



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: EA/11710/2016

THE IMMIGRATION ACTS

Heard at Field House  
On 6 June 2018

Decision & Reasons Promulgated  
On 22 June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

MR OBED AMPOSAH AMANKWAAH  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Khushi, Bedford Solicitors  
For the Respondent: Mr P Deller, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Ghana, appealed to the First-tier Tribunal against a decision of the Secretary of State to refuse his application for a permanent residence card as confirmation of a permanent right to reside in the United Kingdom as the dependant family member of his father, an EEA national. First-tier Tribunal Judge Broe dismissed the Appellant's appeal in a decision dated 20<sup>th</sup> September 2017. The Appellant now appeals with permission granted by First-tier Tribunal Judge Brunnen on 29<sup>th</sup> March 2018.

2. The Appellant entered the UK on 25<sup>th</sup> September 2010 on foot of an EEA family permit. He was issued with a residence card valid from 18<sup>th</sup> April 2011 until 18<sup>th</sup> April 2016. On 16<sup>th</sup> March 2016 he applied for confirmation of a right to reside permanently in the United Kingdom. The Appellant's date of birth is 16<sup>th</sup> May 1991, so at the time of the hearing in the First-tier Tribunal he was aged 26.
3. The First-tier Tribunal Judge noted that there was no dispute that the Sponsor has been exercising Treaty rights in the UK and that the Appellant's mother was to be issued with a permanent residence card. The judge considered the appeal under Regulations 7 and 15 of the Immigration (EEA) Regulations 2006 which were in force at the date of the decision. The judge considered whether the Appellant had been residing in the UK in accordance with the Regulations for a continuous period of five years and had thus acquired a right to permanent residence on that basis under Regulation 15(1)(b). The judge accepted that the Appellant had shown that he was the dependant of his father from when he entered the UK on 25<sup>th</sup> September 2010 until he took up employment in July 2015. However, as this is not a period of five years the judge considered that the Appellant failed to meet the requirements of Regulation 15 and dismissed the appeal.
4. The grounds contend that the judge made an error of law in relation to his assessment of the evidence as to the Appellant's dependency between July and September 2015.
5. At the hearing Mr Khushi pointed out that the judge erred at paragraph 21 of the decision where he found as follows:-

“[The Appellant] has been in full time employment since July 2015. His P60 shows that his income last year was £31,508. He is able to run a car and meet his expenses and still have significant disposable income. He chooses to live with his parents and I have no doubt that they all enjoy that arrangement. I recognise that dependency may be of choice. There must nonetheless be dependency.”

6. The judge went on to state at paragraph 22 that he accepted that while he was at college the Appellant was, despite from his income from his part-time work, dependent on his parents, effectively his father, but did not accept that he had been so dependent since starting full-time work in July 2015. The judge said:-

“He now has an income greater than many people who live independently in this country. I therefore accept that he was dependent on his father when studying from September 2010 to July 2015 which is not a five year period.”

7. Mr Khushi pointed out that the figure referred to at paragraph 21 is taken from the P60 submitted by the Appellant at page 154 of the Appellant's bundle which relates to the year ending 5 April 2017. He submitted that the judge erred in looking at this evidence as, having found that the Appellant was dependant on the sponsor up until July 2015, the period the judge should have been considering was the period from July to September 2015. Mr Khushi pointed out that the judge was looking at the Appellant's income at the date of the hearing rather than from July to September of 2015. He pointed out that the evidence relevant to the Appellant's employment in July 2015 is at page 156 of the Appellant's bundle which is a confirmation of employment from

Wipac Limited dated 7<sup>th</sup> July 2015 offering employment as a production operative on a basic wage of £7.06 per hour payable weekly for 40 hours per week.

8. Mr Khushi submitted that the judge had made a second error in that it was assumed by the judge that, because the Appellant had an offer of employment in July 2015, he would immediately be in a position to support himself. However, in his submission, in reality for the first month-and-a-half up to September 2015 the Appellant was not in a position to support himself as he would have been paid in arrears and it would have taken him time to be in a position to move out and have his own accommodation. He accepted that, as noted in paragraph 12 of the decision, the Sponsor said that in future the Appellant will be in a position to have his own place and live independently, but that that has not yet been achieved. He relied on the decision in **Lim (EEA - dependency) [2013] UKUT 00437 (IAC)** where at paragraph 24 the Tribunal said "If a person requires material support for essential needs in part, that is sufficient".
9. Mr Deller accepted that the First-tier Tribunal Judge had made an error in considering the income of £31,508.00 in relation to the year ending 2017. He accepted that the Appellant's earnings in 2017 was irrelevant to the issue to be determined which was whether the Appellant continued to meet the requirements of the Regulations throughout the period after the end of his studies until September 2015. He accepted on the basis of the offer of employment of 7<sup>th</sup> July 2015 that, after he left college, the Appellant was earning around £280.00 a week which he accepted was well below the level of £31,508.00 per annum, the amount which he was earning by the time of the hearing. He accepted that the undisputed period which covers a period of around eleven weeks between 5<sup>th</sup> July 2015 and 25<sup>th</sup> September 2015 was a period during which the Appellant would have been earning less than that concluded by the judge in paragraphs 21 and 22. He accepted that during that period the Appellant was living at home. Mr Deller indicated that, on the basis of the evidence and in light of the complexity of the definition of dependency, the Secretary of State was no longer opposing the Appellant's appeal.
10. I have taken account of the submissions and in particular the position taken by Mr Deller at the hearing before me. The Appellant had to demonstrate that he had been residing in the UK in accordance with the 2006 Regulations for a continuous period of five years. The judge properly identified that period as being from the date of entry to the UK on 25<sup>th</sup> September 2010 until 25<sup>th</sup> September 2015. The judge found that the Appellant had been residing as the dependant of his father, and thus as his family member under regulation 7(1)(b) until July 2015. The judge erred in considering the additional period up until 25<sup>th</sup> September 2015 in taking account of evidence relating to the financial year 2016/17 rather than the evidence relating to the period from July 2015 when the Appellant entered into full time employment. In these circumstances the judge made a material error of law. I set aside the decision of the First-tier Tribunal. However, I maintain the findings of fact made by the judge as these have not been challenged.

**Remaking the Decision**

11. In remaking the decision I take account of the fact that the Secretary of State is not opposing the appeal. I take account of the evidence of 7<sup>th</sup> July 2015 confirming that the Appellant was offered a job as a production operative at a basic wage of £7.06 per hour. This would have been paid in arrears. I also note that that letter indicates that the Appellant was given a three month induction period. That by nature would have had an element of uncertainty as to how it might progress and I accept that during that initial three month period at least it is reasonable to conclude that the Appellant was dependent on his father.
12. On the basis of the evidence before me and in light of the findings by the First-tier Tribunal Judge, which have not been challenged, I find that the Appellant was dependent upon his father from 25<sup>th</sup> September 2010 until 25<sup>th</sup> September 2015. Accordingly, he acquired the right to reside in the UK permanently on 25<sup>th</sup> September 2015 in accordance with Regulation 15(1)(b). Therefore the Appellant is entitled to the residence card he applied for.

**Notice of Decision**

13. The decision of the First-tier Tribunal contains a material error of law. I set it aside.
14. I remake the decision by allowing the Appellant's appeal under the Immigration (EEA) Regulations 2006.
15. No anonymity direction is made.

Signed

Date: 20<sup>th</sup> June 2018

Deputy Upper Tribunal Judge Grimes

**TO THE RESPONDENT**  
**FEE AWARD**

I have allowed the appeal but I have decided not to make a fee award because the evidence on which I have been able to make this decision, although produced in the First-tier Tribunal, was not submitted to the Secretary of State with the application.

Signed

Date: 20<sup>th</sup> June 2018

Deputy Upper Tribunal Judge Grimes