



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

Appeal Number: IA/40112/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 14 September 2015**

**Decision & Reasons Promulgated
On 15 September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

Mr Olufemi Olayinka BOBOYE

Appellant

v

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Khan of EU Migration Services

For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

ERROR OF LAW DECISION & REASONS

1. The Appellant is a national of Nigeria, born on 27 June 1980. On 13 January 2014, he applied for a derivative residence card as the carer of his mother, Beatrice Eniola Oluwabusola Boboye (DOB 10.1.45) who is a British citizen. This application was refused on 22 September 2014 and the Appellant appealed. His appeal came before First Tier Tribunal Judge Ian Howard for hearing on 2 January 2015. The Appellant and his mother gave evidence. In a decision promulgated on 24 February 2015, the Judge dismissed the appeal on the basis he was not satisfied that the requirements of Regulation 15A and 18A are met [22] as, whilst his findings are not very clear, he found the evidence in respect of the Appellant's sister's whereabouts to be scant [20], he was not satisfied that she was not living abroad [21] and it was not her physical but rather her

mental faculties that meant the Appellant's mother required his care [15]. He also dismissed the appeal on human rights grounds, with regard to Article 8 of ECHR.

2. An application for permission to appeal was made on 10 March 2015 on the basis that the Judge erred in assuming the Appellant's sister living in West Africa could provide the support and care to her mother and in failing to take account of the medical evidence that the Appellant's mother requires 24 hour care from him.

3. Permission to appeal was granted by First Tier Tribunal Judge de Haney on the basis that the Judge's findings that he was not satisfied the sister is not living in the UK arguably lacks reasons [20-21] and it was arguable that there is a lack of clarity between the Immigration Rules and the Immigration (EEA) Regulations 2006 under which this decision was made and the appeal brought [11].

4. At the hearing on 14 September 2015, Mr Khan relied upon his grounds of appeal and an undated written submission served shortly before the hearing commenced. He submitted that the Appellant is the carer of his mother who needs 24 hour care. She is currently sick and ill and not able to come to court today. He has given her medication. No-one is looking after her whilst the Appellant is at court today. It was very difficult for her to walk and come to court last time. The Appellant now has a copy of the sister's passport and visa. He submitted that if the EEA Regulations were satisfied there was no need to look at article 8.

5. At the outset of his submissions Mr Clarke served a copy of the decision of the Upper Tribunal in Amirteymour [2015] UKUT 00466 (IAC) and submitted that no consideration should be given to the article 8 argument. He submitted that there was no material error of law in the decision of the First Tier Tribunal Judge. He submitted that Regulation 15A is a two part test. The Judge appeared to accept that the Appellant is the primary carer [15] but the critical question is whether the British Citizen would be unable to reside in the UK if the carer were to be removed. In relation to other relatives at [20] it was submitted that the Judge has given very good reasons as to why he is not satisfied why other relatives are not in the UK and could help. He states that more evidence could reasonably be expected eg passport entry pages to African countries and the letter in the bundle does not state a country, merely West Africa and there is no evidence of money being sent. Consequently, the Judge was entitled to come to the conclusion he did. Mr Clarke further submitted that one would expect to see evidence from social services that the Appellant's mother could not be expected to leave. She could access home help or sheltered housing. In the absence of evidence that she couldn't the Judge reached a logical conclusion, as it would be extraordinary if a British Citizen was left destitute. Ultimately it comes down to choice and that is material.

6. I find that the First Tier Tribunal Judge erred materially in law in the manner in which he considered the evidence concerning the Appellant's sister and his conclusion at [21] that he was not satisfied she is living abroad. There

was a letter from Kikelomo Boboye at 20 of the Appellant's bundle dated 12.12.14 in which she confirms that the Appellant is her younger brother; that she currently lives and works abroad for an on-line betting company and that she is not in a position to care for their mum and support her and that has been the Appellant's responsibility over the past few years. A letter from the Director of KBMJ Solutions is at page 22 of the same bundle confirming that Kikelomo Boboye has been contracted to work for KC Gaming as the HR Consultant and that this is a multinational on-line betting company with offices across Africa *"to which the HR Consultant has a remit to ensure the HR is aligned with business productivity. The contract appointment with KC Gaming is ongoing with the company for the foreseeable future."* There is no reference by the Judge to the content of the Appellant's sister's letter nor to the letter from her employer at all. In the absence of any reference to this evidence the Judge's finding at [21] that he is not satisfied that the Appellant's sister is living abroad is unsafe. This is a material error because in the absence of any other relatives the Appellant is the sole carer for his mother and fulfils the requirements of regulation 15A(7)(b)(i) of the Immigration (EEA) Regulations 2006, as amended. The Judge further materially erred in that he failed to make any finding as to whether or not the Appellant's mother would have to leave the United Kingdom if the Appellant is not issued with a derivative residence card.

7. Therefore, I set aside the decision of First Tier Tribunal Judge Ian Howard in its entirety and remit the appeal for a hearing *de novo* in the First Tier Tribunal, to be heard by a different Judge, who will need to consider the evidence and make findings both in respect of the question of whether or not the Appellant has primary responsibility for his mother's care and whether if he is required to leave the United Kingdom she would also have to leave.

Deputy Upper Tribunal Judge Chapman

14 September 2015