Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: UI-2022-000195
EA/13187/2021

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 29 July 2022	**On 7 October 2022**

Before

UPPER TRIBUNAL JUDGE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ROSELINE NGOZI EZEYIM
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Ms Young, Senior Home Office Presenting Officer
For the Respondent: Dr C Ikegwuruka

DECISION AND REASONS

1. I shall refer to the appellant as the 'respondent' and the respondent as the 'appellant', as they appeared respectively before the First-tier Tribunal. The appellant was born on 24 December 1962 and is a female citizen of Nigeria. She applied for a Permanent Residence Permit under the EU Settlement Scheme on the grounds that she is a dependent sister of an EEA national who has settled status thereby in the United Kingdom. Her application was refused by the Secretary of State by a decision dated 9 August 2021. Her appeal to the First-tier Tribunal was allowed by a

decision promulgated on 29 December 2021. The Secretary of State now appeals, with permission, to the Upper Tribunal.

2. Ground 1 reads as follows:

> This was an application under Appendix EU refused on the basis that the appellant was not a "dependent relative" as defined in Appendix A, being a relative not covered by the specified definitions. The Judge infers an unreasoned assertion that the appellant was either not a relative or not dependent (or both), neither of which is explicitly asserted. **The biological relationship was confirmed by DNA evidence, but the point was that it was not a qualifying direct relationship. In terms of the 2016 Regulations, the appellant could only have been an extended family member under regulation 8(2), a category not carried forward by the Withdrawal Agreement or the Settlement Scheme. The refusal was thus all the consideration needed under the Rules**. Any consideration of dependence would have had regard to relevant case law and to the Secretary of State's guidance, but as explained in Ground 2 the Judge gave undue, disparaging and incorrect prominence to the decision not being in accordance with that guidance rather than with the Withdrawal Agreement itself.
>
> [my emphasis]

3. It is not disputed that the appellant is the sister of the sponsor. The appellant has never held a residence card as an extended family member under the 2016 regulations. Annex A of Appendix EU sets out the definition of a 'family member of a relevant EEA citizen'; siblings are not included in that definition. The judge at [14] quotes Annex 1 EU14 but has failed to consider that the definition which follows in the same annex. Had he done so, he would have discovered that siblings do not fall within the definition. The judge's failure to do so renders the basis of his decision wrong in law. As the grounds point out, the Secretary of State's refusal letter is concise because it identifies the fundamental reason why the application was bound to fail.

4. I agree also with the Secretary of State that the judge has misconstrued and has placed inappropriate weight on the Secretary of State's guidance. As Ground 3 states:

> Without prejudice to the challenge to the Judge's application of statute, it is submitted that the potentially relevant provisions of the Withdrawal Agreement have been too widely construed. The duty to assist with an application did not extend to identifying the necessary procedural steps to making a timely application under a different provision – it is surprising if the WA required consideration of a category of case it did not include. There is no equivalence between rights of admission for family members and extended family members documented by another country and the domestic requirements imposed for an extended right of residence in the United Kingdom.

5. Under the 2020 Citizens' Rights (Appeals) Regulations, the grounds of appeal available to the appellant were that the decision was not in accordance with Scheme rules or breached rights under the Withdrawal

Agreement. For the reasons I have identified above, the judge has wrongly sought to include the appellant in a category of eligible applicants to which she cannot in law belong. It follows that I should set aside the First-tier Tribunal's decision and remake the decision dismissing the appellant's appeal against the Secretary of State's decision.

Notice of Decision

The decision of the First-tier Tribunal is set aside. I have remade the decision. The appellant's appeal against the decision of the Secretary of State dated 9 August 2021 is dismissed.

Signed Date 29 August 2022

Upper Tribunal Judge Lane