



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

Appeal Number: EA/08862/2016

**THE IMMIGRATION ACTS**

**Heard at Bradford  
On 1 May 2019**

**Decision & Reasons Promulgated  
On 19 June 2019**

**Before**

**UPPER TRIBUNAL JUDGE LANE**

**Between**

**EMMANUEL OSAWARU OGBEBOR  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Jamil

For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant was born on 12 September 1973 and is a male citizen of Nigeria. He appeals against a decision of the respondent dated 6 January 2018 refusing him a residence card as a family (or extended family) member of an EEA citizen exercising Treaty Rights in the United Kingdom. The First-tier Tribunal in a decision promulgated on 27 December 2018, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.
2. The First-tier Tribunal heard the appellant's appeal together with that of his partner, Ms Augustine. The Secretary of State argued that the

appellant and partner were not married but agreed that they were in a relationship. The appellant claims that his family member, Tor Holmberg, a Swedish citizen is his father-in-law; Mr Holmberg is married to Ms Augustine's mother, Mary Osagie.

3. A number of issues arose in the appeal. One concern the validity of a proxy marriage in Nigeria. The appellant's representative before the First-tier Tribunal argued that the respondent had refuse the application under the wrong regulation (7 rather than 8). The appellant also argues that the judge had improperly imposed an income requirement as regards qualification [29].
4. Leaving aside the question of the validity of the marriage for the moment, it appears that the appellant believes that he may only succeed under regulation 8 of the Immigration (European Economic Area) Regulations 2006. First, the appellant asserts that Mr Holmberg is exercising Treaty Rights and, secondly, that is partner's mother may also act as EEA sponsor. Grounds failed to address the findings which the judge makes at [28], namely that Mr Holmberg is not exercising Treaty Rights in the United Kingdom. The judge notes that, 'My reasons for so finding [that Mr Holmberg is not exercising Treaty Rights] are that the documents before me established that he is a Swedish national. He is a merchant seaman working for a Swedish company on a Swedish passenger ship out of Stockholm. He is not a worker in the UK.' That finding was available to the judge on the evidence. I see no reason to interfere with it. If Mr Holmberg is not the sponsor, then the appellant's second position is that Mrs Osagie may act as sponsor. It is for the appellant to establish on the evidence that there is dependency upon the wife (his claimed mother-in-law) so as to satisfy the requirements of Regulation 8. At [29], the judge made a clear finding that there was no such dependency. In this paragraph the judge has not imposed an arbitrary income threshold test. Rather, he has drawn attention to the fact that the evidence did not support the appellant's claim that he was dependent on Mrs Osagie. Again this was a finding available to the judge on the evidence. Since the grounds misunderstand what the judge has written at [29], they fail to raise any arguable challenge to the judge's findings that neither Mr Holmberg nor his wife may act in the capacity of sponsor. Accordingly, the appellant could not succeed. In the circumstances, the appeal is dismissed and there is no need for me to consider the remaining grounds of appeal.

### **Notice of Decision**

This appeal is dismissed.

Signed

Date 2 June 2019

Upper Tribunal Judge Lane