



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/06893/2016

THE IMMIGRATION ACTS

Heard at Field House
On 14 February 2019

Decision & Reasons Promulgated
On 06 March 2019

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

MISS SANDRINE MONOUE FODJO
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Nyawanza, Solicitor at Genesis Law Associates Ltd

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

DECISION AND REASONS

1. The appellant appeals with permission the decision of First-tier Tribunal Judge Ferguson which was signed on 25 July 2018 promulgated shortly thereafter, in which the appeal against the respondent's refusal to issue a permanent residence card under the Immigration (European Economic Area) Regulations 2006 was refused. The appellant had applied for permanent residence on the basis that she had spent five years in the United Kingdom as the dependant of an EEA national, namely her brother-in-law, and had sought recognition of that from the respondent.

2. The initial application was refused on the basis that there was evidence showing that the appellant had lived at a different address from the sponsor and although the sponsor's exercise of treaty rights had been accepted, there was no evidence of continuing dependency or membership of the same household. The appellant had relied on problems within the marriage between her sister and the sponsor to explain the use of different addresses but there had been no evidence that the application could be put forward on the basis of retained rights following divorce as there was no evidence that a divorce had actually taken place.
3. The First-tier Tribunal dismissed the appeal on the basis that the appellant had not established dependency or membership of the same household for the requisite period. That was essentially on the basis of a lack of cogent evidence before the Tribunal to show either. At the hearing, it was not actively pursued on behalf of the appellant that she had been dependent on the sponsor for the entire five year period and there was a dispute as to membership of the same household, as the appellant accepted that she had permanently moved out of the address where the sponsor resided at the latest on 1 April 2014. There was also an issue before the First-tier Tribunal as to the relevant start date for the qualifying period, whether that was from when the appellant entered the United Kingdom with the benefit of a family permit, following which she applied for an EEA residence card which was not issued until some eighteen months later, or whether the five year period ran from 31 August 2010, when a residence card was ultimately issued following a successful appeal before the First-tier Tribunal.
4. The First-tier Tribunal found that the Immigration (European Economic Area) Regulations 2006, in particular Regulation 7(iii), were clear that the intervening periods between the family permit ending on 28 December 2008 and the residence card being issued on 31 August 2010 could not be counted as part of a period of five years for the purposes of permanent residence. The start date was therefore 31 August 2010.
5. In paragraph 22 of the decision, the appellant's evidence and position as to whether she was a member of the sponsor's household was set out with findings as follows:

"... the Appellant accepted in her oral evidence that she moved out of [sponsor's address] permanently on 1 April 2014. She also moved her GP services and notified her employer of her new address. Whatever the position was before that date, the Appellant certainly ceased to be a member of [the sponsor's] household from that date. There is also no evidence of dependence at any time, let alone after that date. Apart from a vague assertion that her sister would give her cash from the joint account, there is no evidence of any financial support and it is difficult to see why any support would be required for the appellant's basic needs given that she had stable employment and was earning more than £1,000 a month net. The appellant's sister did not attend to give evidence but even if her letter was taken at face value it does not come close to establishing dependency."

6. The conclusion followed therefore that the appellant had not satisfied the conditions of being treated as a family member for the continuous period of five years and the appeal must be dismissed.

7. The First-tier Tribunal did however deal with the alternative dates in an argument put on behalf of the appellant in paragraph 24, which states:

“Even if I am wrong about the start date and the correct date was 5 July 2008 when the appellant arrived in the UK, the appellant has not established that she remained dependent on [the sponsor] or a member of his household for a continuous five year period after that date. Having been issued with a residence card in August 2010, there is evidence of the appellant having resided at at least three different addresses other than the [sponsor’s address] before moving to [new address]. The appellant has not provided a satisfactory explanation for this. She has not explained what these addresses were, how long she lived in each or what her relationship was with her sister and the sponsor during those periods. The assertion that she directed correspondence to these addresses in order to ensure she received them does not support her argument that she remained a member of the household throughout. She was also employed from July 2011 onwards. I note that neither the appellant’s sister nor the sponsor attended to give evidence and the appellant’s sister’s letter does not address the issue of whether the appellant was part of the household prior to 2014. No proper explanation was given for their absence.”

8. The appellant’s grounds of appeal to this Tribunal were first, that there was an error in law in the start date to be considered for the five-year period for permanent residence. The intervening period between the expiry of the family permit and issue of a residence card should have been counted as part of the qualifying period given in part the passage of time between the application for a residence card whilst the family permit was still valid and it being issued some considerable time later following a successful appeal. The second ground of appeal is essentially that the First-tier Tribunal erred in law as to the assessment of dependency by reference to the cases of Lim (EEA – dependency) [2013] UKUT 437 in the Upper Tribunal and Moneke (EEA – OFMs) Nigeria [2011] UKUT 00341 (IAC) in the Upper Tribunal, although that is not expanded upon in the grounds at all. The grounds of appeal make no challenge to the factual findings about the lack of evidence of dependency and membership of the household. They are not criticised or even mentioned in the grounds of appeal at all.

9. The First-tier Tribunal granted permission in this case on the basis that both grounds were arguable with no further comment or interaction. In my view, that grant of permission to appeal was erroneous as there was no challenge to the clear factual findings on the evidence before the First-tier Tribunal, such that neither ground of appeal could even arguably be material to the outcome of the appeal.

10. In relation to the first ground of appeal, whether or not the start date was 2008 or 2010, the Tribunal made clear factual findings on either premise that the appellant simply had not established dependency or membership of the household for the

continuous requisite five-year period. Similarly, in relation to dependency, the First-tier Tribunal did not ask a specific question as suggested in the grounds of appeal as to whether the appellant could support herself, that was not the reasons for the finding in paragraph 22. The findings were made that there was no dependency because there was simply no evidence of financial support for the requisite period. The vague assertion from the appellant's sister being far from sufficient to establish any such claim. On this factual basis, the appeal had to be dismissed regardless of any of the further matters raised in the grounds of appeal. For these reasons the decision of the First-tier Tribunal stands, it contains no errors of law that could be material to the outcome of the appeal.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of a material error of law. As such it is not necessary to set aside the decision.

The decision to dismiss the appeal is therefore confirmed.

No anonymity direction is made.

Signed



Date

28th February 2019

Upper Tribunal Judge Jackson