



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

Appeal Number: EA/03558/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 8 April 2019**

**Decision & Reasons Promulgated
On 11 April 2019**

Before

UPPER TRIBUNAL JUDGE PITT

Between

**MR KENNETH UYIMWEN OKORO
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Z Raza, Counsel, instructed by Nathan Aaron Solicitors
For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision issued on 5 February 2019 of First-tier Tribunal Judge Pooler which refused the appellant's appeal against the refusal dated 8 March 2016 of a residence card showing lawful residence as either a family member or an extended family member of an EEA national exercising Treaty rights. The respondent's decision was made under the Immigration (European Economic Area) Regulations 2006 (the EEA Regulations).
2. The background to this matter is that the appellant, a citizen of Nigeria, was born on 12 December 1996. He lost his birth father in approximately

2011 and came to the UK, sponsored by his paternal uncle, Mr [PO]. Mr [PO] and his wife, Ms [IK], an EEA national, obtained a guardianship order for the appellant through the Nigerian courts in 2011. They obtained an adoption order for him on 18 February 2014.

3. On 21 September 2015 the appellant applied for an EEA residence card showing him to be the family member of his uncle and thereby dependent on Ms [IK] in line with Regulation 7 of the EEA Regulations. The respondent refused that application in the decision dated 8 March 2016. The respondent did not accept that the appellant had shown that he was a lawfully adopted child of his uncle and Ms [IK]. Regulation 7 of the EEA Regulations was therefore not met. The respondent also did not find that it had been shown that the appellant had ever been a dependant of or a member of the household of his uncle and Ms [IK] prior to coming to the UK or thereafter. The requirements of Regulation 8 were therefore not met.
4. The First-Tier Tribunal found that Regulation 7 could not be met where the guardianship order could not amount to adoption and the adoption order could not meet the provisions of the Adoption (Designation of Overseas Adoptions) Order 1973 which provided that a Nigerian adoption made after 3 January 2014 would not be regarded as an adoption in the UK. That finding was not disputed before me.
5. The First-Tier Tribunal went on to find that the evidence did not show that the requirements of Regulation 7 were met. At paragraph 21 the judge pointed out that “the issues of dependence and household membership were clearly in dispute”. That statement was correct as the respondent’s refusal letter on page 2 of 4 stated that only college letters addressed to the appellant at the same address as the sponsors and letters from his college regarding his studies sent to the sponsor had been provided. These documents were not found to be
“sufficient evidence that you were dependent upon and, or residing with your sponsor prior to entering the United Kingdom and that since you entered the United Kingdom you have continued to be dependent upon and, or residing with your sponsor.”
6. The First-Tier Tribunal judge went on to place very little weight on the witness statements of Mr [PO] and Ms [IK] as they were not signed and neither attended to adopt their evidence and submit to cross-examination. That finding was not challenged before me.
7. Judge Pooler found in paragraphs 22 and 23 that:
“22. There was no satisfactory supporting documentary evidence. The most recent evidence that the appellant lived at the address given by his uncle was dated March 2015. There was no documentary evidence of Western Union transfers. There was, by way of further example, no supporting documentary evidence of the claim that the appellant’s uncle paid his school fees in Nigeria. There was no documentary evidence of financial support in the United Kingdom.

23. In Mr Ahmed's submission, it was clear that the appellant was surviving on the basis of the financial support of his aunt and uncle. On the evidence, however, I am not persuaded that the appellant has proved financial dependence either before he entered the UK or subsequently. Similarly, I am not persuaded that he has proved membership of his EEA national sponsor's household in the United Kingdom (there being no claim that he was a member of his aunt's household in Nigeria.)"

8. The provisions of Regulation 8 of the EEA Regulations read as follows:

- "8. (1) In these Regulations "extended family member" means a person who is not a family member of an EEA national under regulation 7(1)(a), (b) or (c) and who satisfies the conditions in paragraph (2), (3), (4) or (5).
- (2) A person satisfies the condition in this paragraph if the person is a relative of an EEA national, his spouse or his civil partner and—
- (a) the person is residing in an EEA State in which the EEA national also resides and is dependent upon the EEA national or is a member of his household;
 - (b) the person satisfied the condition in paragraph (a) and is accompanying the EEA national to the United Kingdom or wishes to join him there; or
 - (c) the person satisfied the condition in paragraph (a), has joined the EEA national in the United Kingdom and continues to be dependent upon him or to be a member of his household.
- (3) A person satisfies the condition in this paragraph if the person is a relative of an EEA national or his spouse or his civil partner and, on serious health grounds, strictly requires the personal care of the EEA national his spouse or his civil partner.
- (4) A person satisfies the condition in this paragraph if the person is a relative of an EEA national and would meet the requirements in the immigration rules (other than those relating to entry clearance) for indefinite leave to enter or remain in the United Kingdom as a dependent relative of the EEA national were the EEA national a person present and settled in the United Kingdom.
- (5) A person satisfies the condition in this paragraph if the person is the partner of an EEA national (other than a civil partner) and can prove to the decision maker that he is in a durable relationship with the EEA national.
- (6) In these Regulations "relevant EEA national" means, in relation to an extended family member, the EEA national who is or whose spouse or civil partner is the relative of the

extended family member for the purpose of paragraph (2), (3) or (4) or the EEA national who is the partner of the extended family member for the purpose of paragraph (5).”

9. The argument before me was that the First-Tier Tribunal’s assessment of the evidence on financial dependency was irrational. The evidence of the appellant before the Tribunal was that he had been financially dependent on his uncle prior to coming to the UK, sending money and paying his school fees. After coming to the UK he lived as the child of the family, being supported by his uncle and Mrs [IK]. It was argued that the FTT assessed this evidence incorrectly as he did not assess it in the context of the guardianship and adoption orders and the uncle sponsoring the visit visa. That context was sufficient, even without weight being placed on the witness statements of Mr [PO] and Mrs [IK], to lead to the appellant being found credible and the appeal allowed.
10. I had some sympathy with the argument put forward for the appellant. It was suggested that it had not been well understood that the bundle of documentary materials provided with the original application to the respondent should be updated for the appeal and so was not as complete as it could have been. That may or may not be so but that matter cannot show material error in the decision of the First-Tier Tribunal if up to date or more comprehensive materials were not before the judge. As he noted at paragraph 21, the appellant was on notice from the refusal letter of the absence of documentary evidence on financial dependency.
11. It is not my conclusion that the decision of the First-tier Tribunal discloses a material error on a point of law. He was clearly aware of the guardianship and adoption orders being made. They did not oblige the judge to accept the appellant’s evidence on previous and current financial dependency. He was entitled to look for corroborating evidence, did so, and found that the documents before him were not sufficient to meet the requirements of Regulation 8. The conclusion reached was not one that all judges would necessarily have reached but it is one that was open to the First-Tier Tribunal on the material provided and cannot be characterised as irrational or a decision that no reasonable decision maker could reach.
12. I am therefore satisfied that the First-tier Tribunal was entitled to conclude that the provisions of Regulation 8 of the EEA Regulations were not met.
13. For these reasons I do not find that the decision of the First-tier Tribunal disclosed a material error on a point of law.

Notice of Decision

The decision of the First-tier Tribunal does not disclose an error on a point of law and shall stand.

Signed 
Upper Tribunal Judge Pitt

Date 9 April 20198