seems clear from the respondent's decision and from the evidence that the appellant was not divorced from her EEA national husband and as a consequence the matter fell for

consideration under Regulation 15 rather than Regulation 10 of the Immigration (EEA Economic Area) Regulations 2006.

2. The essential challenge to the judge's decision, as refined in Ms Victor-Mazeli's submissions, is that the judge of her own motion should have adjourned the hearing on the basis of incompetence displayed on the part of the appellant's previous representative. She also argued that the judge had erred in dealing with the matter in respect of Regulation 10 of the EEA Regulations, which is concerned with family members who have retained the right of residence, but it is clear on the judge's findings, for example at paragraph 32, that the appellant had not divorced her partner and the judge then went on to consider permanent residence under Regulation 15 and came to conclusions on that.

3. In essence Ms Victor-Mazeli's argument was as set out in the grounds and developed by her and also was referred to in the appellant's witness statement attached to the grounds, that as a consequence of the appellant's then representative being ill-equipped and unfamiliar with her case and the law, the judge should have adjourned the hearing.

4. It is clear from paragraph 11 of the judge's decision that there was an application for an adjournment made by the appellant's representative. This was made on the basis that she had not been able to locate her EEA spouse, that she needed to show she was married to an EEA national for the purposes of the appeal. The judge noted that the representative was remarkably unfamiliar with the requirements that had to be met in order for the appellant to be entitled to a retained right of residence (perhaps hardly surprisingly since that was not her claim) but noted that the representative had arrived late and because of his apparent lack of understanding of the issues the judge rose on more than one occasion to give him the opportunity to consider the relevant law and clarify the issues that he submitted were live in the appeal. He was not able to present any arguments however, did not highlight the purposes that would be served by the grant of an adjournment and the judge therefore refused the application.

5. It is clear that the judge had concerns about the quality of the representation because she set out subsequently at paragraphs 14 to 16 a precis of three authorities in which the Administrative Court and the Upper Tribunal expressed concerns about cases where there were examples of unprofessional behaviour on the part of representatives.

6. Ms Victor-Mazeli referred to the overriding objective which was required to be born in mind by First-tier Judges and to the decision of the Upper Tribunal in Nwaigwe [2014] UKUT 00418 (IAC) which sets out the various circumstances in which a refusal to accede to an adjournment request may in principle be erroneous in law. The test is one of fairness.

7. As Ms Victor-Mazeli very fairly accepted, there was no adjournment request made on the basis of inadequacy on the part of the representative which is perhaps hardly surprising. Her argument was, as noted above, essentially that the judge should have her own motion adjourned the hearing.

8. That has to be seen however in light of the circumstances as a whole. In particular of relevance in my view is the fact that, as the judge noted at paragraph 34 of her decision, the appellant had not produced any evidence to show that her EEA spouse was a worker at any stage during the currency of her residence card. She had not stated where her EEA spouse worked during the time they were living together and the only information included in her application form was the name of her EEA spouse. It is right of course to point out, as the judge did at paragraph 38 of her decision, that it is for an applicant to prove to their case.

9. It is also relevant to note that the appellant, now represented by different representatives, has not shown in what respect evidence might have been provided to demonstrate the inadequacies of the previous representatives in terms of the provision of evidence to make out the claim that was being made. Though that evidence would not have been admissible to show an error of law by the judge, it would have been admissible to show the difference it might have made had there been competent representation before the judge.

10. As a consequence, I do not consider than any error of law has been made out. One can only have sympathy for the appellant given the inadequacies of representation that are alleged and as described by the judge in her decision. I do not however think she can be left with a sense of grievance as to the Tribunal process in circumstances where she provided no evidence to make out the essence of her claim. However inadequate her representative may have been, it does not appear that the evidence existed that could have gone any way towards making out the claim by bearing in mind the minimal amount of evidence provided as noted by the judge at paragraph 34 of her decision. As a consequence, though as I say there must be sympathy for the appellant, I do not consider that the judge erred as a matter of law in not deciding to adjourn the hearing of her own motion in order to enable the appellant to obtain alternative representation. As a consequence, her decision dismissing the appeal is maintained.

11. No anonymity direction is made.

Signed Date

Upper Tribunal Judge Allen 25 September 2018

TO THE RESPONDENT
FEE AWARD

The appeal is dismissed and therefore there can be no fee award.

Signed

Upper Tribunal Judge Allen

Date

25 September 2018