



**Upper Tribunal  
(Immigration and Asylum Chamber)  
IA/11034/2014**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at: Field House  
On: 7<sup>th</sup> July 2015**

**Decision & Reasons  
Promulgated  
On: 2<sup>nd</sup> October 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**Tajudeen Olusegun Aruna-Ogun  
(no anonymity direction made)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Ms Anifowoshe, Counsel instructed by Apex Solicitors  
For the Respondent: Mr Jarvis, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The Appellant is a national of Nigeria date of birth 12 October 1969. He appeals with permission the decision of the First-tier Tribunal (Judge David C Clapham SSC) to dismiss his appeal against the Secretary of State's decision to refuse to issue him with a residence card confirming his right of residence as the extended family member of an EEA national.

2. It was the Appellant's case before the First-tier Tribunal that he lived with his aunt in the UK, and that having previously lived with her in Nigeria, this qualified him under Regulation 8 of the Immigration (European Economic Area) Regulations 2006 (the Regs): he relied on the second limb of Dauhoo (EEA Regulations - reg 8(2)) [2012] UKUT 79 (IAC).
3. The First-tier Tribunal accepted that the Appellant was currently living with his aunt in the UK. It also accepted that they had lived together in a house in Nigeria in 1991-1992. That house belonged to the Appellant's grandparents, her parents, who also lived there. The matter in issue was whether the phrase "is a member of his household" in Regulation 8(2) required the applicant to show that he had been a member of the *EEA national's* household, or whether it could suffice that they had been part of the *same* household. In this case the First-tier Tribunal rejected the proposition that the Regulation should be read down as meaning that the two were members of "a" household: "it seems to me that the household has to be the household of the EEA principle" [paragraph 37]. Since the two lived in the household of the Appellant's grandparents, the appeal was dismissed. It is on this same question that permission to appeal was granted by Judge Cheales on the 23<sup>rd</sup> April 2015.
4. It would seem that in granting permission Judge Cheales was not aware of the decision of the Court of Appeal in AA (Nigeria) [2014] EWCA Civ 1741 in which this very same argument was considered, and rejected, in December of last year. In that case an applicant sought to rely on the fact that he had in the past lived in the same house as his brother, along with their parents. Ms Anifowoshe, who also appeared for that appellant, submitted to the Court of Appeal that this satisfied the requirement in Regulation 8(2). Lord Justice Sullivan said this:

"To adopt this interpretation of Article 3.2 and Regulation 8(2) would be to depart even further from the plain and ordinary meaning of those provisions. We would be considerably enlarging the obligation in respect of extended family members which was undertaken by member states of the European Union and for the reasons given above, we would be doing so for no obvious policy or reason.

Miss Anifowoshe submitted that if we do not accept her submissions then a reference to the CJEU was appropriate. I do not accept that submission. It seems to me that the provisions of Article 3.2 are clear. There is no need for a reference".
5. Permission to appeal to the Supreme Court was refused on the 31<sup>st</sup> March 2015.
6. Before me Ms Anifowoshe argued that the matter had not been finally

determined and that permission was now being sought to the CJEU. That may be so. I am however bound by the current findings of the Court of Appeal. I would add that had I not had the benefit of the judgement in AA (Algeria) I would have upheld the clear and careful reasoning of Judge Clapham in the present case. There is no justification to extend the meaning of Regulation 8(2) in the manner for which the Appellant contends.

### **Decisions**

7. The decision of the First-tier Tribunal contains no error of law and it is upheld.
8. I was not asked to make a direction for anonymity and on the facts I see no reason to make one.

Deputy Upper Tribunal Judge Bruce  
7<sup>th</sup> July

2015