



**Upper Tribunal
(Immigration and Asylum Chamber)
EA/01871/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 11th December 2017**

**Decision & Reasons
Promulgated
On 11th January 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**MR SHADRACH BONA ANTWI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss D Offi-Kwatia (Counsel)
For the Respondent: Mr P Nath (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Povey, promulgated on 22nd May 2017, following a hearing at Newport on 12th May 2017. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matters comes before me.

The Appellant

2. The Appellant is a male, a citizen of Ghana, who was born on 20th November 1991. He appealed against the decision of the Respondent

Secretary of State refusing his application for a residence card, as confirmation of his permanent right to remain in the UK, such a decision being dated, 1st February 2016. The essence of the Appellant's claim is that his father, Lawrence Anthony, was a Dutch national, exercising treaty rights in the UK. The Appellant was a family member of the Sponsor (as defined by Regulation 7 of the EEA Regulations 2006). He was, accordingly, entitled to a permanent right of residence in the UK pursuant to Regulation 15 of the EEA Regulations 2006.

The Judge's Findings

3. The judge observed how, following his arrival in the UK on 13th December 2009, he was a family member of his sponsoring father, until his 21st birthday. The judge observed that thereafter the Appellant only continued as a family member if he met the test of dependency (see paragraph 23). He went on to conclude that, "I am also satisfied that the Appellant continues to be dependent upon the Sponsor", because "the dependency took the form of providing food, either directly or with financial assistance and assisting in the arrangement of appropriate accommodation" (paragraph 23).
4. However, the judge then went on to state that there was an additional requirement whereby, the Appellant must have resided with the Sponsor in the UK and done so for a continuous period of five years", and that in this case "the Appellant and the Sponsor have only resided together continuously for two years (December 2009 to December 2011) and cumulatively for two years and three months (December 2009 to December 2011 and December 2012 to March 2013)", such that he could not show the residence requirement (paragraph 25).
5. The appeal was dismissed.

Grounds of Application

6. The grounds of application state that the judge was wrong to have construed the law in the manner that he did, in the light of the case of **PM (EEA - spouse - "residing with") Turkey [2011] UKUT 89**, where it was made clear that the phrase "residing with" does not mean living in the same household. The grounds state that the "residing with" requirement relates to her a presence in the UK. It does not, however, require living in a common family home. The judge was wrong (at paragraph 25) to suggest that the Appellant and the Sponsor should have lived together. Even if the Appellant had removed from the family home, the fact remained, as recognised by the judge, that the Appellant remained dependent on the Sponsor (see paragraph 20). The Appellant accordingly, acquired a permanent right of residence under Regulation 15(1)(b) of the EEA Regulations 2006.
7. On 3rd July 2017, permission to appeal was granted, on the basis that it was arguable that the Appellant remained dependent on his sponsoring father since he left the family home in December 2011. He had epilepsy and was currently placed in supported housing.

8. On 19th July 2017, a Rule 24 response was entered to the effect that “the Respondent does not oppose the Appellant’s application for permission to appeal and invites the Tribunal to determine the appeal with fresh oral (continuance) hearing to consider whether the Appellant satisfies the definition of dependency” as set out in the case of **PM [2011] UKUT 89**.

Submissions

9. At the hearing before me on 11th December 2017, Miss Offi-Kwatia drew my attention two documents which were in the bundle, dated 7th August 2017 and 21st November 2012. This, she submitted, demonstrated the issues relating to dependency. She submitted that given the facts as found by the judge, and given the dependency which was known to exist, the appeal should have been allowed. Both the Sponsor and the Appellant had been in the UK for five years. The facts were not in dispute. It was a matter of law as to whether the meaning of “resided with” should include the physical living together under one roof, and in the same household, or whether it means having a presence together in the UK. It was the latter. Given this is what the established authorities stated, this appeal should be allowed.
10. For his part, Mr Nath submitted that it was open to the judge to conclude as he did.

Error of Law

11. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision and remake the decision. My reasons are as follows.
12. First, under the judgment in **MDB and Others (Article 1612/68) Italy [2010] UKUT 161** the Appellant had an extended right of residence under Regulation 14. The question here was the proper interpretation to Regulation 15(1)(b) with regards to the meaning of “a family member of an EEA national who is not an EEA national but who has resided in the United Kingdom with the EEA national ...”. It is plain that even on a literal reading of these words, the reference here is to “resided in the United Kingdom”, and does not confine the residence to one that is in the same household, or under the same roof.
13. Second, this has been so concluded by the Tribunal in **PM (EEA - spouse - “residing with”) Turkey [2011] UKUT 89**. Given that both the Sponsor and the Appellant have resided in the UK continuously for five years, and the judge has accepted (at paragraph 23) that he was “satisfied that the Appellant continues to be dependent upon the Sponsor”, to require that the Appellant additionally also shows that he is living with the Sponsor, was unwarranted. It amounted to an error of law.

Remaking the Decision

14. I have remade the decision on the basis of the findings of the original judge, the evidence before him, and the submissions that I have heard today. I am allowing this appeal for the reasons that I have set out above.

Notice of Decision

15. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is allowed.

16. No anonymity order is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

9th January 2018

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have decided to make no fee award of any fee which has been paid or may be payable.

Signed

Date

Deputy Upper Tribunal Judge Juss

9th January 2018