



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/07278/2016

THE IMMIGRATION ACTS

Heard at Field House
On: 22 June 2018

Decision and reasons Promulgated
On: 17 July 2018

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL CHANA

Between

MS OLAJUMOKE BADEJOKO
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms Lanlehin of Counsel

For the respondent: Mr S Walker, Senior Office Presenting Officer

DECISION AND REASONS

1. The appellant in this appeal is the Secretary of State of the Home Department. The respondent is a citizen of the Nigeria, born on 30 October 1979. However, for the sake of convenience I shall refer to the parties as they were referred before the First-tier Tribunal.
2. The appellant appealed against the decision of the respondent dated 3 June 2016, refusing to issue her with a EEA family derivative residence permit pursuant to the

Immigration (European Economic Area) Regulations 2006 (hereinafter "the 2006 regulations"). First-tier Tribunal Judge Beg allowed the appellant's appeal under the 2006 regulations.

3. Permission to appeal was granted by First-tier Tribunal Judge Farrelley who stated that Judge considered regulation 15A of the 2006 regulation which includes the situation of someone who either has responsibility or shares equally the responsibility with another who is not entitled to reside in this country. The Judge at paragraph 20 of the decision stated that the appellant is a direct relative of the children and shares responsibility equally with their father who has indefinite leave to remain. The Judge allowed the appeal on the basis that regulation 15 A was met. It is arguable that upon this factual matrix the Judge erred in law on the basis that children's father with indefinite leave to remain does not fall within the provisions of regulation 15 A 7 (ii).
4. At the hearing it was agreed by both parties that there has been a material error of law when the Judge make negative findings about the biological father of the children. It was agreed that the appeal should be remitted to the First-tier Tribunal for findings of fact to be made.
5. In the circumstances, I direct that the appeal be placed before any First-tier Tribunal Judge apart from First-tier Tribunal Judge Beg for hearing of the appeal de novo.

This 16th day of July 2018

Signed by

A Deputy Judge of the Upper Tribunal

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Mrs S Chana