



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

Appeal Number: EA/06629/2018

THE IMMIGRATION ACTS

**At Manchester Civil Justice Centre
On 21st May 2019**

**Decision & Reasons Promulgated
On 5th July 2019**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

**Agatha Agyeman Duah
(no anonymity direction made)**

Appellant

And

The Secretary of State for the Home Department

Respondent

**For the Appellant: Mr Rungasamy, Lawrence & Associates Solicitors
For the Respondent: Mr McVeety, Senior Home Office Presenting
Officer**

DECISION AND REASONS

1. The Appellant is a national of Ghana born in 1950. She appeals with permission the decision of the First-tier Tribunal (Judge Andrew Davies) to dismiss her appeal under the Immigration (European Economic Area) Regulations 2016.
2. The matter in issue before the First-tier Tribunal was whether the Appellant qualified for permanent residence under Regulation 15(1) (b) as the family member of an EEA national. It was her case that

she had already resided in the United Kingdom in accordance with the Regulations for a continuous period of five years. Her EEA sponsor is her son, a national of the Netherlands. Although the Respondent accepted that the Appellant had lived in this country since January 2011, it was his case that the Appellant had not demonstrated that she had done so 'in accordance with' the Regulations. As a family member in the ascending line she was required to demonstrate that she was dependent upon her son, and in the Secretary of State's assessment, this she had failed to do.

3. The First-tier Tribunal found against the Appellant and dismissed the appeal. Although it accepted that the Appellant had lived with her son between 2011 and 2018 when she was admitted to a care home, it could not be satisfied that this had been shown to result from a "situation of real dependency": Bigia [2009] EWCA Civ 79.
4. The Appellant now appeals on several grounds but for the purpose of this appeal I need focus only on the central point made. That is that the First-tier Tribunal applied too high a standard of proof in its dependency assessment. Having accepted that this lady lived with her son for some seven years, and that he was the EEA national exercising treaty rights, the First-tier Tribunal should have accepted that she was his dependent, and accordingly met the requirements of Regulation 15(1)(b) by showing herself to be:
 - (b) a family member of an EEA national who is not an EEA national but who has resided in the United Kingdom with the EEA national in accordance with these Regulations for a continuous period of five years;
5. The Appellant points out that the Home Office's own policy gives as an example of evidence establishing dependency "evidence of living in the same household". The same policy instructs caseowners who are unsure to look to the guidance on *extended* family members which itself indicates, in line with Dauhoo (EEA Regulations - Reg 8(2)) [2012] UKUT 79 (IAC), that membership of the EEA national's household is sufficient. The point, in short, is that it would be nonsensical if family members were held to a higher standard than extended family members.
6. These grounds were unopposed by the Secretary of State. Mr McVeety accepted that where the Appellant had been found to live with her EEA worker son for seven years (and where there was no suggestion that the Appellant had an income from anywhere else) she had in fact discharged the burden of proof. I agree. There may have been other deficiencies in the evidence, and the determination may have contained cogent reasoning on other matters, but on the finding made, the Appellant had established 'dependency' for the purpose of Regulation 7(1)(c).

7. The appeal is therefore allowed.

Decisions

8. The decision of the First-tier Tribunal contains an error of law such that it must be set aside.

9. The appeal is allowed.

10. There is no order for anonymity.

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Upper Tribunal Judge Bruce
21st May 2019