



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

Appeal Number: IA/53753/2013

**THE IMMIGRATION ACTS**

**Heard at Glasgow  
On 8<sup>th</sup> September 2014**

**Determination Promulgated  
On 9<sup>th</sup> September 2014**

**Before**

**UPPER TRIBUNAL JUDGE COKER**

**Between**

**ADEBAYO OLUWAGBENGA AINA**

Appellant

**And**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: In person

For the Respondent: Mr M Mathews, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant appeals a decision of the First-tier Tribunal which dismissed his appeal against a decision to refuse him a residence card in accordance with the Immigration (European Economic Area) Regulations 2006 dated 17<sup>th</sup> December 2013 on the grounds that he had failed to produce adequate evidence that his spouse (a British Citizen) had been working or self employed in another member state prior to coming to the UK.
2. Permission to appeal had been granted on the basis that it was arguable that the First-tier Tribunal judge had erred in law in concluding that the time spent by the appellant's wife working in Germany did not engage regulation 9 of the Regulations and had erred in law as regards his conclusions on Article 8.
3. The appellant had a deportation order signed against him on 11<sup>th</sup> January 2011 and was deported pursuant to that order. He subsequently lived with his wife in

Germany, having earlier failed to gain entry to Ireland. He returned to the UK and applied for a residence card, the refusal of which is the subject of this appeal.

4. The First-tier Tribunal judge considered the appeal in accordance with regulation 9. he failed to have regard to regulation 19 (1A) which states that

A person is not entitled to be admitted to the United Kingdom by virtue of regulation 11 if that person is subject to a deportation or exclusion order.

5. Mr Aina drew attention to the respondent's policy statements which, he stated, set out the issues the Secretary of State is to have regard to in determining whether to revoke a deportation order made in circumstances such as those applicable to this appellant. Although these appear relevant it was however clear that the Secretary of State had herself failed to treat the application for a residence permit not only as such an application but also, as seems to be usual practice, to treat the application as an application to revoke the deportation order.
6. In these circumstances it was agreed by the parties that the determination of the First-tier Tribunal judge be set aside because of an error of law in failing to consider the appeal in accordance with the Regulations and in particular regulation 19 and that I should remake the decision.
7. In remaking the decision I am satisfied that the Secretary of State failed to reach a decision on whether the deportation order should be revoked and thereafter on whether the appellant was entitled to a residence card. The Secretary of State has failed to reach a decision on the application before her and I therefore find the decision to be not in accordance with the law.
8. The matter is remitted to the Secretary of State for a lawful decision to be made.

#### Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision

I re-make the decision and find the decision of the Secretary of State to be not in accordance with the law.

#### Consequential Directions

The matter to be remitted to the Secretary of State for a lawful decision to be made.

Date 8<sup>th</sup> September 2014

Upper Tribunal Judge Coker