



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

Appeal Number: EA/01137/2017

THE IMMIGRATION ACTS

**Heard at Glasgow
on 8 November 2018**

**Decision and Reasons
Promulgated
On 15 November 2018**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**SUNJU [D]
(anonymity direction not made)**

Respondent

*For the Appellant
Respondent*

*Mr A Govan, Senior Home Office Presenting Officer
Present, no representative*

DETERMINATION AND REASONS

1. Parties are as above, but the rest of this determination refers to them as they were in the FtT.
2. This determination is to be read with:
 - (i) The SSHD's decision dated 19 January 2017, refusing to issue the appellant a derivative residence card under the Immigration (EEA) Regulations 2006.

- (ii) The appellant's grounds of appeal to the First-tier Tribunal.
 - (iii) The decision of FtT Judge David C Clapham SSC, allowing the appeal, promulgated on 7 June 2018.
 - (iv) The SSHD's grounds of appeal to the UT, stated in the application for permission to appeal dated 18 June 2018.
 - (v) The grant of permission by FtT Judge D O'Callaghan, dated 12 July 2018.
3. The grounds allege that there was an insufficient basis in the evidence and in the reasons given by the judge for finding in favour of the appellant on (a) whether he was the primary carer for his son and (b) whether his son was residing in the UK as a self-sufficient person.
 4. On issue (a), I indicated at the hearing that the judge heard the oral evidence of the appellant on the issue, which was not subject to cross-examination, found him credible and reliable, and that nothing further was legally required. On issue (b), which Mr Govan advanced as the stronger point, I reserved my decision.
 5. Mr Govan submitted that there was a lack of documentary underpinning for what the appellant said about his finances, in particular his income from property in Nigeria. He went through the bank statements the appellant had provided, and pointed to a number of payments from individuals, which he said were not explained in the appellant's evidence.
 6. The appellant said that he had received some support from the church he joined in Edinburgh, and that the payments into his account were mostly from a Mr Egharhevwa, by way of reimbursement of the appellant having met the medical expenses in Nigeria of Mr Egharhevwa's late mother. He referred to the evidence in his bundle of rental income from two properties in Nigeria, remitted to him in the UK, which he said the respondent misinterpreted in the refusal decision. He said that he retains a construction business in Nigeria. He explained how it came about that, having arrived as a visitor, he sought to remain in the UK to look after his son, who does not wish presently to go back to live in Nigeria.
 7. Those submissions, on both sides, were of the nature of further exploration of the case in a way which might have been undertaken in the FtT, rather than of identifying error of law by the FtT in resolving the case which was put to it. That is understandable on the appellant's part, as he is not a lawyer, but it struck me that he had a natural and straightforward answer for all the points raised by the respondent (which perhaps reflects why the FtT accepted his evidence).
 8. On issue (b) I find that the respondent's criticisms are an attempt to make a case which might have been put by way of cross-examination and submission to the FtT, but which does not disclose that the resolution by the FtT of the case before it involved the making of any error on a point of

law. The appeal process is not an opportunity for either party to bring a case which they failed to put to the FtT. The judge was bound to take account of the matters raised in the refusal decision, but he did just that, and was entitled on the documentary and oral evidence to find both issues resolved in the appellant's favour.

9. The decision of the First-tier Tribunal shall stand.
10. No anonymity direction has been requested or made.

A handwritten signature in black ink that reads "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

8 November 2018
Upper Tribunal Judge Macleman