



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

Appeal Number: EA/00497/2017

THE IMMIGRATION ACTS

Heard at: Field House

**Decision & Reasons
Promulgated**

On: 5 October 2018

On: 16 October 2018

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

**PN
(ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr F Farhat of Gulbenkian Andonian Solicitors

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Nigeria born on 26 August 2015. She appealed against the respondent's decision to refuse to issue her with a family permit under the Immigration (European Economic Area) Regulations 2006 ("the EEA Regulations") to join her adoptive Italian national father in the UK.

2. The appellant's application was made on the basis that the sponsor and his wife had formally adopted her as their child in Nigeria. In support of the

application the sponsors produced a Nigerian adoption order dated 27 July 2016 issued by the Magistrate's Court of Anamabra State of Nigeria.

3. The respondent refused the appellant's application on the basis that adoptions taking place after 3 January 2014 had to be recognised in The Adoption (Recognition of Overseas Adoptions) Order 2013 and that Nigerian adoptions were not recognised on that list in the UK. The respondent was therefore not satisfied that the appellant met the adoption rules and was not satisfied that the adoption was in accordance with a decision taken by a competent administrative authority or court in a country whose adoption orders were recognised by the UK. The respondent was accordingly not satisfied that the appellant was the family member of an EEA national in accordance with regulation 7 of the EEA Regulations. The respondent considered further that the appellant had submitted no evidence showing that her adoptive father had approached any authorities in the UK prior to the claimed adoption in Nigeria as required under the Adoption Act 2002 and the Adoptions with a Foreign Element Regulations 2005. The respondent was not satisfied that the appellant met the requirements of regulation 12 of the EEA Regulations.

4. The appellant appealed against that decision. The Entry Clearance Manager reviewed the grounds of appeal but maintained the decision on the basis that the adoption had taken place after 3 January 2014 and that the relative legislative provisions applied. The decision did not breach the appellant's Article 8 rights.

5. The appellant's appeal was heard by First-tier Tribunal Judge Cooper on 14 February 2018. The sponsors appeared without a legal representative. The judge dismissed the appeal on the basis of the laws and regulations relied upon by the respondent.

6. The appellant, having found legal representation, sought permission to appeal that decision to the Upper Tribunal on the basis of a failure to consider the Supreme Court decision in SM (Algeria) v Entry Clearance Officer, UK Visa Section [2018] UKSC 9 which concerned identical issues. In that case the Supreme Court found that a person in the appellant's position could be seen as an 'extended family member' under Article 3.2(a) of the Directive which would include a child for whom the EU citizen had assumed parental responsibility. The Supreme Court decided to refer to the CJEU the question of whether a person in the appellant's position could be classed as a direct family member within Article 3.2(c). The grounds asserted that the First-tier Tribunal had failed to consider staying the proceedings to await the outcome of the referral to the CJEU.

7. Permission was granted on those grounds.

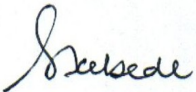
8. In his Rule 24 response the Respondent did not oppose the grant of permission and invited the Tribunal to determine the appeal with a fresh

continuance hearing to consider whether the appellant was affected by the reference to the CJEU.

9. Accordingly, at the error of law hearing, I set aside Judge Cooper's decision. However it was agreed by all parties that the most appropriate course was for the appeal to be remitted to the First-tier Tribunal, given that there would be a need for live evidence and for findings of fact to be made about the nature of the parental relationship between the sponsors and the appellant and other such relevant matters.

DECISION

10. 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, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), before any judge aside from Judge Cooper.

Signed 
Upper Tribunal Judge Kebede
2018

Dated: 5 October