



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/05092/2015
EA/03576/2016
EA/03580/2016

THE IMMIGRATION ACTS

Heard at Glasgow
On 16 February 2018

Decision & Reasons Promulgated
On 07 March 2018

Before

Mr C M G OCKELTON, VICE PRESIDENT & UT JUDGE MACLEMAN

Between

OSIMAYE IKHIDE & ELOHO VERONICA IKHIDE

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the appellants: Mr R Molyneux, of Global Immigration Solutions, London
For the respondent: Mr M Diwyncz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants appealed to the FtT against refusal of residence cards under the Immigration (EEA) Regulations 2006 as the extended family members of the brother of the first appellant, and against refusal of leave on human rights grounds. FtT Judge Kempton dismissed their appeals by a decision promulgated on 23 January 2017.

2. The appellants applied to the FtT for permission to appeal to the UT, advancing two grounds:
 - (1) the judge erred in understanding and applying the law relating to permanent residence of family members of EEA nationals, and failed properly to consider Home Office guidance, as she applied an outdated version; and
 - (2) based on the regulations, guidance, and discretion, the appeal should have been allowed on human rights grounds.
3. On 10 August 2017 FtT Judge Hodgkinson took the view that the judge arguably erred by relying on the incorrect guidance, and said, "Permission is granted only in relation to the long residence / human rights element of the appeals, bearing in mind that there is no right of appeal in relation to the EEA decisions".
4. The appellants applied to the UT for permission to appeal also on ground (1), pointing out that the case law was not as Judge Hodgkinson thought.
5. On 5 September 2017 UT Judge Jackson granted permission on ground (1), as the appellants were correct about jurisdiction, and on the view that consideration of an out of date version of the guidance was arguably an error of law capable of affecting the outcome.
6. The appellants instructed their present representatives after the hearing in the FtT. It is not clear whether either party in the FtT referred Judge Kempton to the outdated guidance quoted at ¶16 of her decision.
7. The passage of the current guidance on which Mr Molyneux relied says that applicants do not have to depend on the EEA national for all or most of their essential needs. He also emphasised that dependency does not have to be of necessity but may be of choice. He said that dependency could exist even although the appellants had employment and income from which they might have supported themselves without assistance, had they not chosen to take out a substantial loan to buy a 3-bedroom house. The evidence before the FtT was that the first appellant earned about £17-18,000 and the second appellant £16,000 a year. Mr Molyneux said this, as a matter of fact, was not enough to meet their essential needs, and so dependency was established.
8. Mr Molyneux realistically accepted that the case could not succeed on human rights grounds.
9. Having heard also from Mr Diwyncz, we reserved our decision.
10. As put in the guidance, the appellants had to show that they needed financial support from the sponsor to meet at least some of their essential needs.

11. Appellants who have plainly sufficient income to support themselves cannot establish dependency by taking on unnecessary commitments beyond their income. Those are not essential needs.
12. The income the appellants said they earned was ample for their essential needs.
13. The oral and documentary evidence for the appellants was vague and incomplete. Income, outgoings, and transfers from the sponsor were poorly vouched.
14. The first appellant was a witness of little if any credit, claiming in his statement to have no one left in Nigeria but saying in oral evidence that his mother, his siblings and all his wife's family lived there.
15. The first appellant's oral evidence was that the second appellant sends most of her money to assist her siblings in Nigeria (¶18). The sponsor's evidence suggested that the first appellant makes transfers to their mother (¶23). These matters are inconsistent with dependency of the appellants on the sponsor.
16. There is no error in the judge's conclusions at ¶25 that genuine dependency had not been proved, and that any payments from the sponsor were made "without much question, rather than on account of genuine need".
17. The submissions to us did not clarify the period over which the appellants would have to prove dependency. We need not attempt to resolve that, as the evidence did not show any dependency.
18. Reference to an earlier version of guidance, however that arose, is immaterial. The outcome was equally inevitable in terms of the updated guidance.
19. The decision of the FtT, dismissing the appeals, shall stand.
20. No anonymity direction has been requested or made.



16 February 2018
Upper Tribunal Judge Macleman