
**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: EA/04160/2018

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Determination and Reasons Promulgated** |
|---|---|
| **On Monday 25 February 2019** | **On 27th February 2019** |

**Before**

**UPPER TRIBUNAL JUDGE SMITH**

**Between**

**MISS BRENDA TABOT AYUK**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**
For the Appellant: Mr O Ononeme, solicitor, Moorehouse solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant appeals against the decision of First-tier Tribunal Judge LSL Mensah promulgated on 21 September 2018 ("the Decision"). By the Decision the Judge dismissed the Appellant's appeal against the Respondent's decision dated 24 May 2018 refusing the Appellant a residence card as the adult family member (daughter) of an EEA national.

2. The Appellant elected to have her appeal dealt with on the papers. The Judge took account of documents which were provided to the Respondent

with the application but recorded that "[n]o further evidence has been filed to counter what was said in the decision letter" ([8] of the Decision). Expressly, at [10] of the Decision she stated that "[n]either the appellant nor her mother have filed any written statement for themselves or any other person who would say the appellant was living with her Mother in the UK or any evidence of dependency." She therefore rejected the Appellant's case that she was dependent on her mother and, at [11] of the Decision, also rejected the case that the Appellant's mother was exercising Treaty rights in the UK.

3. The essence of the Appellant's grounds challenging the Decision is that the Judge failed to consider documentary evidence which was filed with the Tribunal on 16 August 2018 and therefore should have been before the Judge when she decided the appeal on 22 August 2018.

4. By his rule 24 statement, the Respondent accepts that a bundle of evidence was sent to the Home Office and received on 17 August 2018. The file includes a bundle of documents which are recorded as received by the Tribunal on 16 August 2018. The Respondent accepts that the Judge has not considered those documents.

5. The Respondent says though that the documents make no difference to the Decision and, since there could be no different outcome, I ought to refuse to set aside the Decision in the exercise of my discretion. That therefore was the issue on which I heard submissions.

6. Mr Ononeme submitted that there were documents which showed that the Appellant was living with her mother. He relied in particular on an IS96 which was issued by the Respondent giving her address as that of her mother. He said that this established dependency. As I pointed out, that document alone could not establish dependency without more. Mr Melvin also pointed out that the document probably does not even establish that the Appellant lived at that address since the address given would be that which the Appellant herself provided to the Respondent.

7. It is the case that many of the documents do not add significantly to those which were before the Judge as enclosed with the application, particularly on the issues which the Judge had to determine, namely whether the Appellant was dependent on her mother and whether her mother was exercising Treaty rights.

8. Ultimately, though, there were witness statements from the Appellant and her mother to which the Judge clearly did not have regard because of the overlooking of the bundle. I accept Mr Melvin's point that the Judge would be entitled to give little weight to those statements in the absence of an oral hearing. However, in response to the point made in the rule 24 statement, that nothing would be gained by remittal because it would be likely that the Appellant would again elect for a hearing on the papers, Mr Ononeme indicated that this would not be the position and that the Appellant would ask for an oral hearing this time round.

9. Although, based on the documents in the bundle, it is quite likely that a Judge would not have formed any different view on the crucial issues, I cannot say that the outcome would necessarily have been the same. The hearing was procedurally unfair for failure to take account of the Appellant's further evidence, particularly the witness statements.

10. For those reasons, I am satisfied that the grounds do disclose a material error of law in the Decision. I therefore set aside the Decision. I am also satisfied in light of the nature of the error found, that it is appropriate to remit the appeal to the First-tier Tribunal, particularly in order that the Appellant can have her oral evidence considered.

**DECISION**

**I am satisfied that the Decision involves the making of a material error on a point of law. The Decision of First-tier Tribunal Judge LSL Mensah promulgated on 21 September 2018 is set aside. The appeal is remitted to the First-tier Tribunal for re-hearing before a different Judge.**

Signed  Dated: 25 February 2019

Upper Tribunal Judge Smith