



**Upper Tribunal
(Immigration and Asylum Chamber)
EA/00252/2019**

Appeal Numbers:

THE IMMIGRATION ACTS

Field House

On 12th November 2019

**Decision & Reasons
Promulgated**

On 14th November 2019

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

**GODWIN OLUWASEUN OGUNNIYI
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L Appiah, of Counsel, instructed by Isaac Akande & Co
Solicitors

For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Nigeria born in 1982. He arrived in the UK lawfully in May 2010 as a student, having visited the UK previously. After 2012 he made a number of applications to remain which were not successful, and an appeal against one of these decisions was dismissed by Judge of the First-tier Tribunal Lingam in September 2017. He applied for a derivative residence card as his mother's carer and the

application was refused in a decision dated 4th January 2019. His appeal against the decision was dismissed by First-tier Tribunal Judge H Clark in a determination promulgated on the 26th July 2019.

2. Permission to appeal was granted by Designated First-tier Tribunal Judge MacDonald on 15th October 2019 on the basis that it was arguable that the First-tier judge had erred in law in making findings that the appellant's sister could and would do shopping, cleaning and go to medical appointments for/with the appellant's mother when arguably there was no evidence in support of these findings.
3. The matter came before me to determine whether the First-tier Tribunal had erred in law.

Submissions - Error of Law

4. In oral submission from Ms Appiah and in the grounds of appeal it was argued, in summary, as follows. The key question is whether the appellant's mother would be forced to leave the UK/EEA if the appellant were not in the UK. The First-tier Tribunal found at paragraph 29 that the appellant's sister was not working and could do shopping, cleaning and accompany their mother to medical appointments. However, the evidence of the appellant was that all his siblings had children and could not care for their mother, and in oral evidence he said that his sister was studying at the current time. The evidence of the occupational therapist is that the appellant, cooks, cleans, shops and provides mobility in the home environment for his mother. The finding with respect to the appellant's sister, that she could take over from him as she was not working and has school age children, was therefore not based lawfully on evidence before the First-tier Tribunal.
5. It was further argued that this error is material to the outcome of the appeal as in the context of the very extensive 24 hour personal care provided by the appellant, and documented in the Reablement Case Management Report of Social Services on his mother, it was not open to the First-tier Tribunal to conclude that Social Services would in reality be able to provide this level of care for the appellant's mother.
6. I did not need to call on Mr Avery.

Conclusions - Error of Law

7. The First-tier Tribunal correctly directs itself to the applicable law with respect to derivative rights of residence under Regulation 16(5) of the Immigration (EEA) Regulations 2016 at paragraphs 8 to 10 of the decision. This test is then clearly applied in the conclusion at paragraph 32 of the decision. The First-tier Tribunal makes careful findings based on the Islington NHS Trust Care Assessment with respect to the appellant's mother's needs at paragraphs 26 and 27 of the decision, and finds that the appellant is his mother's primary carer. There is a legally correct direction at paragraph 27 of the decision that the fact that the appellant and his mother would miss each other if not allowed

to stay together and the fact that the current arrangement for her care by him might be the most desirable, and indeed would appear to be saving Social Services considerable cost, does not qualify the appellant to remain, as even if these things are the case they would not mean that his mother would be required to leave the UK if the appellant was forced to depart.

8. I find that there was no evidence to support the finding at paragraph 29 of the decision that it was likely that the appellant's sister would do shopping, cleaning and take her mother to medical appointments during the day particularly given that she is currently studying and has young children. It was however open to the First-tier Tribunal to find that the appellant's mother has other close relatives other than the appellant for her emotional needs as is done at paragraph 32 of the decision.
9. I find that it was reasonable for the First-tier Tribunal to find at paragraphs 31 and 32 of the decision that the appellant's mother's care needs would be reassessed by Social Services if the appellant were not there to assist her. This was particularly reasonable as clearly Social Services are aware of the appellant's mother and monitoring her case and ensuring she obtains relevant services. It was not an error of law for the First-tier Tribunal to assume that Social Services would fulfil their statutory obligations to the appellant's mother and provide her with the 24 hour care that is currently needed, and given by the appellant, if he were removed from the UK. It was also open to the First-tier Tribunal to find at paragraph 32 of the decision that the appellant's mother would also have other close relatives to turn to in the UK for emotional support, as she has three other children in the UK, two sons and a daughter. As a result I find that there was no material error in the decision that the appellant's mother would not be compelled to leave the UK if he were forced to leave the UK, and that thus he was not entitled to a derivative residence card.

Decision:

1. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.
2. I uphold the decision of the First-tier Tribunal dismissing the appeal under the Immigration (EEA) Regulations 2016.

Signed: Fiona Lindsley
2019
Upper Tribunal Judge Lindsley

Date: 12th November