



**Upper Tribunal  
(Immigration and Asylum Chamber)**  
IA/25969/2013

Appeal No:

**Heard at Field House  
promulgated  
On 13 June 2014**

**Determination  
On 4 July 2014**

**THE IMMIGRATION ACTS**

**Before**

**DEPUTY JUDGE OF THE UPPER TRIBUNAL DIGNEY**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

and

**IKPONMWOSA GERALD IZE-IYAMU**

Appellant

Respondent

**Representation:**

For the appellant: Mr Jarvis, Home Office Presenting Officer  
For the respondent: Mr Ijezie

**DETERMINATION AND REASONS**

1. The respondent, a citizen of Nigeria, applied under section 10 of the Nationality, Immigration and Asylum Act 2002 for a certificate that he was entitled to a right of abode in the United Kingdom. That application was refused on the basis that the respondent's mother was not born in the United Kingdom and she had acquired her right of abode in the United Kingdom through residency and this could not be passed on to the respondent. The respondent also claimed to derive a right of abode through his father and this claim was also rejected. The appeal was

allowed on the basis of both claims, but for reasons that will become apparent it is not necessary for me to consider the claim allegedly derived from the father.

2. Permission to appeal was granted on 6 May 2014. The first ground argues that the judge confused a right to register as a British citizen under section 4C of the British Nationality 1981 Act with an entitlement to a right of abode. The grounds concede (6) that the respondent may have an entitlement to register as a British citizen under section 4C “if, had the law allowed mothers to pass on nationality to their children, they would have become a British citizen on 1 January 1983”. The grounds go on to say that the respondent would further have to show that he had been resident in the United Kingdom for five years and that is something that he, admittedly, cannot do. The second ground is really a slightly different statement of the first ground. It repeats that the respondent had not resided here for five years and was not a citizen of the United Kingdom as his mother could not pass her nationality to her children as the law in force prior to 1983 did not allow a mother to pass her nationality to her children.
3. I have to decide whether the original determination was vitiated by any material error of law.
4. At the hearing Mr Jarvis argued that the appeal against the Secretary of State’s original decision is effectively an appeal against a refusal to grant citizenship and such a decision is not an “immigration decision” as laid down by section 82 of the Nationality, Immigration and Asylum Act 2002. Mr Ijezie relies on the case of Harrison v SSHD [2003] EWCA Civ 432 which is authority for the proposition that “the natural place for the determination of legal rights [in that case citizenship] conferred by statute is the court”<sup>1</sup>. His argument is that this Tribunal is “the court” for present purposes and therefore it can decide the matter. He seemed to think that it was open to the Tribunal to make a declaration. It is clear that what is referred to as “the court” is the High Court (the case is one of judicial review); it is also clear that the Tribunal is a statutory body that has no jurisdiction beyond what it has been given by statute. Indeed it is actually said earlier in paragraph 35 that in cases of citizenship “there is in the legislation no structure of adjudicators or rights of appeal and the like”.
5. However I conclude that it is open to the Tribunal to consider citizenship. That is because citizenship is a relevant factor in deciding the question of a right of abode; it is, at any rate in a case such as this, a condition precedent that has to be decided. The matter is analogous to a decision by “the appropriate authority” that someone has not been trafficked. There is no appeal to the Tribunal against such a decision but if a finding on the point is necessary in an asylum case it is open to the Tribunal to decide the point, and the Tribunal is not bound by the decision of the “appropriate authority”.

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<sup>1</sup> See paragraph 35.

6. The next point to be decided is whether the respondent's mother can pass on to him her status. The grounds of appeal (6 above) seem to conclude that this may be possible and Mr Jarvis did not argue strongly to the contrary. It is clear from section 45 of the Borders, Citizenship and Immigration Act 2009 that descent through the mother is to be treated in precisely the same way as that through a father and it is equally clear that the section is retrospective; if it were not it would serve no purpose.
7. Paragraphs 55 and 56 of the determination explain why the respondent is entitled to a right of abode. Subject to the question of rights passing through the mother, the reasoning is not impugned in the grounds of appeal but it is argued that as well as citizenship there are other conditions that must be complied with before there is an entitlement to a right of abode, namely that the respondent had been resident in the United Kingdom for five years.
8. At the hearing Mr Jarvis reiterated this point and produced the Immigration (Certificate of Entitlement to Right of Abode in the United Kingdom) Regulations 2006. This contains a schedule detailing the evidence that must accompany an application and state what is necessary in an application based on five years' residence before 1 January 1983. The regulations do not provide the statutory basis for the requirement but for the evidence needed to satisfy it. I had great difficulty in finding the basis for this requirement and that is not altogether surprising because it appeared in the original version of the Immigration Act 1971 as section 2(1)(c) which was repealed by section 39 of the British Nationality Act 1981. That the regulations cannot apply to the respondent is made clear in the schedule where reference is twice made to periods before 1983. It follows that the appellant is wrong to say that the respondent must meet this additional requirement; this has not been a requirement for many years.
9. It follows that the conclusions in paragraphs 55 and 56 of the determination are not subject to any further requirements with the result that the judge's conclusions are not vitiated by any error of law.
10. The respondent also claims a right of abode by reason of descent from his father. The judge concluded that the respondent succeeded on this ground because his father remained a British citizen after Nigeria's independence. On the basis of the evidence that I have been shown it appears that this was an incorrect assumption, but as the respondent succeeds on the basis of descent from his mother, it is not necessary to decide the point.
11. The determination is not vitiated by any material error of law and the original decision shall stand.

**The appeal is dismissed**

