



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

Appeal Number: IA/24750/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 16 September 2015**

**Decision & Reasons Promulgated
On 17 September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

v

Mr Honorius Ugo EMODI

Respondent

Representation:

For the Appellant: Mr Abbas of Imperium Group

For the Respondent: Mr K Norton, Senior Home Office Presenting Officer

ERROR OF LAW DECISION & REASONS

1. This is an appeal by the Secretary of State for the Home Department against a decision of First Tier Tribunal Judge Symes dated 18 March 2015, allowing an appeal by Mr Emodi against a decision dated 27 May 2014 refusing to issue him with a residence card confirming his right to reside as the extended family member of an EEA national.

2. Mr Emodi is a national of Nigeria, born on 25 April 1970. He arrived in the United Kingdom with leave to enter as a visitor until 12 February 2010 and subsequently made applications for a residence card which were refused, as was an application on private and family life grounds. This application was

made on 25 March 2014 and was refused due to a lack of evidence of dependency prior to Mr Emodi's arrival in the United Kingdom.

3. At the appeal hearing on 13 February 2015, Judge Symes heard evidence from Mr Emodi, his cousin, Barnabus Robert, Mr Robert's wife, Aleksandra Filipial-Robert, a Polish national and from Mr Emodi's wife, Augustina. He noted at [25] that the issue before him was relatively narrow bearing in mind the prior findings of Judge Davidson, set out in a decision dated 8 August 2011. He accepted at [30] that Mr Emodi is a person who qualifies as an extended family member and he went on to allow the appeal on the basis that it is appropriate as a matter of discretion to facilitate the Appellant's residence here [33].

4. On 20 March 2015, the Secretary of State sought permission to appeal on the basis that:

(i) there had been a failure to properly apply Devaseelan in that, although he addresses the principle at [24], he effectively sought to reinterpret it in such a way as to render it meaningless, and

(ii) the Judge had exercised a discretion reserved to the Secretary of State and he had no jurisdiction to consider regulation 17(4) as the Secretary of State had made no decision on 17(4). Permission to appeal was granted in on the basis that both grounds were arguable, in a decision dated 8 May 2015.

5. At the hearing I heard submissions from Mr Norton for the Secretary of State and from Mr Abbas on behalf of Mr Emodi. I reserved my decision.

6. I find that there is no material error of law in respect of the first ground of appeal. Judge Symes correctly directed himself in respect of the decision in Devaseelan [2002] UKIAT 000702 and subsequent caselaw on point: LD (Algeria) [2004] EWCA Civ 804. He noted correctly at [25] that given the prior findings of Judge Davidson, the issue is relatively narrow and that the history was generally accepted as credible. Judge Symes did not automatically accept the account of financial remittances but went on to consider material caselaw: Moneke (EEA-OFMs) Nigeria [2011] UKUT 341 (IAC) and Amos [2011] EWCA Civ 552 at [40] and concluded that, given the witnesses were consistent as to the means and frequency of past remittance and bearing in mind they were describing events that happened more than a decade ago, he accepted the evidence of the witnesses. He correctly applied the factual test set out in Reyes (EEA Regs: dependency) [2013] UKUT 314 and Dauhoo (EEA Regulations - reg 8(2) Mauritius) [2012] UKUT 79 (IAC) and found that Mr Emodi was dependent on Barnabus in Nigeria before the latter's migration to Poland and then in the United Kingdom and he accepted that he is a person who qualified as an extended family member. I note that Judge Davidson also heard evidence from 3 of the same witnesses [10] but made no finding as to the evidence of the EEA national, Aleksandra Filipial-Robert, which was clearly capable of corroborating the accounts of Mr Emodi and his cousin. Oral evidence can suffice, as Judge Symes clearly set out with reference to the relevant jurisprudence and it is well-established that to require corroboration is erroneous: *cf.* Kasolo [13190].

7. I do find, however, that in allowing the appeal outright Judge Symes erred materially in law in that, although he made no express reference to Regulation 17(4) of the Immigration (EEA) Regulations 2006, in essence he conducted the discretionary exercise at [31]-[32] that falls within the remit of the Secretary of State for the Home Department and thus exceeded his jurisdiction.

8. There has been no successful challenge to Judge Symes' findings of fact, which stand. Therefore, I do not find it necessary for a further hearing to take place and I re-make the decision, upholding Judge Symes' findings and remitting the appeal to the Secretary of State to consider exercising her discretion under regulation 17(4) of the Immigration (EEA) Regulations 2006 and issuing Mr Emodi with a residence card on the basis that he is a person who qualifies as an extended family member.

Deputy Upper Tribunal Judge Chapman

16 September 2015