



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/00167/2018

THE IMMIGRATION ACTS

Heard at Field House
On 12 September 2018

Decision & Reasons Promulgated
On 21 September 2018

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

ANGELA WANJIKU WAWERU-HOLLAND
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Unigwe instructed by Melvyn Everson & Co
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a national of Kenya. She appealed to a Judge of the First-tier Tribunal against the Secretary of State's decision of 30 November 2017 refusing to grant her a permanent residence card.
2. In the decision letter it was concluded that she had not provided adequate evidence to show she had a permanent right to reside as the direct family member of her sponsor, who is her mother. She had not provided evidence to show she was currently living with the sponsor but had submitted a university letter and a student loan letter showing that she lived elsewhere. She had not provided any bank statements, evidence of money transfers, or any other evidence to show that she was reliant on the sponsor. Although she claimed her mother gave her £200 every other month to assist

with childcare and food shopping, she had not provided any evidence of this. She had also stated that she worked and paid her own rent, utility bills, transport, school uniform and phone bill. It was said that she had not provided any proof to show that she could not cover her essential needs and that she was reliant on her EEA sponsor financially.

3. The hearing before the judge was conducted on the papers, at the appellant's request. The judge said at paragraph 5 of his decision that he had no supportive evidence before him but that it was clear that the respondent had had sight of a number of documents when reaching the decision. Otherwise the judge had the letter of refusal and the grounds of appeal.
4. The judge considered Regulation 15 and Regulation 7 of the Immigration (EEA) Regulations 2006 (hereafter the EEA Regulations) and concluded that there was a requirement of dependency as the appellant was over 21, and that on the basis of the evidence summarised in the refusal decision, it had not been shown that the appellant satisfied the requirements of the Regulations and as a consequence the appeal was dismissed.
5. In her grounds the appellant argued that she met the requirements of Regulation 15(1)(b), referring to a Home Office Guidance Note of 21 April 2017, as a dependent direct family member of her EEA national sponsor. It was also argued that the judge erred with regard to Article 8 of the ECHR which had not been considered, and there was also a reference to the need for a fair hearing in line with the guidance in **AM (Sudan)**.
6. Permission to appeal was granted on the basis that it was arguable that the judge had not assessed the appellant's circumstances under Regulation 15(1)(b) and had not explained why the requirements of the Regulations were not met. The grounds were limited to that point, since as was said by the judge who granted permission, there was no error of law in failing to consider Article 8, and the grounds did not explain the relevance of **AM (Sudan)**.
7. In his submissions Mr Unigwe argued that the judge had erred in failing to allow the appeal under Regulation 15(1)(b) in that the sponsor was an EEA national from Germany and the appellant was her daughter. Both had lived in the United Kingdom for more than five years. The sponsor had been exercising Treaty rights since 2012. There was no requirement of dependency in Regulation 15. The judge had erred in addressing his mind to Regulation 7.
8. In the alternative it was argued that there was evidence of money transfers in terms of the £200 transfers. The appellant had previously been given a five year residence card and had been given permission to work and that having been given, the Secretary of State had not expected her to sit down and be dependent on the sponsor. She was allowed to work. She had lived with her mother at all material times except that at some time in 2014 as the appellant's son grew older it was difficult for the sponsor to accommodate them all so the appellant had to find other accommodation. She now

lived five minutes away from her mother and they shared the responsibility of care for the appellant's son and saw each other every day. Her mother helped the appellant when the need arose. According to the case law there was no need to provide financial support at all times. The appellant was not wholly reliant on the sponsor but sufficiently so to be a dependent relative within the meaning of Regulation 7.

9. In his submissions Mr Melvin relied and adopted the points made in the Rule 24 response. It was difficult to see how the appellant could be said to be residing with the sponsor. She had been working and earning for a number of years, earning around £22,000 which was well over the benefit subsistence rate. It was necessary to read Regulation 15 in conjunction with Regulation 7 and otherwise a person who had once got a residence card and was over 21 could go away and work and claim permanent residence five years later. There had to be an issue of dependency. It was not disputed that the appellant and her son lived separately albeit between the two houses and dependency could not be met by the £200 bearing in mind her earnings were around £1,700 a month. There was no material error of law.
10. By way of reply Mr Unigwe argued that there was no doubt that the appellant was a family member of her mother. She had been issued with a five year residence card on the basis of being a family member of an EEA national but it was only when her mother had applied for permanent residence for the appellant and her son that the issue in dispute arose. Leave had been granted to the mother and child but not to the appellant. The fact that she was a family member was resolved when the earlier residence card was issued. There was no issue as to her identity. Nor was there any issue as to when the card was issued. The judge had erred in both regards. It was not just a question of money.
11. I reserved my determination.
12. The relevant provisions of the EEA Regulations are as follows:
 - “15(1) The following persons acquire the right to reside in the United Kingdom permanently - ...
 - (b) a family member of an EEA national who is not an EEA national but who has resided in the United Kingdom with the EEA national in accordance with these Regulations for a continuous period of five years ...”
13. Also of relevance is Regulation 7 which states as follows:
 - “7(1) In these Regulations, “family member” means, in relation to a person (“A”) -
 - (a) A's spouse or civil partner;

- (b) A's direct descendants, or the direct descendants of A's spouse or civil partner who are either –
 - (i) aged under 21; or
 - (ii) dependents of A, or a spouse or civil partner ...”

14. Clearly reference to a family member in Regulation 15 must be read back to the definition of family member in Regulation 7. It cannot be argued that the requirement of dependency which is clearly set out at Regulation 7(1)(b)(ii) can be ignored, and as a consequence therefore to be a family member within the provisions of Regulation 15(1)(b), in the case of a person in the appellant's position, they must be a dependant of an EEA national, as set out Regulation 7(4).
15. Accordingly, the judge did not err when considering the relevance of the issue of dependency in this case. Dependency has to be shown.
16. Unfortunately, the judge had virtually no evidence on which to go. The appellant chose to have the hearing on the papers, and the judge, as is clear from paragraph 5 of his determination, could only go on the limited documents available which did not include any supporting evidence. The judge noted that the appellant is in employment and able to meet her essential needs herself, although her mother it was said paid her £200 every other month to help with childcare and food bills.
17. This was in effect all the evidence there was before the judge to show dependency. In my view it was fully open to the judge to conclude that in the circumstances of that very limited amount of evidence, dependency had not been made out. It may be that on a fresh application fuller evidence can be provided of the kind referred to in passing by Mr Unigwe and as contained in the bundle he produced which upon examination it became clear had not been before the judge. But as matters stand it is clear that the judge did not err in law in any regard and his decision dismissing the appeal is upheld.
18. No anonymity direction is made.



Signed

Date 21/09/18

Upper Tribunal Judge Allen