



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: EA/06332/2018

**THE IMMIGRATION ACTS**

Heard at Field House  
On 1 July 2019

Decision & Reasons Promulgated  
On 11 July 2019

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

JACINTA MUMBI WAWERU  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr R Layne, Counsel, instructed by Victory Solicitors

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

**DECISION AND REASONS**

**Introduction**

1. This is a challenge by the Appellant to the decision of First-tier Tribunal Judge Welsh (“the judge”), promulgated on 14 February 2019, in which she dismissed the Appellant’s appeal against the decision of the Respondent dated 5 September 2018, refusing to issue her with a permanent residence card under the Immigration (European Economic Area) Regulations 2016 (“the Regulations”).

2. The Appellant had originally come to the United Kingdom in 2010 and upon application had been issued with a residence card on 28 May 2013, running for the usual five-year period. By an application made on 24 May 2018 the Appellant sought a permanent residence card. In refusing the application, the Respondent concluded that insufficient evidence of ongoing dependency and/or membership of the EEA national's household since 2014 had been provided.

### **The judge's decision**

3. The judge set out the evidence before her and then made reference to the relevant legal framework, in particular Regulations 15 and 8. At paragraph 21 she goes to set out a number of self-directions relating to the issue of dependency, referring specifically to the cases of Reyes Case C-423/12 and Lim [2016] Imm AR 421, [2015] EWCA Civ 1383.
4. The judge found the Sponsor and additional witnesses to be credible. She found that the Appellant had been living in her own property since 2014 and had been in full-time employment for a number of years, earning approximately £2,000 a month. She found that after rent had been paid the Appellant had disposable income of some £500 a month left over which she put aside for saving. The judge also accepted that the relevant EEA national had provided her with between £150 and £200 a month. The Appellant used this to help with payment of her rent.
5. At paragraph 24 the judge concluded that the Appellant was not a member of the EEA national's household and had not been so since 2014. At paragraph 25 she concluded that the Appellant was not dependent on the EEA national or his spouse (the Appellant's sister) because whilst she had accepted their contribution of approximately £200 a month, the Appellant had not needed this money in order to meet her essential daily living requirements. She found that the Appellant's take home pay was sufficient to meet those expenses.

### **The grounds of appeal and grant of permission**

6. The grounds of appeal assert that the judge failed to deal with the permanent residence issue clearly or at all, that the judge failed to make clear findings in respect of what was described as the "emotional" dependency issue, and failed to give any or any adequate reasons.
7. Permission to appeal was refused by the First-tier Tribunal but granted by Upper Tribunal Judge Perkins on 5 June 2019.

### **The hearing**

8. At the hearing before me Mr Layne initially sought to amend the grounds of appeal by including a challenge to the judge's findings on membership of the EEA national's household. This application was opposed by Ms Everett.

9. I refused the application. There was no good reason as to why the point had not been made in the original grounds. No written application had been made in advance of the hearing before me and there was no adequate reason for this. Making an application at the hearing itself in these circumstances was way too late in the day. Further, in light of the judge's clear findings of fact, the proposed amended ground of appeal held very little prospect of success, if any at all.
10. Mr Layne relied on the original grounds but sought to expand on the second of these (if indeed this did not in reality amount to an amendment) by suggesting that the judge should, on the facts found, have concluded that there was relevant dependency by the Appellant on the EEA national and that the appeal should have been allowed. It had been accepted that money provided by the Sponsor had been used by the Appellant to go towards her rent and rent was an essential part of an individual's living expenses.
11. Mr Layne accepted that the reference in the original grounds of appeal to "emotional" dependency was misconceived.
12. Mr Layne also submitted that the reasons set out in paragraphs 24 and 25 were impermissibly brief. No further submissions were made on the first ground.
13. Ms Everett submitted that the grounds were ill-conceived. The judge had correctly directed herself as to the law on dependency. Whilst the Appellant had been in receipt of some money from the Sponsor, she had chosen to spend it on rent. She did not need to do so as her income would have been sufficient to cover all relevant expenses. Ms Everett also submitted that whilst the reasons provided were relatively brief, in the circumstances they were adequate.
14. In reply, Mr Layne re-emphasised the points already made.

### **Decision on error of law**

15. I conclude that there are no material errors of law in the judge's decision.
16. The first point to be made is that the grounds of appeal refer to "emotional" dependency only. Whilst Mr Layne has in my view quite rightly accepted that this is wrong, these nonetheless stand as the grounds of appeal and in my view the reliance on such a form of dependency is wholly misconceived and the Appellant's appeal fails on this basis alone.
17. However, for the sake of completeness, I deal with Mr Layne's substantive point as to financial dependency. It is clear that the judge correctly directed herself to the law on dependency. Paragraph 21 of the decision sets out a full and accurate summary of the relevant elements applicable to the test. The judge made favourable findings as to the credibility of the Appellant and Sponsor. Part of those findings was that the Appellant's own income was sufficient to meet the relevant daily living expenses, including rent. The money given to her on a regular basis by the Sponsor, whilst no doubt helpful, was clearly in the judge's view a bonus, so to speak. It did not form

an essential element of the daily living expenses. The reasons, albeit relatively brief, set out in paragraph 25 are clear and make the point more than adequately:

“I find the Appellant is not dependent on Mr and Mrs Jalonen because, though I accept their evidence that they give her about £200 a month, she does not need this money in order to meet her basic requirements. Her take-home pay is sufficient to pay her rent, bills and living expenses.”

18. The figures spoke for themselves: the Appellant’s rent was £630 a month; she chose to use the Sponsor’s £150-£200 contribution to go towards that rent; she had £500 left over each month. If one were to have removed the contribution from the equation, the Appellant had more than enough in the pot to meet her essential living needs.
19. On the facts found and in light of the accurate self-direction on the law, the judge was plainly entitled to reach the conclusion that she did. There is no error in this respect.
20. As already mentioned, the reasons provided are relatively brief, but I agree with Ms Everett to the extent that all depends on the context. In this particular case, the findings having been set out previously, the concluding reasons in paragraphs 24 and, importantly, 25, were concise and adequate. Brevity of reasoning does not in of itself disclose an error of law.
21. Dealing very briefly with the first ground of appeal, it is with respect entirely misconceived. The judge quite clearly dealt with the core issues raised in the appeal before her. There is no error in this respect whatsoever.

**Anonymity**

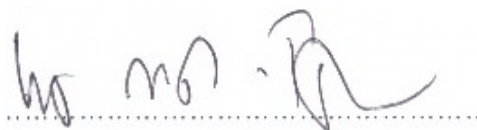
22. No anonymity direction had been made by the judge and there is no reason for me to make one at this stage.

**Notice of Decision**

**The decision of the First-tier Tribunal does not contain errors of law.**

**That decision shall stand.**

**The appellant’s appeal to the Upper Tribunal is dismissed.**



Signed

Date: 4 July 2019

Upper Tribunal Judge Norton-Taylor