



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: EA/01545/2017

**THE IMMIGRATION ACTS**

Heard at Field House  
On 29<sup>th</sup> August 2018

Decision & Reasons Promulgated  
On 18<sup>th</sup> September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

MS MAVIS BOAMAH  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr J Collins instructed by Fortwell Solicitors  
For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant, a national of Ghana, appealed to the First-tier Tribunal against a decision of the Secretary of State dated 26<sup>th</sup> January 2017 to refuse her application for

a residence card as the family member of an EEA national, her mother Linda Opokua who is an Italian national. First-tier Tribunal Judge Sills dismissed the appeal in a decision promulgated on 22<sup>nd</sup> January 2018. The Appellant appealed against that decision with permission granted by Upper Tribunal Judge Hanson on 12<sup>th</sup> July 2018.

2. The Appellant asserts in the Grounds of Appeal that the First-tier Tribunal Judge erred in finding that the Appellant was unable to succeed as a family member under Regulation 7 of the Immigration (European Economic Area) Regulations 2006 (the EEA Regulations). It is asserted that the judge was required to consider in the alternative whether the Appellant could succeed under Regulation 8 of the EEA Regulations on the basis of the contention that the Appellant qualified as an extended family member by virtue of membership of her mother's household in Italy and then in the UK.
3. Upper Tribunal Judge Hanson granted permission to appeal on the basis that it is arguable that the alternative submission as to whether the Appellant is an extended family member under Regulation 8 may have been a matter which was before the First-tier Tribunal and that the Tribunal may have erred in failing to make findings on that issue. He granted permission to appeal limited to the question of whether the judge erred in failing to consider the Appellant's claim to be an extended family member of her mother and whether, if that claim had been properly considered, it would have made any difference to the decision to dismiss the appeal. Mr Collins did not seek to widen the basis of those grounds before me.
4. It is asserted that the Appellant's mother came to the UK in 2009. The Appellant entered the UK on 14<sup>th</sup> February 2016 on the basis of entry clearance as a visitor with her husband and minor child. On 25<sup>th</sup> July 2016 she applied for an EEA residence card on the basis of her relationship with her mother, an Italian citizen. In the form she stated that she is the dependant child of an European Economic Area national who is a qualified person (page 24-25) and she completed section 7 which is applicable to a dependent family member. With the application the Appellant's representative submitted a covering letter which is headed "Application for a Registration Certificate or Residence Card as the Family Member of a European Economic Area (EEA) or Swiss National ...". The covering letter states that the Appellant's mother had provided her with financial support whilst she was in Italy occasionally sending money to the applicant and states "The applicant had lived with her mother in Italy before her mother came to the United Kingdom". The letter states that the Appellant resides with her mother and is a fully dependent member of the household.
5. The Secretary of State considered the application under Regulation 7 of the EEA Regulations and concluded that the Appellant had provided insufficient documentation to support the claim that she had been residing with her mother and that she has been financially dependent upon her since arriving in the UK. The Secretary of State considered that the application failed to meet Regulation 7(1)(c) of the 2006 Regulations.
6. The Grounds of Appeal to the First-tier Tribunal state that the Appellant had previously been dependent on her mother who previously lived in Italy, that her

mother provided financial support for the Appellant while she was in Italy occasionally sending money to the applicant and “the applicant had lived with her mother in Italy before her mother came to the United Kingdom”. It states that the Appellant currently resides with her mother and is a fully dependent member of the household. The grounds set out under Article 3(2) of the Directive and Regulations 8 and 17 of the 2006 Regulations as well as Article 8 of the ECHR. The first ground asserts that the Appellant’s mother provided financial support for her while she was in Italy and had previously provided cash payments as financial support to the Appellant with whom she had previously lived in Italy. Ground 2 relates to financial support since entering the UK, and the remaining grounds relate to human rights.

7. Mr Collins accepted that the skeleton argument submitted to the First-tier Tribunal did not rely on Regulation 8 of the EEA Regulations. However, in his submission the covering letter with the application and the Grounds of Appeal to the First-tier Tribunal were sufficient to raise the issue of Regulation 8. He further pointed to aspects of the First-tier Tribunal’s decision which he contended were sufficient to indicate that Regulation 8 was before the judge. These included a reference at paragraph 3 where the judge said “there was also insufficient evidence that the Appellant lived with her mother”. However, in my view it is clear that this paragraph is a summary of the reasons for refusal letter.
8. Mr Collins was unable to point to any other potential reference to Regulation 8 issues in the judge’s decision. He referred to paragraph 12 where the judge said “The issue in this appeal is whether the Appellant can show that she is dependent upon her mother ...”. He submitted that this demonstrates that the judge misunderstood the issues before him in failing to recognise that there were two issues to be determined, the alternative issue being whether the Appellant met the requirements of Regulation 8. He highlighted a finding at paragraph 18 where the judge said “I find that the Appellant has stayed with her mother since her arrival in February 2016” and submitted that this finding meant that the only outstanding issue to be determined by the judge in relation to Regulation 8 was whether the Appellant had been a member of her mother’s household in Italy.
9. In these circumstances he submitted that any error made by the judge was material to the Regulation 8 issue. Mr Collins submitted that there was evidence to support the contention that the Appellant was a member of her mother’s household before her mother left Italy in 2009 and relied on the mother’s witness statement where she said at paragraph 2 that she first arrived in the UK in 2009. However it is not clear what evidence was before the judge as to when the Appellant's mother left Italy to come to the UK. He also referred page 23 of the Appellant’s bundle which is an English translation of an Italian ‘certificate of family status’ which appears to show the Appellant and her mother at the same address in Italy in 2009. The difficulty with this document however is that it is a translation and the original document was not produced.
10. Mr Collins also referred to the decision in **Dauhoo (EEA Regulations – reg 8(2)) [2012] UKUT 00079 (IAC)** and in particular to paragraph 17. Mr Collins also referred to the

application covering letter at B3 of the Respondent's bundle where there was a citation from Dauhoo which clarified that in order to be recognised as an extended family member the Appellant would need to show, inter alia, prior membership of a household and present membership of a household. However, although under the heading 'Legal Basis for a Residence Card as the Family Member of an EEA National' in the covering letter there are quotations from legislation and case law, it is not clear at all from that application or from the consideration of that application by the Secretary of State that this application was in any way founded (either as a primary application or as an alternative application) as one under Regulation 8 as an extended family member. Although the grounds of appeal to the First-tier Tribunal cite Regulation 8 it is clear that this was cut and pasted into the grounds and it is in no way clear that this was directly relevant to the case put in the grounds of appeal which were clearly based on Regulation 7(1)(c).

11. In terms of the actual hearing there is no reference in the skeleton argument to any alternative submission based on Regulation 8. There is no reference in the judge's decision about an alternative submission being put on that basis. I have considered the Record of Proceedings in the file which are in note form and I see no explicit or implied submission that the Appellant qualifies under Regulation 8.
12. The judge made a number of adverse credibility findings in relation to the Appellant and her mother in a detailed decision before reaching a conclusion that the Appellant had not shown that she was dependent upon her mother in Italy before coming to the UK or in the UK since coming here. The judge noted at paragraph 23 that the Appellant had been living independently in Italy and had chosen to move to the UK. The judge found that the Appellant and her mother had exercised deception in obtaining the visa for the Appellant to travel to Italy and that the Appellant had been dishonest in her application for a UK visit visa. These are significant matters the judge was entitled to hold against the Appellant.
13. Mr Collins submitted that it was a live issue and the judge should have made a finding as to whether or not it was accepted that the Appellant had lived with her mother in Italy as claimed but had failed to do so. He submitted that this was a material error of law. However, in my view, had the Appellant considered this to have been a live issue it would have been explicit in the Grounds of Appeal to the First-tier Tribunal, the skeleton argument and the submissions made at the hearing. The evidence said to have been put forward in support of this submission is not sufficiently clear. Further, it is not clear on the evidence put to the First-tier Tribunal as to when the Appellant's mother obtained Italian nationality, when or how long they were said to have lived together in Italy or when the Appellant's mother came to the UK. These are all issues relevant to the determination of Regulation 8. There is no evidence beyond the translation of a document, the original version of which was not provided, to support any assertion that they were living together in 2009 or that they were members of the same household before or after the Appellant's mother's departure to the UK.
14. I accept as pointed out by Mr Jarvis that there was no evidence before me from Mr Brooks, who represented the Appellant in the First-tier Tribunal, to indicate that this

submission had been put to the judge specifically. There was no submission made by Mr Collins that on the basis of the case put that it was **Robinson** obvious that the judge should have gone on to consider Regulation 8. This is a complex matter which would not, on the evidence before the Tribunal, have been an obvious one for the judge to have pursued. It cannot be the case that the judge would have had to go off on his own investigation into the limited evidence which may go to the issue of establishing membership of the household under Regulation 8 without being directed to do so or without such evidence being clear and complete.

15. Mr Collins accepted that there was a certain vagueness throughout but submitted that there was enough in the covering letter, the witness statement and the grounds to raise this issue before the judge. I disagree, in my view there was not enough evidence or indication before the First-tier Tribunal to make the issue of Regulation 8 a live issue. Accordingly, the judge made no material error in failing to consider this issue.

### **Notice of Decision**

There is no material error in the decision of the First-tier Tribunal Judge.  
The decision of the First-tier Tribunal will stand.

No anonymity direction is made.

Signed

Date: 14<sup>th</sup> September 2018

Deputy Upper Tribunal Judge Grimes

### **TO THE RESPONDENT** **FEE AWARD**

The appeal has been dismissed and therefore there can be no fee award.

Signed

Date: 14<sup>th</sup> September 2018

Deputy Upper Tribunal Judge Grimes