



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2023-004597
First Tier No: EA/05337/2022

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 16 August 2024**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**RASAQ OMODOLAPO AJIBOLA
(NO ANONYMITY ORDER MADE)**

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Ms Wilson

For the Respondent: Mr Diwnycz, Senior Presenting Officer

Heard at Royal Courts of Justice (Belfast) on 28 May 2024

DECISION AND REASONS

1. Permission to appeal in this matter was granted by Upper Tribunal Judge Pickup by a decision dated 2 November 2023. This decision helpfully sets out the background of the appeal and the issues raised so I shall quote it below in full:

The appellant, a national of Nigeria renews his application for permission to appeal to the Upper Tribunal against the decision of the First-tier Tribunal (Judge Gillespie) promulgated 5.7.23 dismissing his appeal against the respondent's decision of 23.5.22 to refuse his EUSS application made on 24.5.21.

The respondent considered the claim to have been made as the dependent relative of a relevant EEA citizen, and refused for lack of evidence of that status. At the First-tier Tribunal appeal hearing it was contended that the application was in fact made on the basis that the appellant had a derivative right to reside, with a card issued in 2017, valid until 10.10.22.

In the alternative, it was argued that the EUSS was in breach of the EU Withdrawal Agreement. The grounds first argue that the First-tier Tribunal applied the wrong test in determining whether the appellant was a 'person with a derivative right to reside' under Annex 1 of Appendix EU. Secondly, it is argued that the decision breached Article 2 of the Northern Ireland Protocol to the Withdrawal Agreement.

Whilst the judge accepted that the appellant had been issued with a Derivative Residence Card, it was found that he could not meet the definition of a person with a derivative right to reside for the purpose of the EUSS. The judge refers to self-sufficiency, which appears to have been an argument advanced in the appellant's skeleton argument, not provided to the Upper Tribunal. Nevertheless, the grounds argue that the appellant meets the definition under sub-paragraph (d) of the definition under Annex 1. However, it is not clear on the limited information provided that the appellant can meet that requirement as he is and was over the age of 18, even when the application was made in 2021. The definition also includes a person who was granted limited leave to remain under paragraph EU3 of Appendix 1 and was under the age of 18 at the date of that application. The appellant's date of birth is 15.5.98 and the Residence Permit was issued in 2017, though the precise date has not been provided. Neither has the date of application been provided. The appellant turned 18 on 15.5.16 and the application would need to have been made prior to that date for the appellant to qualify under (d) of the definition under Appendix 1. For that reason only, permission is granted. It will be necessary for the appellant to provide the necessary information to prove that he meets the definition as claimed.

The remaining ground of incompatibility is not properly arguable.

For the reasons explained above, an arguable material error of law is disclosed by the grounds.

2. At the initial hearing at Belfast on 28 May 2024, Ms Wilson, who appeared for the appellant, referred me to page 65 of the consolidated bundle of documents. This document is part of the appellant's application for a residence permit. It clearly bears the date stamp '14 Dec 2015'. Both representatives agreed that this stamp had been affixed by the respondent's officer and that it records the date upon which the application was received and issued. In the light of this evidence and Upper Tribunal Judge Pickup's comment in the grant of permission ('The appellant turned 18 on 15.5.16 and the application would need to have been made prior to that date for the appellant to qualify under (d) of the definition under Appendix 1.') it follows that the application was issued before the

appellant reached the age of 18 years (15 May 2016) and that consequently the decision of the First-tier Tribunal should be set aside and the decision remade allowing the appeal against the Secretary of State's decision.

Notice of Decision

The decision of the First-tier Tribunal is set aside. I have remade the decision. The appellant's appeal against the decision of the Secretary of State dated 24 May 2021 is allowed.

C. N. Lane

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 2 July 2024