



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: EA/06622/2017

**THE IMMIGRATION ACTS**

Heard at Field House  
On 15 January 2019

Decision & Reasons Promulgated  
On 31 January 2019

**Before**

**UPPER TRIBUNAL JUDGE BLUM**

**Between**

**JOSEPH OHUE  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms K McCarthy, Counsel, instructed by SP Law

For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is a remade decision following the identification of a material error of law in the decision of Judge of the First-tier Tribunal Fox (the judge), promulgated on 13 July 2018, dismissing the appellant's appeal against the respondent's decision, dated 13 July 2017, refusing to issue him a residence card pursuant to the Immigration (European Economic Area) Regulations 2016 (the 2016 Regulations) as confirmation of his right to permanently reside in the UK as the dependant family member of an EEA national exercising Treaty rights.

2. In an error of law decision promulgated on 21 November 2018 I found that the judge failed to identify anywhere in his decision the relevant 5-year period during which the appellant had to demonstrate dependency on his sponsor (his daughter, an EU national with a permanent right of residence in the UK) in accordance with Reg 15 of the Immigration (European Economic Area) Regulations 2016. The appellant entered the UK on 16 June 2011 in receipt of a Family Permit, was issued with a residence card on 13 July 2012, and therefore had to show that he was a dependent up to and including 16 June 2016. The judge's decision, read holistically, did not show that he got to grips with the relevance of the 5-year time period from 16 June 2011 to 16 June 2016, and, specifically, the period from February 2014, when the appellant ceased to live with the sponsor, to 15 June 2016. While the judge was not assisted by the dearth of evidence relating to the relevant period, it is nevertheless insufficiently clear whether he appreciated the need to focus on the period from February 2014 to June 2016.
3. Given the lack of focus in the documentary evidence I decided to adjourn remaking the hearing and gave permission for further evidence to be adduced relating to the issue of dependency in the period from February 2014 to June 2016.
4. The resumed hearing was listed for 15 January 2019. In accordance with my directions the appellant provided a further bundle of documents running to 311 pages. This included, *inter alia*, further statements from the appellant and his sponsor, copies of the appellant's bank account statements covering the relevant period, copies of the appellant's wife's bank statements covering the relevant period, copies of the appellant's payslips and his wife's payslips covering the relevant period, copies of the sponsor's bank account statements and a P60 covering the relevant period, and, significantly, evidence of the appellant's ISA account covering the relevant period. The ISA account showed a balance of £616.85 on 17 February 2014, rising to £1,522.36 on 17 June 2014, then £3,027.61 on 17 September 2014, £5,031.11 on 17 October 2014, and rising steadily to £10,077.19 on 17 April 2015 and then £16,073.86 on 17 May 2016.
5. In her skeleton argument prepared for the resumed hearing Ms McCarthy accepted that the evidence showed that the appellant was not financially dependent for the purposes of EU law on his sponsor in the relevant period because he and his wife were earning sufficient money to meet their essential needs. This was confirmed by Ms McCarthy orally at the hearing. In light of the evidence, and the principles established in **Lim v Entry Clearance Officer Manila** [2015] EWCA Civ 1383 relating to dependency, Mr McCarthy's position was one she was bound to take.
6. Ms McCarthy invited me to dismiss the appeal. She invited me however to make the following findings, and, after some discussion, there was no objection from Mr Whitwell. The findings are consistent with the evidence that was provided to

both the First-tier Tribunal and the Upper Tribunal, and consistent with the retained factual findings made by the First-tier Tribunal. I find the following.

- (i) There was no evidence in this case of abuse or attempted abuse of EEA rights;
- (ii) The evidence showed that the appellant was genuinely a member of his daughter's household in Italy and, initially, in the UK and he was correctly given residence on that basis;
- (iii) Even after the appellant and his sponsor moved to separate households the appellant's sponsor continued to give him some financial support, even though this was not indispensable for his essential needs,
- (iv) Even after the appellant and his sponsor moved to separate households, they continued to be close to one another, including regular visits by the appellant's sponsor to see and support her half-siblings (the appellant's children).

**Notice of Decision**

**The remade EEA appeal decision is dismissed**



15 January 2019

Signed

Date