



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

**Appeal Number: EA/05301/2016
EA/05303/2016**

THE IMMIGRATION ACTS

**Heard at Field House
On 14 March 2018**

**Decision & Reasons Promulgated
On 22 March 2018**

Before

UPPER TRIBUNAL JUDGE FINCH

Between

**OSAMUYI JENNY OGBEMUDIA
SOPHIA BOSE OGBEMUDIA**

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. A. Malik of counsel, instructed by The Sethi Partnership
For the Respondent: Mr. N. Bramble, Home Office Presenting Officer

DECISION AND REASONS

BACKGROUND TO THE APPEAL

1. The 1st Appellant, who was born on 12 April 1979, and the 2nd Appellant, who was born on 4 April 1981, are nationals of Nigeria. On 8 January 2010 they applied for granted residence

cards as extended family members of Stella Ogbemudia, who is an EEA national exercising a Treaty right in the United Kingdom. On 11 February 2011 they were issued with residence cards, 16 November 2015. On 9 November 2015 they applied for permanent rights of residence.

2. The Respondent refused their applications on 20 April 2016 and they appealed against this decision on 4 May 2016. First-tier Tribunal Judge Abebrese dismissed their appeal in a decision, promulgated on 16 October 2017.
3. The Appellants appealed against this decision and Designated First-tier Tribunal Judge Macdonald granted them permission to appeal on 4 January 2018.

ERROR OF LAW HEARING

4. Both counsel for the Appellant and the Home Office Presenting Officer made oral submissions and I have referred to the content of these submissions, where relevant, in my decision below.

ERROR OF LAW DECISION

5. Counsel for the Appellants stated that he was relying on a five year period of residence which ran from 2008 on the basis that they met the criteria of extended family members for the purposes of Regulation 8(2) of the Immigration (European Economic Area) Regulations during that time. This was not consistent with his later reliance on evidence which fell outside that period of time.
6. Regulation 15(1) of the Immigration (European Economic Area) Regulations states that:

“The following persons shall acquire the right to reside in the United Kingdom permanently

(b) a family member of an EEA national who is not himself an EEA national but who has residence in the United Kingdom with the EEA national in accordance with these Regulations for a continuous period of five years”.

7. In order to show that they are extended family members of an EEA national for the purposes of Regulation 8(2) (c) of the EEA Regulations, the Appellants also have to show that they are persons who are not family members for the purposes of regulation 7 and have joined their EEA national sponsor in the United Kingdom and continue to be dependent upon her.
8. Case law indicates that dependency is a question of fact. It is not necessary to show that the Appellants cannot access employment themselves and are not also relying on welfare benefits. Therefore, it did not matter that it is clear from the evidence that the 2nd Appellant has also been receiving child benefit and that both Appellants have been working here in the past.
9. In *Reyes (EEA Regs: dependency)* [2013] UKUT 00314 (IAC) the Upper Tribunal found that:

“whether a person qualifies as a dependent under the Regulations is to be determined at the date of decision on the basis of evidence produced to the respondent or, on appeal, the date of hearing on the basis of evidence produced to the tribunal”.
10. It is on this basis that it is appropriate to consider evidence up until the date of the hearing in front of First-tier Tribunal Judge Abebrese despite the submissions referred to earlier.
11. In paragraph 22 of *Reyes* the Upper Tribunal also found that “as case law makes clear, in the context of EU law on family members the test of dependency is not whether a person is wholly or mainly dependent, but whether he or she is reliant on others for essential living needs”.
12. This has been confirmed by Lord Justice Elias in *Siew Lian Lim v Entry Clearance Officer, Manila* [2015] EWCA Civ 1383, where he held that:

“...it is not enough simply to show that financial support is in fact provided by the EU citizen to the family member. There are numerous references in these paragraphs which are only consistent with a notion that the family member must need this support from his or her relatives in order to meet his or her basic needs”.
13. Counsel for the Appellants did not submit that this was the wrong test, even though this had been submitted in ground one of the grounds of appeal. Instead, he submitted that First-tier

Tribunal Judge Abebrese had failed to properly assess all the relevant evidence, which was the Appellants' second ground of appeal. In particular, counsel for the Appellants argued that there was no finding of fact in relation to the sums of £100 paid by the sponsor into the Appellants' accounts in June, July and August 2017. However, the inference to be drawn from the clear wording of paragraph 32 of the decision was that the First-tier Tribunal Judge accepted that this amount of money had been provided to the Appellants by the sponsor.

14. The First-tier Tribunal Judge also made it clear that he did not accept that the sponsor had previously been supplying the Appellants with similar financial support as there was nothing to show that the large sums of money she had at times withdrawn from her Nationwide Cash-builder account were for the Appellants. There was also no evidence, apart from their own testimony, that their sponsor paid their rent or any other bills. They sought to rely on some receipts for shopping purchased in 2017 but, as the Home Office Presenting Officer noted, there was nothing to suggest that the sponsor had bought these items. In addition, very few of the items which were purchased could be characterised as essential items. This meant that the Appellants were not able to establish the necessary dependency on their sponsor between the time of their eviction and the payments made to them in 2017.
15. Counsel for the Appellants also submitted that the First-tier Tribunal Judge had made inadequate findings in relation to the Appellants previously being part of their sponsor's household. But in paragraph 31 of his decision, First-tier Tribunal Judge Abebrese accepted that the Appellant's evidence was credible and consistent and that their prior dependency had been established in so far as the Appellants had been living in the same household as their sponsor up until they were evicted from their home on or around 26 October 2012. Immigration Judge Cameron had also found that they were living in the same household with and were financially supported by their sponsor between 2008 and 2010 in the determination promulgated on 20 October 2010.
16. The live issue between the parties was whether at the date of the refusal to grant them permanent residence and at the date of hearing on 29 September 2018 the Appellants continued to be dependent upon their sponsor.

17. Furthermore, the reference to any contributions which may be being made by the father of the child of one of the Appellant in paragraph 32 of the decision was not relied upon by the First-tier Tribunal Judge when he reached his decision.
18. As a consequence, I find that First-tier Tribunal Judge Abebrese did not err in law in his decision.

DECISION

- (1) The Appellants' appeal is dismissed and First-tier Tribunal Judge Abebrese's decision is upheld.

Nadine Finch

Signed

Date 14 March 2018

Upper Tribunal Judge Finch