



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

Appeal Number: IA/42765/2014

THE IMMIGRATION ACTS

Heard at: Field House

**Decision and Reasons
Promulgated
On: 30 September 2015**

On: 24 September 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE CHANA

Between

**MR OUFOWOBI ODUKOYA
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Gilbert of Counsel

For the Respondent: Mr D Clarke, Senior Presenting Officer

DECISION AND REASONS

1. The appellant before the Upper Tribunal is the Secretary of State for the Home Department and the respondent is a citizen of Nigeria born on 18 September 1974. However, for the sake of convenience, I shall refer to the latter as the “appellant” and to the Secretary of the State as the “respondent”, which are the designations they had in the proceedings before the First-tier Tribunal.
2. The appellant’s appeal to the First-tier Tribunal was against the decision of the respondent dated 25 September 2014 refusing to issue him with a Residence Card as confirmation of his right to live in the United Kingdom pursuant to the Immigration (European Economic Area) Regulations 2006

(hereinafter the 2006 regulations). First-tier Tribunal Judge Butler allowed the appellant's appeal pursuant to "the Immigration Rules".

3. Permission to appeal was granted by the First-tier Tribunal Judge Fisher who stated that it was arguable that the Judge allowed the appeal outright on the bases that it was not in accordance with the law, after finding that the appellant was extended family member of the sponsor, instead of remitting the appeal to the respondent to exercise her discretion.
4. At the hearing it was agreed between the parties that the First-tier Tribunal by allowing the appeal on the basis that the decision was not in accordance with the law, essentially left the matter of discretion to the respondent. It was also accepted that the Judge by allowing the appeal pursuant to the Immigration Rules, made an error but it was not material.
5. The Judge found that the appellant and his sponsor were in a durable relationship which is demonstrated by the fact that they have a son together. The Judge stated that the appellant had satisfied the burden of proof upon him that he is an extended family member of his sponsor, an EEA national and allowed the appeal under the "Immigration Rules".
6. By allowing the appeal under the Immigration Rules is a clear error of law, but it is not material. It is clear from the determination that, although put in an opaque way, that the Judge allowed the appeal on the basis that the decision was not in accordance with the law. Therefore the respondent's discretion is not interfered with.
7. I therefore find that there is no material error of law in the determination and that the upshot is that the decision is not in accordance with the law and that the appeal be remitted to the Secretary of State awaiting the exercise of her discretion.

DECISION

Appeal dismissed

Signed
Deputy Judge of the Upper Tribunal
Mrs S Chana

This 29th day of September

2015