



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

Appeal Number: OA/09103/2015

THE IMMIGRATION ACTS

**Heard at RCJ, Belfast
On 6 June 2019**

**Decision & Reasons Promulgated
On 26 June 2019**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

**IBUKUNOLUWA OLUWATOSIN ADEKOGBE MARCUS
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Barr, Simon Barr Immigration Law

For the Respondent: Ms Cunha, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals this permission against the decision of First-tier Tribunal Judge Gillespie promulgated on 8 October 2018 dismissing his appeal against the decision of an Entry Clearance Officer in Lagos to refuse to issue him with an EEA family permit to join his brother in the United Kingdom. The appellant's brother is an Irish citizen as is his wife another wife is also a British citizen. There is as the judge noted a long history to this application but in essence the issue in this case that the judge decided was whether or not the brother was a qualified person. As it now transpires that was not something that was necessary because the brother was in fact a holder of permanent residence and indeed he was

issued with a permanent residence card in February 2013 and thus whether he was or was not employed is not a relevant issue.

2. The other area which is an error of law and received by the Secretary of State is this was an accompanying case and on that basis, but what was not in issue was whether duty rights would be in play. There was clearly perhaps through no fault of the judge an error of law in this case in that the parties proceeded on a fundamentally mistaken basis. The result of this was that there was no proper consideration about the issue of dependency which is a matter which needs to be considered and for that reason the decision will need to be remade on that issue.
3. It is my view that given the history of this case and the length of time it has taken, some five years in total in a number of cases, that this should be reluctantly remitted to the First-tier Tribunal as it is likely to be heard more quickly than if retained in the Upper Tribunal.

Notice of Decision

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
2. The appeal is remitted to the First-tier Tribunal for a fresh decision on the issue of dependency between the appellant and the sponsor.

Signed

Date 24 June 2019



Upper Tribunal Judge Rintoul