



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

Appeal Number: IA/38892/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 30 April 2015**

**Determination
Promulgated
On 5 May 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE E B GRANT

Between

**DAMIANA OLDEZIRE TINY DE GRACA FONSECA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms D. Ofei-Kwatia of Counsel
For the Respondent: Ms A Fijiwala, Senior Presenting Officer

DECISION AND REASONS

1. The appellant applied for an EEA residence card and her application was refused by letter dated 4 September 2013. Her appeal against the refusal was heard by FtTJ Raymond and in a decision promulgated on 31 October 2014 he dismissed the appeal. The appellant sought permission to appeal

and this was granted by FtJ P.J.G. White on 19 December 2014 who said: “ The central issue in this appeal is whether the appellant is a “family member” of the sponsor who is an EEA national”

2. He went on to note that the judge erred by failing to consider or make findings on whether the appellant was a “family member” on the alternative basis of being a member of the sponsor’s household” following Dauhoo (EEA Regulations – Reg 8(2) [2012] UKUT 79 (IAC).
3. In remarkably brief findings which comprise three sentences in paragraph 12 the FtJ found “I find that the appellant, upon whom lies the burden of proof, has not established on the available evidence that she has been dependent upon her claimed sister, with that claimed relationship having also been established. The claimed sibling relationship has been left in substantial obscurity on the available evidence (see paragraphs 3 to 4 above). The fact of dependency has been asserted, and there is nothing to suggest that the appellant has not been living an autonomous economic existence in the UK since entry in 2005”
4. There have been some difficulties with this appeal not least that the refusal letter cites the wrong regulation that is 7 (1) (c) which provides that a dependent direct relatives in the ascending line shall be treated as the family member of another person. The appellant is not her sister’s mother and is not a relative in the ascending line of her sister. Before the FtJ Miss Bell for the respondent submitted that the appellant did not meet Regulation 7 (1) (c) for this reason and that she could only succeed under Regulation 8 (2).
5. There is no mention at all of Regulation 8 (2) in the determination and even though Dauhoo was placed before the FtJ by the respondent, yet the FtJ has failed to make any findings on whether the appellant meets the requirement of dependency in one of the four ways indicated in Dauhoo. Furthermore he failed to make any clear finding on whether the appellant is a sibling of her sponsor as claimed.
6. Regrettably the findings of the FtJ are so brief as to be inadequate and consequently the FtJ erred in law. His finding that dependency had not been established does not specify whether the appellant could show prior dependency on her sponsor before her arrival in the United Kingdom, and present membership of the sponsor’s household as set out in (iii) of the headnote to Dauhoo, even if present dependency could not be established. His finding on the sibling relationship in the first sentence of paragraph 12 is confused and it is not clear whether he is saying the sibling relationship had been established or whether it had not. He was plainly addressed at length on the evidence before him and sets out some of the submissions made and the evidence heard before failing to follow the approach set out in Dauhoo and make findings on whether the appellant could meet the applicable Regulation 8 (2) having been informed by Miss Bell that was the correct one to apply.

7. The appellant's case is not without difficulties. There seems to have been little evidence of prior dependency or membership of the same household placed before the Tribunal and certainly there was no evidence before the Tribunal that when the appellant came as a student her sponsor paid her fees and expenses. In other words although the FtTJ has materially erred in law in his decision the appellant should not assume that by setting aside the FtTJ's decision that her appeal will succeed.
8. The FtTJ has erred in law by failing to make findings on the evidence placed before him. I have concluded that accordingly the appellant did not have a fair hearing of her appeal and the decision should be set aside entirely and it is remitted to the First-tier Tribunal to be heard de novo.

Notice of Decision

The decision of the FtTJ is set aside.

The appeal is remitted to the First-tier Tribunal at Hatton Cross on 8 October 2015 to be heard de novo.

No anonymity direction is made.

Signed

30 April 2015

Deputy Upper Tribunal Judge E B Grant