



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

Appeal Number: EA/04454/2019

THE IMMIGRATION ACTS

**Determined at Field House Without a
Hearing
On 21 July 2020**

**Decision & Reasons
Promulgated
On 18 August 2020**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

DENNIS AISOSA OGBAMO
(anonymity direction not made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. This is an appeal by a citizen of Nigeria against a decision of the First-tier Tribunal dismissing his appeal against a decision of the Secretary of State refusing him a residence card as the dependant of an EEA national.
2. I have decided to decide the appeal without a hearing. Permission to appeal was granted by the First-tier Tribunal and on 22 April 2020 Upper Tribunal Judge Norton-Taylor issued a Note and Directions suggesting inter alia that the appeal be determined without a hearing. He was concerned about the proper progress of business arising from the pressure on the Tribunal's resources brought about by the national lockdown in the wake of the Covid-19 crisis.
3. It is timely to remember that the Rules do not require an oral hearing in statutory appeals although it is certainly the long-established practice of

the Tribunal to determine appeals after an oral hearing. Rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008 obliges the Tribunal to “have regard to any view expressed by a party when deciding whether to hold a hearing to consider any matter”. Neither party has expressed a view although in response to those directions the Secretary of State has produced a helpful and detailed “Rule 24 notice” on 4 May 2020 setting out its case. There has been no response from the appellant and the Secretary of State’s Rule 24 notice notes that she had not received any further representations.

4. The Tribunal has a general obligation to act fairly and that includes an obligation to act expeditiously. Given the pressure on hearing room space I am satisfied that there would be considerable delay both to the hearing of this appeal if it was listed for an oral hearing and to another appeal or appeals which would themselves be delayed to make space for this one. The issues seem to me to be raised clearly in the papers and I do not consider an oral hearing necessary for the proper disposition of the appeal. It follows therefore that I have decided to determine the appeal without a hearing.
5. Permission to appeal was granted by an experienced First-tier Tribunal Judge who was concerned that there may have been procedural irregularity.
6. The appellant’s complaint is that the nature of the appeal was changed at the hearing. According to the grounds the application for a residence card was refused by the Secretary of State because the appellant had not shown that he was related as claimed to his purported brother. However, the appeal was dismissed because he had not shown dependency.
7. The respondent’s Rule 24 notice includes an apt reminder of the decision in **Kwok On Tong (R v IAT and Another ex parte Kwok On Tong [1981] Imm AR 214)** which was affirmed a little more recently but still, for this Tribunal, some time ago in **RM (Kwok On Tong: HC 395 para 320) India [2006] UKAIT 00039.**
8. This makes clear that a Rule-based appeal can only allowed if the appellant satisfies the judge that he meets all the requirements of the relevant Rules. The decision is the judge’s and whilst a judge might want to think carefully before raising a point that had not been raised by the Secretary of State the appellant is not entitled to succeed because he has proved some of the disputed facts if he cannot satisfy all the requirements of a Rule.
9. I am not aware of any decision that applies this directly to EEA decisions but I see no reason whatsoever why the ratio should not apply.
10. Clearly, there is an ever-present possibility that where a judge takes a point that has not been considered an adjournment may be necessary to enable the appellant to prepare something that had not been considered.

11. As far as I can see there is no suggestion that any adjournment was ever sought here. Indeed, it seems to me unlikely that an application for an adjournment would have succeeded. This is because the refusal letter dated 9 August 2019 includes the following paragraph:

“As you have failed to effectively evidence your relationship no further consideration has been given to the other requirements which need to be satisfied under the Regulations including whether your EEA national sponsor is exercising treaty rights as a qualified person”.
12. The refusal letter then continues by pointing out that the appellant can make a further application on better evidence if he is so minded.
13. Given that clear statement in the refusal letter it would have been very difficult for the appellant’s representatives to have argued that they could not be expected to know that all aspects of the Rule had to be proved. Be that as it may, no application was made.
14. However, it is clear from the Decision and Reasons at paragraph 7 that near the start of the hearing the First-tier Tribunal Judge “advised the appellant’s representative I was required to consider all the requirements of the Regulations and not just the issue of the birth certificates. No application for an adjournment was made”
15. If the appellant’s representatives had missed the point there was their opportunity to explain. They did not take it.
16. The First-tier Tribunal Judge also, possibly not entirely wisely but in an effort to be fair, gave the appellant an opportunity to produce evidence after the hearing but nothing useful was served.
17. The Secretary of State’s Rule 24 notice does raise matters that concern me, not the least being that the Secretary of State’s case was that the dependency was a live issue at the hearing.
18. However, I see no point in going into that further. For the reasons given the First-tier Tribunal’s decision is unimpeachable and the grounds essentially are misconceived.
19. It follows that there is no error of law and I dismiss the appeal against the First-tier Tribunal’s decision.

Notice of Decision

The appeal is dismissed.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 12 August 2020

