



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

Appeal Numbers: IA/00651/2021  
[EA/50081/2021]

**THE IMMIGRATION ACTS**

**Heard at Field House at a Video  
Hearing  
On 20 December 2021**

**Decision & Reasons Promulgated  
On 11 January 2022**

**Before**

**UPPER TRIBUNAL JUDGE PITT**

**Between**

**TIMI JOHN AGBANA  
(NO ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: No representation

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

**DECISION AND REASONS**

1. This is an appeal against the decision issued on 24 May 2021 of First-tier Tribunal Judge Alis which allowed Mr Agbana's appeal against refusal of a residence card showing him to be the extended family member (EFM) of an EEA national exercising Treaty Rights in the UK.
2. There was no appearance for or by Mr Agbana at the hearing. Given my preliminary view that the First-tier Tribunal decision in his favour had to be upheld and that Ms Everett indicated that was also her view, it appeared to me to be in the interest of justice and fair to proceed in the absence of the appellant and his legal representatives.
3. The appellant is a national of Nigeria born on 4 June 1989. He came to the UK as a student on 1 February 2019 with leave until 29 September 2020. On 29 November 2020 he applied for a residence card showing him to be

the EFM of his brother, Temitope Ebenezer Agbana, a Dutch national in line with Regulation 8 of the Immigration (European Economic Area) Regulations 2016 (the EEA Regulations). The application was refused on 12 January 2021.

4. The appellant appealed to the First-tier Tribunal. Following a hearing on 24 February 2021, Judge Alis issued a decision dated 24 May 2021 allowing the appeal under the. The decision set out details of the appellant's case and clearly allowed it in paragraph 31 but did not set out any reasons for doing so.
5. A second decision was then issued by the First-tier Tribunal on 30 May 2021. That decision did contain reasons which found that the appellant was not an EFM and refused the appeal.
6. The appellant appealed to the First-tier Tribunal for permission to appeal to the Upper Tribunal. The respondent did not cross-appeal. Permission to appeal was granted by First-tier Tribunal Loke on 28 June 2021. The respondent did not provide a Rule 24 response or any other submission in response to the grant of permission.
7. The appellant grounds argued that any attempt to rely on the second decision was unlawful and that he was entitled to the benefit of the first decision. He maintained that nothing in law allowed for the first decision to be set aside.
8. I was in agreement with the appellant. Nothing before me indicated that the first decision of Judge Alis could be found to contain an error on a point of law such that it could be set aside. There was no challenge to it from the respondent. It therefore had to stand. The appellant's appeal has to be refused on a technical basis as it is only asserting the lawfulness of the first decision of Judge Alis dated 24 May 2021 rather than arguing any error therein. Having refused the appeal, this leaves the first decision of First-tier Tribunal Alis dated 24 May 2021 extant and the appeal against refusal of the residence card as allowed.
9. Ms Everett indicated that she agreed with the approach set out above and did not make any submissions to the contrary, accepting that it remains for the respondent to exercise her discretion under make Regulation 17 (5).
10. For these reasons, I dismiss the appeal.

## **Decision**

11. The decision of the First-tier Tribunal dated 24 May 2021 does not disclose an error of law and shall stand.

Signed: S Pitt  
Upper Tribunal Judge Pitt

Date: 20 December 2021