



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

Appeal Number: IA/15590/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 12 January 2018**

**Decision & Reasons
Promulgated
On 09 February 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE APPLEYARD

Between

**MR RICHARD BOLUWATIFE OYERINDE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Coleman, Counsel.

For the Respondent: Ms A Everett, Home Office Presenting Officer.

DECISION AND REASONS

1. The Appellant is a citizen of Nigeria who appealed against a decision of the Respondent made under the European Economic Area Regulations. That appeal was heard by Judge of the First-tier Tribunal Mark Eldridge who, in a decision promulgated on 12 April 2017, dismissed it.
2. The Appellant sought permission to appeal which was granted by Judge of the First-tier Tribunal Farrelly on 26 October 2017. His reasons for so doing were:-

- “1. The appellant seek (sic) permission in time to appeal the decision of First-tier Tribunal Judge Eldridge promulgated on 12th April 2017.
2. The judge dealt with the appellant’s appeal and that of his father on the same occasion.
3. His father argued a retained right of residence following his divorce from his EEA sponsor. The appellant’s claim also to have a retained right of residence under Reg 10 was rejected on the basis he was not in the country when his father divorced.
4. The grounds argue the appellant’s appeal should have been allowed in line with his father’s and he was here as a dependant family member of his father.
5. The respondent’s decision in relation to this appellant was that he was removable as he had been admitted on a 6 month family permit under reg 12. His entitlement was as a family member of an EEA national via his father. A retained right of family members is set out in reg 10 in relation to different categories of persons and there are specific requirements. In relation to the termination of his father’s marriage, the judge explained at a (sic) para 12 why the appellant could not benefit. It does not follow that because his father’s appeal succeeded so must he as their circumstances are different.
6. Although the appellant is not covered by reg.10 it is arguable that give the judge accepted his father was a family member with a retained right of residence then the appellant now has a claim as a family member of his father under reg 7 (1)(b)”.

3. Thus, the appeal came before me today.

4. At the outset both representatives urged me to accept that the Judge had materially erred by failing to consider the appeal under Regulation 7(1)(b) of the EEA Regulations. I was asked to remit the appeal to the First-tier Tribunal for a fresh hearing.

5. That is an analysis that I share.

Decision

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal to be dealt with afresh pursuant to Section 12(2)(b)(i) of the Tribunals, Court and Enforcement Act 2007 and Practice Direction 7(b) before any Judge aside from Judge Mark Eldridge.

No anonymity direction is made.

Signed

Date 7 February 2018

Deputy Upper Tribunal Judge Appleyard