



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: IA/09399/2014  
IA/09400/2014  
IA/09401/2014  
IA/09402/2014

THE IMMIGRATION ACTS

Heard at Field House, London  
On 4 December 2014

Determination Promulgated  
On 20 January 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

EZEKIAN OLAGOKE OPEMIYAN  
JANET OLUWAKEMI JADESOLA OPEMIYAN  
REBECCA BOLANLE OPEMIYAN  
OLUWATOYIN JESSICA BOLANLE OPEMIYAN

Respondents

**Representation:**

For the Appellant: Ms L Kenny, Home Office Presenting Officer

For the Respondents: Ms F Shaw, instructed by Adam Bernard Solicitors

DETERMINATION AND REASONS

1. Whilst this is an appeal by the Secretary of State for the Home Department for convenience I will refer to the parties in the determination as they appeared before the First-tier Tribunal.

2. The first and third appellants are the parents of the second and third appellants. The children are Irish nationals and their parents are Nigerian nationals. They all appealed to the First-tier Tribunal against decisions of the Secretary of State to refuse the first and third appellant's applications for permanent residence cards and the second and fourth appellant's applications for permanent residence registration certificates under the Immigration (EEA) Regulations 2006 (the EEA Regulations). The children had been issued with registration certificates on 8 March 2006 on the basis that they were self-sufficient as they were being supported by a UK sponsor and their parents were issued with leave to remain under the Immigration Rules in line with that of their children until 8 March 2011. Since then they have made a number of applications culminating in the current applications which were refused on 6 February 2014. The Secretary of State refused the parents' applications because parents or primary carers have a derivative right of residence and are not entitled to permanent residence under European law and because in any event the leave to remain issued to the parents was under the Immigration Rules which applied at that time and cannot amount to residence under the EEA Regulations. The children's applications were refused on the basis that they did not have comprehensive medical insurance nor had they provided evidence of sufficient funds to prevent them being a burden on the State as required to show that they are self-sufficient.
3. First-tier Tribunal Judge MPW Harris allowed the appeals. The Judge noted that the presenting officer conceded that the evidence in the appeal met the requirements of regulation 4 (1) (d) (i), (ii) and (iii) for the claimed period [14]. On that basis the Judge found that the children had demonstrated that they were exercising treaty rights through being students for a continuous period of at least 5 years. The Judge was satisfied that the children had established a permanent right of residence. The Judge was satisfied that the parents are the primary carers of the children and, being satisfied that the children were self-sufficient within regulation 4 (c), he found that the parents were therefore entitled to a derivative right of residence under regulation 15A (2) and allowed their appeals on that basis.

#### Error of Law

4. In her grounds of appeal the Secretary of State contends that the First-tier Tribunal Judge erred in his findings because there is insufficient evidence that the appellants are self-sufficient or that the children have had comprehensive sickness insurance for the full five year period.
5. Permission to appeal was granted on the basis that, in light of the presenting officer's note appended to the grounds of appeal, it is arguable that the concessions referred to in the determination have been extended beyond what was said.

6. At the hearing before me I advised the parties that the record of proceedings indicated that the presenting officer at the First-tier Tribunal had accepted that there was evidence as to the comprehensive sickness insurance but that the other matters in the appeal were in dispute. Ms Shaw accepted that there was no evidence to show that the concession extended to all of the issues and that the Judge did not make findings in relation to all of the issues.
7. The First-tier Tribunal Judge made no findings in relation to the Article 8 appeals which were mentioned in the grounds of appeal to the First-tier Tribunal. His failure to do so was not challenged and the parties made no reference to these grounds before me.
8. I was satisfied that the Judge erred in that he misinterpreted the terms of the concession made by the Home Office Presenting Officer and failed to make findings on the issues to be determined in the appeal or to give reasons for his conclusions that the children were entitled to permanent residence and their parents to a derivative right of residence. I therefore set aside the decision of the First-tier Tribunal Judge.

#### Remaking the decision

9. The appellants submitted a new bundle of documents for the Upper Tribunal in accordance with the procedure Immigration Rules. I considered this evidence along with the oral evidence of the third appellant, Rebecca Bolanle Opemiyan. The third appellant adopted the contents of her statement dated 21 November 2014. She said that she has not lived anywhere other than the UK since February 2005. She said that the children, now aged 14 and 12, have been in the UK since they were 9 and 7 and they have been in school since coming to the UK. She said that they family have had private medical insurance continuously since coming to the UK. She said that Mr Odwale Odesanya is a family friend who she has known since they were young in Nigeria. He assists the family by giving them around £500 every month. She said that they spend the money on rent, clothes and food. She said that the money he gives them is not enough and that they receive additional money from the Church where they worship.

#### The second and fourth appellants (the children)

10. The basis of the applications to the Home Office were that the children have acquired permanent residence through continuous residence in the UK as students in accordance with regulation 4 for five years under regulation 15 (1). The relevant provisions of Regulation 4 for the purposes of this appeal are as follows;

4. (1) In these Regulations –

...

(c) “self-sufficient person” means a person who has –

(i) sufficient resources not to become a burden on the social assistance system of the United Kingdom during his period of residence; and

(ii) comprehensive sickness insurance cover in the United Kingdom;

(d) “student” means a person who –

(i) is enrolled, for the principal purpose of following a course of study (including vocational training), at a public or private establishment which is –

(aa) financed from public funds; or

(bb) otherwise recognised by the Secretary of State as an establishment which has been accredited for the purpose of providing such courses or training within the law or administrative practice of the part of the United Kingdom in which the establishment is located;

(ii) has comprehensive sickness insurance cover in the United Kingdom; and

(iii) assures the Secretary of State, by means of a declaration, or by such equivalent means as the person may choose, that he has sufficient resources not to become a burden on the social assistance system of the United Kingdom during his period of residence.

11. The children must therefore show that throughout a five year period they have been enrolled in school as set out in regulation 4 (1) (d) (i); they have been continuously resident in the UK; they have had comprehensive sickness insurance; and they have had sufficient resources throughout that period not to have become a burden on the UK’s social assistance system.
12. The letters and documents before me from St James Hatcham primary school and Deptford Green School confirm that the second appellant has been attending school continuously since 26 September 2005 and the fourth appellant since 8 December 2006. I am therefore satisfied that they met regulation 4 (1) (d) (i) since each started school.
13. The documents in the appellants bundle confirm that all four appellants have been covered by private health insurance from HSA and then Aviva, since 1 September 2007. I am therefore satisfied that the children met the requirements of regulation (1) (d) (ii) since that date.
14. Although accepting that they were self-sufficient at the date of the issue of their residence cards in 2006 the Secretary of State said in the Reasons for Refusal

letters that she was not satisfied that the children had shown that they have been self-sufficient throughout the period since then.

15. In their statements the first and third appellants say that Mr Odesanya has been financially supporting the children. In his letter Mr Odesanya says that he has been supporting the family since 2005. However his letter is undated and this is the same letter as that in the appellant's First-tier Tribunal bundle. There is therefore no up to date evidence from Mr Odesanya and that letter could have been written at any times since 2005. There is no witness statement from Mr Odesanya and he did not attend to give evidence at the hearing in the First-tier Tribunal or before me. In her oral evidence the third appellant said that Mr Odesanya gives them £500 per month. Although some of Mr Odesanya's payslips and a bank statement have been submitted there is no evidence of any transfer of funds from Mr Odesanya to the appellants. The recent bank statement covers a period of only five days and is insufficient evidence to demonstrate that Mr Odesanya has been supporting the family for five years as he claims and that he has been giving the family £500 a week as the third appellant claims.
16. In oral evidence the third appellant said that the money Mr Odesanya gives them is not enough and that they are supported by their Church. However there is no evidence of such financial support. Further, there is no evidence of the appellants' finances in the form of bank statements to support the witness statements and oral evidence.
17. On the basis of the evidence before me I am not satisfied that the second and fourth appellants have had sufficient resources throughout the period of their residence in the UK to demonstrate that they met the requirements of 4 (1) (d) (iii) for a continuous period of five years. They have not therefore demonstrated that they have acquired permanent residence in accordance with regulation 15 (1).

#### The first and third appellants (the parents)

18. The parents claim to have a derivative right of residence based on the rights of their children. I am not satisfied that the children have acquired permanent residence in the UK. Further, there is insufficient evidence to demonstrate that they currently meet the requirements of regulation 4 (1) (d) (iii). The parents are entitled to a derivative right of residence under regulation 15A if, inter alia, they are the primary carer of an EEA national who is residing in the UK as a self-sufficient person (regulation 15A (2)). Under regulation 4 (1) (c) as well as having comprehensive sickness insurance a self-sufficient person must have sufficient resources not to become a burden on the social assistance system of the United Kingdom during his period of residence. The EEA nationals have not shown that they have sufficient resources therefore the parents cannot be entitled to a derivative right of residence. Further, even if the first and third

appellants could demonstrate that they have been residing in the UK for a continuous period of five years with a derivative right of residence, which they cannot, regulation 15 (1A) precludes them from acquiring a permanent right of residence.

19. The first and third appellants have not demonstrated that they meet the requirements of regulation 15 or 15A.

Conclusion:

The making of the decision of the First-tier Tribunal did involve the making of an error on point of law.

I set it aside and remake the decision.

I dismiss all four appeals under the EEA Regulations.

Signed

Date: 15 January 2015

A Grimes  
**Deputy Judge of the Upper Tribunal**