



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/03236/2017

THE IMMIGRATION ACTS

Heard at Field House
On 13th September 2017

Decision & Reasons Promulgated
On 26th September 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

RAFAEL PEREIRA DE ALMEIDA
(ANONYMITY ORDER NOT MADE)

Respondent

Representation:

For the Appellant: Mr D Clarke, Senior Home Office Presenting Officer
For the Respondent: Unrepresented

DECISION AND REASONS

1. For ease of reference I shall refer to parties as they were before the First-tier Tribunal Judge, namely that Mr Rafael Almeida is the Appellant and the Secretary of State is the Respondent.
2. The Appellant is a citizen of Brazil. With his mother they jointly made an application for a residence card as family members of a Sponsor who was an EEA national. The judge at the First-tier found that the mother's appeal should be allowed and that she was entitled to a residence card. The judge went on to allow the Second Appellant's appeal – Mr Almeida – in part. The reasoning was that he had shown that the Sponsor was and remained a qualified person but had not shown that he was dependent upon her. His failure to show dependency disentitled him to a residence card.
3. The Secretary of State appealed these findings on the basis that it was not competent for a judge to allow an appeal in part. There is no dispute that the mother was entitled to a residence card and there was no challenge to that. However, given that this Appellant had not met the necessary criteria the grounds say that the appeal should have been dismissed.
4. The judge who allowed permission to appeal in this case noted that the judge had allowed the appeal, albeit only in part, when the reasoning suggested it should be dismissed. While there was no prescriptive wording to describe an appeal outcome it was expected that in terms of Presidential guidance appeals should be allowed or dismissed.
5. I do not consider this to be in dispute.
6. Thus the case came before me on the above date where I noted from the file that the Appellant had in fact been granted a residence card by the Home Office. There was a letter from the agents indicating that he did not wish to pursue this matter further. He was unrepresented before me with notification of the hearing having been given to DMA Consultancy Services.
7. Before me Mr Clarke indicated that it had been an error by the Home Office to issue the residence card and he was not withdrawing the appeal. The judge had been correct to find that dependency had not been proved in this case and because of that the judge should have dismissed the appeal.

Conclusions

8. The position is that the judge was not entitled to make the findings he did in the actual Notice of Decision. It was clear enough that the Sponsor was a qualified person but there was a need to show that the Appellant was dependent upon him. As the judge said, his failure to

show dependency disentitled him to a residence card. It would have been legitimate if the judge had simply put this in the narrative of the decision and then gone on to dismiss the appeal, but that was not the way he expressed it and therefore by allowing the appeal in part only he made a material error in law.

9. The Appellant's failure to show dependency should have been a crucial factor in deciding the appeal - it follows inexorably from that finding that the appeal should have been dismissed.
10. It is therefore necessary to set this decision aside and dismiss the appeal.
11. It is unfortunate indeed that the Secretary of State appears to have issued a residence card in error but that is not a matter within my jurisdiction at this time. If the Secretary of State seeks to withdraw the residence card then no doubt she will grant the Appellant a fresh right of appeal.

Notice of Decision

12. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.
13. I set aside the decision.
14. I dismiss the appeal.

Signed *J Macdonald*

Date 21st September 2017

Deputy Upper Tribunal Judge J G Macdonald

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed *J Macdonald*

Date 21st September 2017

Deputy Upper Tribunal Judge J G Macdonald