



IAC-FH-AR-V1

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

Appeal Numbers: IA/15105/2015  
IA/17928/2015

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 3 May 2016  
Oral Judgment**

**Decision & Reasons  
Promulgated  
On 11<sup>th</sup> May 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**LOLA ESTHER DANIEL (FIRST RESPONDENT)  
[O O] (SECOND RESPONDENT)  
(ANONYMITY DIRECTION NOT MADE)**

Respondents

**Representation:**

For the Appellant: Mr T Melvin, Home Office Presenting Officer

For the Respondents: No appearance

**DECISION AND REASONS**

1. The first respondent is a citizen of Nigeria born on 26 March 1973. The second respondent is her daughter who was born on [ ] 2008 and is a citizen of Poland. The first respondent applied for a residence card as

confirmation of a right to reside in the UK. On 31 March 2015 her application was refused.

2. The Secretary of State refused the application for two reasons. The first reason given was that the first respondent did not qualify for a residence card based on derivative rights because her daughter was not residing in the UK as a self sufficient person in accordance with Regulation 4(1)(c) of the Immigration (European Economic Area) Regulations 2006 ("the 2006 Regulations") such that Regulation 15A(2) of the 2006 Regulations was satisfied.
3. The second reason given was that the first respondent did not qualify for a retained right of residence under Regulation 10(5) because she did not supply evidence of having divorced.
4. The respondents appealed and their appeal was heard by First-tier Tribunal Judge Majid. In a decision promulgated on 11 January 2016 Judge Majid allowed the appeal. He characterised the circumstances of the case as "extraordinary" and discussed some of the principles underlying EU and immigration law before concluding that the respondent came within the "relevant immigration law" and should be given the "benefit of discretion".
5. Permission to appeal was granted by First-tier Tribunal Judge Chohan, who stated:

*"I have to say that when one reads the judge's decision it is not clear on what basis the appeal was allowed. No specific findings have been made in respect of the EEA Regulations. There is a clear lack of reasoning in the decision."*
6. I heard submissions today from Mr Melvin who reiterated the point made by Judge Chohan and identified a number of specific passages in the decision that in his view demonstrated a lack of reasoning. The respondents were unrepresented. They did not make any submissions but sought to introduce further evidence which I did not allow.
7. I agree with Judge Chohan's grant of permission. Absent from the First-tier Tribunal's decision is any consideration of whether the requirements of the 2006 Regulations were satisfied. It is unclear how the analysis of immigration law in the decision relates to the matters at issue and I am not able to discern from the decision the reasons why the appeal was allowed.
8. I consider this to be a case where the effect of the error of law has been to deprive both parties of a fair hearing and therefore one which in accordance with Section 7.2 of the Senior President's Practice Statement should be remitted to the First-tier Tribunal to be heard afresh.

### **Notice of Decision**

9. The First-tier Tribunal's decision contained a material error of law.

10. The appeal is remitted to the First-tier Tribunal to be heard by a judge other than Judge Majid.
11. No anonymity direction is made.

Signed



Deputy Upper Tribunal Judge Sheridan

Dated: 9 May 2016