



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

Appeal Number: IA/01659/2014

THE IMMIGRATION ACTS

Heard at Field House

On 2nd September 2014

**Determination
Promulgated**

On 9th September 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD

Between

MISS ABIOLA ATINUKE LOREMIKAN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Ahmed, Counsel, instructed by Shores Anchor Solicitors

For the Respondent: Ms A Everett, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a national of Nigeria who applied for permanent residence as the family member of her father and whose appeal was dismissed by

First-tier Tribunal Judge Prior in a determination promulgated on 19th June 2014. Grounds of application were lodged primarily on the basis that the judge had failed to take into account evidence of dependency with reference being made to well-known case law including **Reyes v Sweden [2014] EUECJ C-43/12**. Permission to appeal was granted by First-tier Tribunal Judge Astle who said that dependency was a matter of fact and the judge had failed to take proper account of the evidence of dependence, noting that the Appellant continued to be accommodated by her father.

2. Thus the matter came before me on the above date.
3. Mr Ahmed indicated that he had not drafted the grounds (which are unhelpfully long and the first and final grounds unsound) but the test under the 2006 Regulations was whether there was material support to meet essential needs. The evidence before the judge was that the Appellant continued to reside with her father in the holidays and sometimes at weekends. Furthermore the judge had made a finding at paragraph 22 that the Appellant was in receipt of money from her father. I was asked to set the decision aside, remake it, and allow the appeal.
4. For the Home Office Ms Everett agreed with some of the points taken. The case of **Reyes** was not authority for the proposition that dependency was not required. The issue on what dependency was required was still a matter that was not wholly clear when the non-EEA national was in a member state.
5. I reserved my decision on all issues.

Conclusion

6. Under the Citizens Directive the descendants of union citizens may travel with a union citizen to another EU member state if they are under 21. If they are over 21, they have to demonstrate dependence upon the union citizen and in this case the Appellant has to demonstrate dependency on her father. The judge found the evidence of the father (the Sponsor) to be “consistent, unhesitant and unrehearsed witness whose testimony was credible” (paragraph 20). He appears to have accepted that the Appellant was in receipt of no regular financial support from the Sponsor, only being in receipt of cash gifts as and when the Sponsor had cause to make them or when she had cause to ask for them. The judge did not consider that this was sufficient to meet the dependency test.
7. However what the judge appears to have overlooked is what both the Appellant and the father said in their witness statements. The Appellant said “I am still residing with my father and step family during the holidays and some weekends” (paragraph 6) and the Sponsor said “she is still residing with us during the holidays and some weekends” (paragraph 10) of their respective witness statements. For the judge not to take account

of this evidence was a significant factual error which translates into a material error in law.

8. While the judge did not say if he was accepting or rejecting that evidence he was accepting the Sponsor as an entirely credible witness and he makes no comments which might go against the credibility of the Appellant. It therefore seems reasonable to me to accept that the Appellant was a credible witness as well given that her evidence dovetails with that of her father who has been found to be credible.
9. I am therefore accepting as true that the Appellant does, as many students do, reside with her father and extended family during the holidays which is therefore for a significant period of time.
10. In my view this evidence is eloquent of the Appellant having a *real* dependency on the Sponsor irrespective of the irregularity of any cash payments made by the Sponsor to his daughter. I use the word *real* deliberately as that appears to be the jurisprudential test. It follows that, in terms of the current case law, that the Appellant has provided evidence of dependency and it is therefore necessary to set the judge's decision aside as containing a material error in law and remake the decision allowing the appeal.

Decision

11. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.
12. I set aside the decision.
13. I remake the decision in the appeal by allowing it.

Signed

Date

Deputy Upper Tribunal Judge J G Macdonald