



**Upper Tribunal  
(Immigration and Asylum Chamber)**  
IA/45637/2013

Appeal Numbers:

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 2<sup>nd</sup> July 2014**

**Determination**

**Promulgated**

**On 11<sup>th</sup> July 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE FRANCES**

**Between:**

**ARINZE NNOLIM**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr D Adams, instructed by JDS Solicitors

For the Respondent: Ms A Holmes, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The Appellant is a citizen of Nigeria born on 1<sup>st</sup> August 1976. He Appeals against the determination of the First-tier Tribunal dated 17<sup>th</sup> April 2014 dismissing his appeal against the Respondent's decision of 21<sup>st</sup> October 2013 refusing to issue a residence card as confirmation of a right of residence under Regulation 8 of the (Immigration) EEA Regulations 2006.
2. Permission to appeal was granted by Designated First-tier Tribunal Judge Murray on 20<sup>th</sup> May 2014 on the grounds that it was arguable that First-tier Tribunal Judge Shepherd acted unfairly in relying on a previous

determination without giving the Appellant the opportunity to give evidence on it.

3. Mr Adams submitted that the Judge relied on the credibility findings in the previous determination which were not relied on by the Respondent. The Appellant's representative before the First-tier Tribunal was not aware of the determination and therefore the Judge should have adjourned the hearing to give the Appellant an opportunity to address the adverse credibility findings. The factual matrix of the previous appeal and this appeal were different and Devaseelan [2002] UKIAT 000702 was not binding.
4. Ms Holmes relied on the Rule 24 response and submitted that the Judge had adopted the correct approach and the determination was careful and thorough. The Judge made it clear at the hearing (paragraph 26 of the determination) that he intended to rely on the previous determination and the Appellant's representative did not seek to adjourn or make submissions on the point. The Appellant was well aware of the determination and failed to mention it. There was no unfairness on the part of the Judge. The previous determination was not appealed and the findings remained unchallenged. The Judge was entitled to rely on it and he behaved perfectly properly in indicating to the parties that he intended to do so.
5. In any event, the Judge took into account the Appellant's additional evidence about the aluminium business, but found that he had still not shown dependency. The Appellant had no justifiable complaint.
6. Mr Adams submitted that although the Appellant's representatives were aware of the existence of the determination, they were not aware of its contents. It was not the Appellant's fault that his previous solicitors did not challenge the previous determination. The Judge realised the importance of the adverse credibility findings and had to consider whether it would be fair to go ahead; it was a matter of procedure. The Judge had the power to adjourn and did not do so.

### Discussion and conclusions

7. The Appellant was aware of the previous appeal, having attended the hearing and given evidence. He had applied for a residence card on the basis that he was an extended family member of his uncle. The appeal was dismissed and not appealed. The determination was referred to in the immigration history. It was not a matter only arising at the appeal.
8. The Judge was made aware of the previous appeal at the hearing before him. Neither the Appellant nor the Respondent supplied him with a copy of the determination. The Judge indicated at the hearing that he intended to get a copy and that he would take it into account in his decision. The Appellant did not seek to make any representations in

relation to the previous appeal. He did not ask for an adjournment and he failed to address the previous judge's findings in his oral evidence. I find that the Judge did not act unfairly because he gave the parties notice of his intention to rely on the determination. The Appellant was aware of the previous decision, but failed to address the findings therein.

9. The Judge properly directed himself following Devaseelan and was entitled to rely on the previous determination; the Appellant having made another application as an extended family member of the same uncle. In any event, the Judge took into account the Appellant's new evidence and gave cogent reasons for finding that it was not credible.
10. The Judge's finding that the Appellant was not credible was open to him on the evidence before him. The Judge also considered the appeal in the alternative; accepting that there was an aluminium business. The Appellant was unable to show dependency on his own evidence.
11. The Judge made no error on any point of law which might require the determination to be set aside. The appeal to the Upper Tribunal is dismissed. The determination of the First-tier Tribunal dated 17<sup>th</sup> April 2014 shall stand.

Deputy Upper Tribunal Judge Frances  
8<sup>th</sup> July 2014