



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

Appeal Number: EA/00182/2018

THE IMMIGRATION ACTS

Heard at Field House

Decision and Reasons

On 16 April 2019

**Promulgated
On 05 July 2019**

Before

**UPPER TRIBUNAL JUDGE GLEESON
UPPER TRIBUNAL JUDGE CANAVAN**

Between

**AISABU JAMALCAN
(NO ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms I Mahmud, Counsel, instructed by Ishwar Solicitors

For the Respondent: Ms J Isherwood, a Senior Home Office Presenting Officer

DECISION AND REASONS

The appellant is the mother of the sponsor and appeals against the First-tier Tribunal decision dismissing her appeal against the respondent's decision on 29 November 2017, maintained following administrative review on 9 March 2018, to refuse her application for an EEA residence card pursuant to Regulation 7(1)(c) of the EEA Regulations 2016.

The sponsor and his siblings, all of whom are in the United Kingdom exercising treaty rights, are all Portuguese citizens, the sponsor having become a

Portuguese citizen in 2014 and moved here almost immediately. The sponsor's evidence to the First-tier Tribunal was that he had been supporting his mother emotionally and financially since he was 14 years old in 1997 when his father died and that until he moved to the United Kingdom he and his siblings had continued to live in his mother's and father's family home, where she still lives.

At paragraph 10 of the decision the judge found the sponsor to be "an open witness, who had a genuine wish for the appellant to join him and his siblings in the United Kingdom". Nowhere in the decision does the judge find that there is any hint of lack of credibility in the evidence of the sponsor. At paragraph 13 the judge accepted that the sponsor had provided financial assistance to the appellant since he arrived in the United Kingdom in 2014 and at paragraph 16 she accepted that there was documentary evidence of that financial assistance over a number of years.

At paragraph 17 the judge accepted that the sponsor had given evidence that the appellant had been financially dependent on him for over twenty years and at paragraph 18 that he sent money to pay for food, household expenses and medical bills and, at paragraph 22, additional money if the appellant needed to attend family weddings and buy clothes and presents. It is not suggested anywhere in the First-tier Tribunal decision or indeed in the application to the Entry Clearance Officer that the appellant has ever been employed or that she has any financial resources of her own.

At paragraph 25, having set out the dependency test at paragraph 24, the judge says this:

"25. However, having given careful consideration to all of the evidence and materials before me in this appeal and to the submissions I find that the appellant has not established to the required standard that she requires material support for essential needs and that her dependency on the sponsor is genuine."

At paragraph 26 the judge goes on to deal briefly with Regulation 8 but, in context, we are not concerned with Regulation 8 in this judgment.

First-tier Tribunal Judge Gibb granted permission to appeal on 20 November 2018, specifically because:

"3. At [10] the judge arguably appeared to find the sponsor to be a reliable witness, and found that he sent regular sums to the appellant; the judge's Record of Proceedings records him as having said that his mother relied on him for all her needs and had no other income. It is therefore arguable that the findings at [25] were not open to the judge on the evidence, or were not adequately reasoned."

We have invited Ms Isherwood to seek to persuade us that this decision can be sustained but, having looked at it again this morning in court, she has, very properly, said that she accepts that the reasoning in the decision cannot be sustained.

We therefore set aside this decision and remake it on the basis of the facts found by allowing the appeal.

Conclusions

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

We set aside the decision.

We re-make the decision in the appeal by allowing it.

Signed **Judith AJC Gleeson**
Upper Tribunal Judge Gleeson

Date: 1 July 2019