



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: EA/02836/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 19 February 2019

Decision & Reasons Promulgated  
On 26 April 2019

Before

UPPER TRIBUNAL JUDGE BLUM

Between

GODSTIME BASSEY IDENEKPOMA  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: None (the appellant appeared in person, although he continued to instruct EcoM Solicitors)  
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is a remade decision following the identification of a material error of law in the decision of Judge of the First-tier Tribunal Devittie (the judge), promulgated on 15 March 2018, dismissing the appellant's appeal against the respondent's decision dated 25 February 2016 refusing to issue him a permanent residence card under the Immigration (European Economic Area) Regulations 2006 (the 2006 Regulations). The respondent did not accept that the appellant was either dependent on his EEA sponsor, or that he was a member

of his EEA sponsor's household, as required by Reg 8 of the 2006 Regulations. These were the two issues in contention in the appeal.

2. The appellant is a national of Nigeria, date of birth 24 February 1991. He entered the UK on 16 April 2009 pursuant to entry clearance as a student. On 1 April 2010 he applied for a residence card under the 2006 Regulations. According to his statement he applied as a family member of an EEA national. His application was however premised on his relationship with his brother's spouse (the EEA sponsor, Ms [DN]), a German citizen exercising Treaty rights in the UK. He would therefore have been applying as an Extended Family Member as defined in Reg 8 of the 2006 Regulations. He was issued a residence card on 30 September 2010. The card was valid until 30 September 2015. Having been issued with the residence card, and pursuant to Reg 7(3) of the 2006 Regulations, the appellant was treated, for the purposes of his residence, as a family member so long as he continued to meet the relevant conditions in Reg 8. On the facts of this appeal the relevant conditions are contained in Reg 8(2). This reads, in material part,

'A person satisfies the condition in this paragraph if the person is a relative of an EEA national, his spouse or his civil partner and -

- (a) The person is residing in a country other than the United Kingdom ... and is dependent upon the EEA national or is a member of his household;
- (b) The person satisfied the condition in paragraph (a) and is accompanying the EEA national to the United Kingdom or wishes to join him there; or
- (c) The person satisfies the condition in paragraph (a), has joined the EEA national in the United Kingdom and continues to be dependent upon him or to be a member of his household.'

3. On 21 September 2015 the appellant applied for a Permanent Residence Card as confirmation of his right to reside in the UK. He would be entitled to a Permanent Residence Card under Reg 15 of the 2006 Regulations if he resided in the UK with the EEA national in accordance with the Regulations for a continuous period of 5 years.
4. The respondent was not satisfied the appellant continued to meet the requirements of Reg 8(2)(c) throughout his 5-year residence since the issue of the residence card in 2010. The respondent noted evidence in the form of a payslip dated October 2011, water bills from September and October 2012, and a University letter dated June 2015, relating to the appellant's residence at [~] Road, Tilbury (the Tilbury residence). The respondent additionally noted evidence of the appellant's residence at [~] House, Plumstead (the Plumstead residence) consisting of bank statements issued in June and November 2013, January 2014 and February 2015. The respondent noted a total of 4 bank transfers from the EEA sponsor to the appellant in 2013 totalling £1,500, and

that the bank statements showed regular incoming wages and student loans. The respondent was not satisfied that the appellant had been residing with his EEA sponsor for a continuous period of 5 years, or that he was dependent upon her for his essential living needs. As the conditions of Reg 8(2)(c) had not been met, the appellant could not be considered as a family member pursuant to Reg 7(3), and the respondent refused to issue the appellant with a Permanent Residence Card under Reg 15(1)(b) of the 2006 Regulations.

5. The appellant elected to have a 'paper' appeal before the First-tier Tribunal rather than an appeal with a hearing. Despite the respondent's reference to several specific documents in the Reasons for Refusal Letter, a respondent's bundle was not produced for the First-tier Tribunal hearing. The appellant filed a bundle of documents running to 70 pages. This included, *inter alia*, a skeleton argument, a statement from the appellant and a brief letter from Ms [N]. There were also various documents randomly placed in the appellant's bundle relating to both the Tilbury and Plumstead residences. These included, *inter alia*, letters from a charity called the Higher Aims Foundation addressed to the appellant at the Tilbury residence and sent in 2013 and 2014, and letters from Student Finance England addressed to the appellant at the Tilbury residence dated 30 May 2011, 8 October 2012 (indicating that £8,738 would be paid to him for the academic year), and 13 August 2015 (this letter suggested the appellant had applied for student finance for the 2015/2016 academic year, which was not supported by his statement). There were also Barclays Bank account statements and documents addressed to the appellant at the Tilbury residence from July 2015 onwards. Also contained in the bundle were utility bills addressed to Ms [N] relating to the Plumstead residence and dated 6 June 2014, 2 January 2015, and 13 July 2015, an undated letter and attached council tax payment card addressed to her at the Plumstead residence, a letter dated 20 October 2015 indicating that she was in arrears in her payment of the council tax for the Plumstead residence (in the amount of £1,042.15), and a Santander account summary, covering January to February 2016, addressed to her at the Plumstead residence (previous Santander accounts covering the period 20 November 2013 to 19 December 2013, and 7 June 2014 to 6 August 2014, were addressed to her at the Tilbury residence), as was a Santander letter offering her a personal loan in the amount of £7,500 dated 26 November 2013.
6. In his statement prepared for the First-tier Tribunal the appellant claimed he and Ms [N] lived in Plumstead when he lodged his initial application for a residence card in 2010, but that in June 2010 she and her husband, [MI] (the appellant's brother) purchased the Tilbury residence. They all lived together in Tilbury but Ms [N] retained the Plumstead residence as she worked in Woolwich during the week and returned to Tilbury at weekends. When the appellant commenced his studies at university in September 2011 he moved to the Plumstead residence as this was more convenient. He claimed he would usually return to Tilbury at the weekends. While studying he only undertook casual work. He received student finance which supported him during this period, but the money from his casual employment and his student finance was

insufficient to cover his living expenses in London. He claimed Ms [N] gave him 'pocket money' when he ran out of money, and she paid the rent, the utility bills and the council tax. Without this support the appellant claimed it would have been very difficult for him to meet his daily needs. The appellant claimed to have finished his studies in 2014 and that he started doing agency work with the NHS. He lived in Tilbury fulltime but regularly came to London for his work and would sometimes stay at the Plumstead residence. The appellant claimed he was a member of Ms [N]'s household throughout the 5-year period, and that when he was not physically present in the same house as her, he was dependent on her as he resided in a property she owned or in respect of which she paid the rent and the bills.

7. A brief letter from Ms [N], dated 16 September 2015, merely stated that her sister-in-law and the appellant were dependent on her and her husband, and that the appellant and her sister-in-law were financially supported and that they had "... also become a member of our household."
8. In dismissing the appeal the First-tier Tribunal judge gave two reasons why he was not satisfied the appellant had been dependent on the sponsor for a continuous 5-year period.
  - (1) The appellant has provided an elaborate account of how he was living in a property in which the sponsor had retained her tenancy and in which he continued to meet all the bills after she moved to Tilbury. His account is not supported by any documentary evidence, such as the sponsor's tenancy, on which he relies. More importantly, the sponsor, given the opportunity in her witness statement to support this appeal, fails to make any mention of the detailed arrangements in terms of which she continued to pay rental after moving to Tilbury and did so [sic] solely because appellant was dependent on her.
  - (2) The appellant accepts that in 2014 he obtained full-time employment and thus became fully self-sufficient. On this basis alone he cannot prove that he was a dependent of the sponsor for a period of five years.
9. The error of law decision was promulgated by the Upper Tribunal on 17 October 2018. In that decision the Upper Tribunal found that the judge directed himself only in respect of the issue of dependency and did not consider whether, on the evidence before him, the appellant could be considered a member of the EEA sponsor's household. Dependency on the EEA sponsor and membership of the EEA sponsor's household are alternative routes under Reg 8(2)(c) (see, for example, **Moneke (EEA - OFMs) Nigeria** [2011] UKUT 341 (IAC)). The Upper Tribunal additionally found that the judge failed to consider relevant evidence going to the issue of both dependency and membership of the EEA sponsor's household. The Upper Tribunal consequently set the judge's decision aside. As the Upper Tribunal was concerned that the full picture of the appellant's circumstances in the 5-year period since the issue of a residence card

to him in 2010 has not yet been fully disclosed, and mindful that the appellant sought to serve new evidence in accordance with Rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008, it was considered appropriate to remake the appeal following a further oral hearing.

10. A further hearing was listed for 11 December 2018. The appellant attended that hearing and was represented by Mr D Balroop, of Counsel. During the early stage of the appellant's oral evidence it emerged that he had a brother who, he claimed, had recently been issued a permanent residence card following a successful appeal. The basis of the brother's application for a permanent residence card was said to be similar to the appellant's application. The appellant additionally claimed that his mother and younger sister had also been issued residence cards. Nor was there any further evidence from the EEA sponsor, and she did not attend the hearing. In these circumstances the hearing was adjourned and the Upper Tribunal issued directions requiring the appellant's legal representatives to file with the Upper Tribunal the First-tier Tribunal decision in the appeal of the appellant's brother ([EI]), and the Home Office references relating to the same brother, the appellant's mother ([JI]), and the appellant's sister ([SI]). The Upper Tribunal additionally issued a witness summons to the EEA sponsor (Ms [DN]) requiring her attendance at the adjourned hearing.
11. The appellant's legal representatives provided a copy of the decision by Judge of the First-tier Tribunal Freer, promulgated on 7 June 2018, and provided the requested Home Office references. The appellant additionally provided a copy of his daughter's birth certificate, who was born on 20 December 2018. Judge Freer's decision was made on the basis of the papers before him as [EI] did not elect to have an oral hearing.
12. On 13 February 2019 the Upper Tribunal received an email from Ms [N]. The Subject heading read "Application to set aside my witness summons Appeal no EA/02836/2016". The body of the email read,
 

"To whom it may concern,

I received a witness summons letter to attend a hearing.

I [DN] hereby write to inform you that I do not wish to support the above case.

In this case, can I be excused from attending court.

Can this request be placed before the judge and kindly keep me informed of the outcome."
13. On 14 February 2019 the Upper Tribunal responded to Ms [N] by email and requested that she set out in clear terms what she meant when she said she did "not wish to support the above case" and why she did not want to attend the hearing. On 18 February 2019 the Upper Tribunal received a further email from Ms [N]. This stated,

“To whom it may concern,

Following my previous email, I confirm I will now be attending the court hearing on 19/02/2019. Please disregard my previous email.”

14. By a fax sent at 21:02 on 18 February 2019, received by the Upper Tribunal on 19 February 2019, EcoM Solicitors informed the Upper Tribunal that the appellant has not instructed them to attend the appeal hearing, and that he would be attending in person. The appellant attending the hearing on 19 February 2019. Ms [N] also attended the hearing, as did the appellant’s mother. All three gave oral evidence.
15. In addition to the original bundle of documents prepared for the First-tier Tribunal hearing, the appellant additionally provided a ‘Rent Arrears: Payment Reminder’ issued by the Royal Borough of Greenwich, dated 17 July 2012 and addressed to Ms [N] at the Plumstead property indicating that the Borough was owed £229.02 relating to water and housing charges. A Housing Account Statement, dated 8 July 2013 and issued by the Directorate of Housing Services of the Royal Borough of Greenwich indicated that the property was £219.31 in arrears, and a similar document dated 14 April 2014 indicated that the property was £543.71 in arrears.
16. In his oral evidence at the hearing on 19 February 2019 the appellant confirmed that he had not provided any tax documents relating to his employment between 2010 and 2015. The appellant claimed no one advised him to adduce these documents. The appellant initially claimed that Ms [N] owned the Plumstead property and was not aware whether the property was mortgaged. The appellant then said he was unaware whether the property was owned or rented. The appellant denied paying any rent to Ms [N] in respect of the Plumstead property. The appellant claimed that Ms [N] and his brother supported him before and after his education. The appellant claimed to have earned money “cash-in-hand”. The appellant stated that, before the Tilbury property was purchased, the persons living in the two-bedroom property in Plumstead were him and his younger sister (who was a minor), Ms [N] and her husband and their child, his brother [EI] and their mother. After the general move to the Tilbury property Ms [N] would spend time in the Plumstead property because she had a job in the Santander Bank in Woolwich. According to the appellant Ms [N] would stay at the Plumstead property from Monday to Friday and would return to the Tilbury property for the weekends.
17. When asked about the water bill in his name dated 17 October 2012 and addressed to the Tilbury property, the appellant freely admitted that he had no other means of showing that he lived in the property and his name was added for that purpose. The appellant did not pay the water bills. When asked whether he had begun repaying his student loan the appellant believed the repayments were taken from his payslips when he started doing casual work. He did not have any evidence that he was repaying his student loans. He went back to university in 2015 but couldn’t continue his course.

18. The appellant claimed that, when he was studying at the London Metropolitan University, he would spend 2 or 3 days every week at the Plumstead property and would spend the remainder of the week at the Tilbury property. When he studied at Greenwich University in 2012 the appellant would spend 3 or 4 days a week at the Plumstead property and would spend his weekends in Tilbury, and sometimes in London. The appellant said that Ms [N] continued to live in the Plumstead property until she was transferred to another job in Basildon, that was closer to Tilbury. He believed this happened in 2013 or 2014. Although she would spend some time in Plumstead, she spent most of the time at the Tilbury property. When asked why Ms [N] would still spend some time in the Plumstead property, the appellant said he did not know.
19. The appellant claimed that he and his younger brother ([EI]) were both moving between the Plumstead property and the Tilbury property while they were studying. The appellant confirmed that Ms [N] acted as an EEA sponsor to him, his brother [EI], his sister [SI] and his mother [JI]. The appellant said that his brother [MI] was a businessman and was a qualified nurse and had other businesses, including an educational business. No one had asked him to give evidence.
20. In her oral evidence Ms [N] was asked what she meant when she emailed the Tribunal stating that she did “not wish to support the above case.” She said she was going through issues in her personal life but had a rethink. When asked what changed her mind she said that she sorted out what she needed to sort out. She said she rented the Plumstead property and had done so since 2009. It was registered in her name. She was “coming and going” between the Tilbury and Plumstead properties due to her work while her mother-in-law helped with her children. She worked at the Woolwich branch of the Santander Bank and the Plumstead property was more convenient for her to get to work. Ms [N] said she “sometimes” went to the Tilbury property at weekends. She said that she only worked in Basildon for a short while, and this was in 2017. She claimed to have worked in other Santander branches such as Lakeside Shopping Centre and Gravesend. She could not remember which year she worked at the Lakeside Shopping Centre. When asked whether there was ever a time that she predominantly resided in the Tilbury property Ms [N] became evasive, claimed she didn’t know what was meant by the question, and stated that she stayed in both properties. She denied ever moving back to the Tilbury property on a more permanent basis. When asked where she spent most of her time in 2013 and 2014 she said she couldn’t really say.
21. Ms [N] said that the appellant took casual jobs between 2010 and 2014 in between his studies. She said that she rented the Plumstead property from Greenwich Borough Council and claimed she could provide evidence of continuous rental payments, although none were provided in the documents prepared for the appeal. She also claimed she could provide council tax documentation and documents confirming that the local authority was aware of the identity of those residing in the property, but these were not produced at

the hearing. She did not know why the appellant's name appeared on a water bill relating to the Tilbury property. Ms [N] maintained that she had access to both the Tilbury and the Plumstead properties. Her husband paid the mortgage in respect of the Tilbury property and she paid the rent in respect of the Plumstead property. When asked why she needed another address if she was primarily residing, according to the appellant, at the Tilbury address from either 2013 or 2014, Ms [N] again became evasive and aggressive and said she could decide where she wanted to live. When asked whether there was any particular reason why she would wish to continue living between the two properties, Ms [N] said there was "no particular reason." When asked why, if the appellant was working, he didn't pay any rent for living in the Plumstead property, Ms [N] said she didn't expect him to. When asked how she financially supported the appellant from 2010 to 2015 she said that she sometimes gave him cash and sometimes transferred money to his account.

22. The appellant's mother, [JI], gave evidence. [JI] claimed that Ms [N] worked in the Lakeside Shopping Centre but didn't know when this employment commenced and was unable to even guess the year in which the employment at Lakeside commenced. [JI] could not remember where her daughter-in-law worked before she moved her job location to Lakeside. [JI] claimed that Ms [N] spent most of her time in Plumstead, but would come to Tilbury to see her children. When asked where Ms [N] currently resided [JI] remained silent for a significant amount of time and eventually said that she lived mostly in Tilbury now. When asked how long Ms [N] had been living 'mostly' in Tilbury, [JI] said she couldn't remember. [JI] claimed that Ms [N] now worked in Thurrock for Thurrock Council. When asked where Ms [N] lives during the week [JI] said, "she lives in Tilbury, she lives in Plumstead. I can't be checking the time she lives in both." [JI] did not know why her daughter-in-law retained two addresses if she worked locally near Tilbury. When asked how Ms [N] was able to support her, [SI], [EI], and the appellant, and pay rent and cover a mortgage, [JI] said that her other son worked. He was a businessman and had a company. When asked why Ms [N] was not living permanently in the same house as her husband and children, [JI] said she did not know.
23. Mr Melvin invited me to find the evidence from the appellant, Ms [N] and [JI] to be incredible. There was said to be little or no evidence of financial dependency, and little evidence of the appellant's residence at either the Tilbury property or the Plumstead property. Ms [N], it was submitted, gave deliberately vague evidence with respect to the Plumstead property. There was no evidence of where the funds for the rent payments for the Plumstead property originated and it was likely that the property was in fact being sublet. It was submitted that, on the balance of probabilities, the appellant was paying the bills and the rent in respect of the Plumstead property from his own earnings. The appellant submitted that Ms [N] owns both properties, that he wasn't paying any rent, that she paid the bills and that she was resident at both properties. He referred to his brother's successful appeal and stated that his brother, [EI], spent time at the Plumstead property. He invited me to find that



the evidence showed that he spent time between the two properties and that he was part of Ms [N]'s household.

### Findings of fact and conclusions

24. I have considered the decision of judge of the First-tier Tribunal Freer in respect of the paper appeal of the appellant's brother, [EI], promulgated on 7 June 2018. In *AA (Somalia)* [2007] EWCA Civ 1040 the Court of Appeal considered the approach that should be adopted when considering what weight to attach to a finding of fact in one person's asylum/human rights appeal when those findings are relevant in another person's subsequent asylum/human rights appeal. After a detailed consideration of authorities on the issue the Court of Appeal held, at [21], that, "*The second tribunal should have regard to the earlier decision but only as a starting point.*" At [29] the Court stated, "*In cases where the parties are different, the second tribunal should have regard to the factual conclusions of the first tribunal but must evaluate the evidence and submissions as it would in any other case. If, having considered the factual conclusions of the first tribunal, the second tribunal rationally reaches different factual conclusions, then it is those conclusions which it must apply and not those of the first tribunal.*"
25. The 'key point' in Judge Freer's decision was whether [EI] was either a member of Ms [N]'s household for the period 7 June 2012 to 7 June 2017 or dependent on her during the same period. The decision was determined without an oral hearing. The judge found that "the sponsor also resided in the flat on some days due to work commitments." The judge stated that a 72-page bundle was produced by [EI] and that it contained "ample evidence from many different years showing that the German national sponsor owns the two addresses stated." The judge does not identify any of the actual evidence contained in the bundle. The judge's conclusion that Ms [N] (the German national sponsor) "owns the two addresses" is contradicted by Ms [N]'s own evidence that she rents the property. The judge concluded that [EI] had shown both dependency of household and dependency of income. I approach the decision of Judge Freer as my starting point, but I note that I have had a considerably greater opportunity to probe the evidence produced by the appellant.
26. In order to be issued a Permanent Residence Card under Reg 15 of the 2006 Regulations the appellant must demonstrate, to the balance of probabilities standard, that he was either dependent on Ms [N] or a member of her household for the continuous period from September 2010 to September 2015. The appellant and Ms [N] contend that she provided him with financial support in order for him to meet his basic needs by giving him money and by paying the rent or the mortgage in respect of the properties in which they both resided, and that the appellant was, in any event, a member of her household as they both resided at the Tilbury and the Plumstead properties.
27. I will first consider whether the appellant was a member of Ms [N]'s household. The appellant's bundle contains a Land Registry document confirming that [MI]

and Ms [N] purchased the Tilbury property on 17 June 2010. The overwhelming majority of the documents linking Ms [N] to the Plumstead property date from 2014 onwards. A Rent Arrears Payment Reminder letter from the Royal Borough of Greenwich, dated 17 July 2012, suggests however that Ms [N] was registered with the Local Authority as the tenant. Two Housing Account Statements, dated 8 July 2013 and 14 April 2014, both addressed to Ms [N] at the Plumstead property, also suggest that she was the registered tenant of the property. I note the evidence that, at the date of the appellant's initial application for a residence card in 2010 he identified the Plumstead property as his residence, and that an Aviva mortgage insurance contract was addressed to Ms [N] at the Plumstead property in June 2010, and I note Ms [N] claim, made in oral evidence, that she had rented the Plumstead property since 2009. I additionally take into account a Council Tax Arrangement letter issued by the Royal Borough of Greenwich, dated 20 October 2015, addressed to Ms [N] and relating to an arrangement regarding the payment of a Council Tax debt of £1,042 in respect of the Plumstead property. I find, based on this evidence, that Ms [N] is the registered tenant of the Plumstead property and has been for the relevant period September 2010 to September 2015.

28. There remains however limited evidence that the funds used to pay the rent in respect of the Plumstead property actually originate from Ms [N], or that she has continuously resided in the Plumstead property during the period September 2010 to September 2015. There is, for example, no evidence that the rental payments in respect of the Plumstead property come out of any bank account held by Ms [N]. This is a surprising omission given the basis of the respondents refusal to issue a residence card and the concerns raised both by the First-tier Tribunal judge and by the Upper Tribunal at the 'error of law' hearing and the subsequent adjourned hearing. Nor is there adequate evidence relating to her employment and financial circumstances, a point of some relevance given her claim that she pays the rent on the Plumstead property and financially supports the appellant, his brother [EI], his sister [SI] and their mother, [JI].
29. There is also limited evidence of Ms [N]'s residence at the Plumstead property. There is a dearth of correspondence relating to her residence at the Plumstead property in 2010 and 2011, and the only document linking her to the property in 2012 and 2013 of those identified in paragraph 27 above. The appellant's bundle contains two letters issued by E.on (the utility company) dated 6 June 2014 and 19 June 2014 addressed to Ms [N] at the Plumstead property requesting the gas and electricity meter readings for the property as "we're nearing the end of your switch to us." There is additionally a further letter to Ms [N] from E.on, dated 2 January 2015, welcoming her to the utility company, and a 'First prepayment gas statement' dated 13 July 2015. There is a council tax payment card addressed to Ms [N] at the Plumstead property, but this is undated. Nor is there any date on a Vodafone advert sent to Ms [N] at the Plumstead property.

30. These documents must be balanced against the evidence suggesting that Ms [N] has resided at the Tilbury property as her principal residence during the relevant period, which includes Santander Bank account statements addressed to her at the Tilbury property in 2013 and 2014, a letter dated November 2013 indicating that an application for a personal loan in the sum of £7500 was successful, mobile phone bill statements dating from 2014, HMRC tax credit documents relating to the years 2012 - 2013, 2013 - 2014, 2014 - 2015, and 2015 - 2016, water utility bills issued in 2015, and child benefit documents dated December 2012. Although a Santander Bank account statement for the period January to February 2016 was addressed to Ms [N] at the Plumstead property this related to the period outside consideration for the purposes of the issuance of a permanent residence card, and after the application for a residence card was made.
31. The oral evidence from the witnesses compounds my concerns with the written evidence relating to whether the appellant was a member of Ms [N]'s household. I observe at the outset that the appellant initially believed that Ms [N] owned the Plumstead property. The appellant is an intelligent man as demonstrated by his educational achievements, and, on his evidence, would have lived with Ms [N] for a considerable period of time. I do not therefore find it credible that he would have failed to appreciate the difference between owning and renting, and would have been unaware that Ms [N] was renting the Plumstead property. More significantly, the appellant said Ms [N] changed the location of her job to Basildon in either 2013 or 2014, and that, as Basildon was closer to Tilbury than Plumstead, she thereafter spent most of her time at the Tilbury property. Ms [N] however said she only worked in Basildon for a short while, and this was in 2017. Given that the appellant and Ms [N] are said to have lived in the same property, and indeed that Ms [N] did most of the cooking (statement, at paragraph 5), it is not credible that the appellant would be unaware of where Ms [N] worked. The appellant also said that Ms [N] spent most of her time at the Tilbury property after changing jobs in 2013 or 2014. However, when asked where she resided most of the time in 2013 and 2014 Ms [N] said she couldn't really say. Attempts to clarify Ms [N]'s evidence were met by aggressive and evasive responses. Although the appellant said that Ms [N] would spend her weekends at the Tilbury property she maintained that she would only sometimes go to the Tilbury property at weekends and stayed at both properties, and denied that she moved back to reside at the Tilbury property on a more permanent basis. This is in flat contradiction to the appellant's evidence. [JI], on the other hand, claimed that Ms [N] spent most of her time in Plumstead, but would come to Tilbury to see her children. This is contrary to both the evidence from the appellant and the evidence from Ms [N]. These inconsistencies significantly undermine the weight that can be attached to the evidence relating to whether the appellant was part of Ms [N]'s household during the relevant period.
32. When asked why Ms [N] would still spend some time in the Plumstead residence if, according to the appellant, she predominantly lived in the Tilbury

property after 2013 or 2014, he said he did not know. When asked whether there was any particular reason why she would wish to continue residing between two different properties, Ms [N] said “no particular reason.” I am not satisfied Mr [N] provided a satisfactory answer. It is simply not credible that she would reside in the Plumstead property when she had two young children living in the Tilbury property and when her place of employment was, according to the appellant, much closer to Tilbury. I also bear in mind that Ms [N] did not produce any documentary evidence of her employment at any of the Santander bank branches, or any documentary evidence relating to when she worked in the different branches.

33. When asked where Ms [N] currently resided [JI] remained silent for a significant amount of time and eventually said that Ms [N] lived ‘mostly in Tilbury now’. I found [JI]’s evidence on this point to be evasive. She was asked a straightforward question but significantly hesitated before giving an answer. When asked how long Ms [N] had lived ‘mostly in Tilbury’ [JI] said she could not remember and could not even give an estimate of the year. Given that [JI] lives with Ms [N] it is not credible that [JI] would be unable to give even a rough estimate. When asked where Ms [N] currently lives, [JI] said, “she lives in Tilbury, she lives in Plumstead. I can’t be checking the time she lives in both.” When asked why Ms [N] was not permanently living in the same house as her husband and children, [JI] said she did not know. [JI] claimed that Ms [N] now worked for Thurrock Council in Thurrock. I take judicial notice of the fact that Thurrock is very close to Tilbury geographically. Although I am only concerned with the period September 2010 to September 2015, the evidence relating to Ms [N]’s current residence is relevant to the issue of the witnesses’ credibility. If Ms [N] worked in Thurrock it would make more sense for her to live in the Tilbury property rather than the Plumstead property. Yet she maintains that she continues to reside in the Plumstead property as well. I do not find it credible that Ms [N] would continue to reside in the Plumstead property and I find her evidence to the contrary undermines her general credibility.
34. Ms [N] initially emailed the tribunal saying that she did not wish to support the appellant’s case. She later sought to disregard this email. At the hearing she did not disclose the nature of the personal reasons that led her to initially withdraw her support of the appellant’s case and to then change her mind. In the absence of any explanation it is of some relevance that Ms [N] did not initially wish to support the appellant’s case when determining whether the appellant has actually been dependent on her or been a member of her household.
35. In the absence of any evidence that Ms [N] was actually paying the rent on the Plumstead property, and given the significant inconsistencies and implausibilities in the evidence described above, I am not persuaded that the Plumstead property can be regarded as having been Ms [N]’s actual household for the period September 2010 to at least 2014, when the appellant completed his studies and claims to have returned to the Tilbury residence. I find it more likely than not that the property was, during the relevant period, sublet to the

appellant or another person. I am not persuaded that she actually resides there during the relevant period or that she paid the rent on the property during the relevant period. It is for these reasons that I depart from the decision of judge of the First-tier Tribunal Freer. I therefore find that the appellant was not a member of Ms [N]'s household from the period September 2010 to the time he completed his studies in 2014.

36. I must now consider whether the appellant was dependent on Ms [N] during the period September 2010 to the time he completed his studies and moved back to the Tilbury property in 2014.
37. There is a dearth of evidence that I would reasonably expect to have been provided relating to the appellant's income over the period 2010 to 2015 and his tax liability covering the same period. No reasonable explanation was advanced by the appellant for the absence of such evidence, such as employment documents, P45s, P60s, which were materially relevant to determining whether he was not earning sufficient money to meet his essential needs, applying the principles established in **Lim v Entry Clearance Officer Manila** [2015] EWCA Civ 1383 relating to dependency.
38. The appellant's Barclays Bank statements in the respondent's bundle show that Ms [N] made 4 bank transfers into the appellant's bank account in 2013, totalling £1,500. While the appellant also provided Barclays Bank statements relating to his account haphazardly covering the period 25 November 2009 to 2015, there was no evidence of any further payments made by Ms [N] to him. I accept that the bank account statements do show some transfers from the appellant's brother, [MI], but these are made either in 2014 or in the years 2009 to 2010. There is little or no evidence of any money transfers from [MI] to the appellant in the period from 2010 to 2014. The appellant's bank account statements do however show deposits in respect of his employment during the relevant period, and his receipt of significant funds in the form of student loans. There is no statement from [MI] concerning any money he may have given to the appellant and no details of his own financial circumstances during the relevant period. Given my very serious concerns relating to Ms [N]'s credibility, I do not find I can attach much weight to her claim that she gave the appellant 'cash-in-hand' informally.
39. According to the decision in [EI]'s appeal, Ms [N] was supporting him during the period 2012 to 2017. Other than some account summaries that do not identify any transactions, and one statement showing transactions for the period 13 December 2013 to 19 December 2013, there is very little evidence of Ms [N]'s financial circumstances during the relevant period. The very limited evidence relating to her financial circumstances suggests that she needed to take out a loan of over £7000 at the end of 2013. She was also supporting her mother in law. The evidence, cumulatively considered, does not show that the sponsor or her husband would have been earning sufficient funds to enable

them to financially support the number of people that she claims to have sponsored.

40. Based on the limited documentary evidence available to me, and having regard to my adverse credibility findings identified above, I am not persuaded that Ms [N] and her husband have been providing the appellant with money necessary to meet his essential needs during the period September 2010 to September 2015.
41. I consequently find that the appellant does not meet the requirements for the issuance of a permanent residence card.

**Notice of Decision**

**The appeal is dismissed**



20 March 2019

Signed  
Upper Tribunal Judge Blum

Date