



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: EA/13687/2016

**THE IMMIGRATION ACTS**

Heard at Birmingham  
On 9<sup>th</sup> January 2019

Decision & Reasons Promulgated  
On 7<sup>th</sup> February 2019

Before

DEPUTY JUDGE UPPER TRIBUNAL FARRELLY

Between

Miss SALOMEY DOKUAA OSEI OSEI  
(NO ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the appellant: Mr J Dewa of Immigration Advice Service

For the respondent: Mrs H Aboni, Senior Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. The appellant is a national of Ghana, born on 3 June 1989. On 14 May 2016 she sought confirmation she was entitled to permanent residence on the basis of European Treaty rights. This was premised on her being a dependent family member of an EEA national (hereinafter referred to as her sponsor). She is

required to have resided in the United Kingdom in accordance with the Immigration (European Economic Area) Regulations 2006 (hereinafter referred to as 2006 regs) for a continuous period of 5 years.

2. The sponsor is her mother, Ms Gladys Opuku. She was born on 15 July 1963 and is a national of the Netherlands. The application stated that she had been working in the United Kingdom from April 2005 to the time of application.
3. Her application was refused on 10 November 2015 on the basis she had not shown she had resided in accordance with the regulations of 5 years. The refusal letter states that she had not demonstrated dependency upon her sponsor. The evidence she supplied related to her own employment since December 2011 and she had not provided evidence of any financial support from her sponsor. Consequently, she was not considered to be a dependent family member as defined in regulation 7(1)(b) of the 2006 regulations.
4. The grounds of appeal contended that the appellant sponsor had supported her through her studies.

#### The First tier Tribunal

5. Her appeal was heard by First-tier Tribunal Judge Young Harry. The judge found that the sponsor had been exercising Treaty rights continuously since at least April 2005. The appellant's evidence was that while she was a student she also took employment and was reliant upon her mother to meet essential needs. She said her parents paid her course fees and assisted with the cost of accommodation.
6. She said she had earned no more than £300 a month whereas the presenting officer contended she was earning £200 a week. The judge accepted the respondent's argument in this regard. The judge accepted that her mother at some stage paid some of her university fees but the evidence did not indicate how much or over what period. The judge also accepted that the appellant lived mainly at her parents address outside of term time and received a nominal sum from her parents when at home. However, the judge did not feel she was dependent.

#### The Upper Tribunal

7. Permission to appeal was granted on the basis the judge's finding that an income of £11,000 per annum was sufficient for the appellant to be independent was wrong. It was argued the conclusion she was independent was flawed as she continued to reside rent free with her parents.
8. The respondent has lodged a rule 24 response submitting the judge directed himself correctly and on the evidence the appellant had not been frank in her account of her circumstances and the judge was entitled to conclude she had not been dependent on her sponsor for some time.

9. At hearing Mr Dewa submitted that the appellant was dependent upon her mother. He said she was attending university and the fees were paid by her parents. Outside of term time she lived with her parents. I was not referred to any authorities as to what would be considered adequate dependency. In response, Ms Aboni continued to rely upon the rule 24 response and submitted that the grounds and the oral representations in the upper tribunal were an attempt to reargue the appeal. He submitted that the judge had directed himself appropriately and made findings that were open to the judge.
10. Paragraphs 2,3 and 8 of the decision show the judge correctly identified the issue to be determined. The Judge found as a fact that her sponsor had been exercising Treaty rights over the necessary period. Connected to this then was a question of the appellant's dependency upon her sponsor as she was over 21 years of age.
11. The judge found that the appellant in her oral evidence sought to suggest she earned less than she did. The judge at paragraph 17 referred to the absence of evidence to support her claim that the sponsor met her essential needs. This reflects the refusal letter which refers to the absence of money transfers in her bank account from her mother.
12. The judge did accept that the appellant outside of term time normally resided at her parents' home and that they would give her nominal sums. However, the judge concluded the evidence did not support her claim that she was or is dependent on her sponsor. The judge did not accept that she could not survive on her income alone. The judge rejected the appellant's claim that her sponsor continued to support her by paying for her travel and lunch money whilst at work. The judge at paragraph 21 referred to the absence of recent payslips and inferred the appellant was not being frank about her income.

### Conclusions

13. It is for the appellant through her representative to demonstrate a material error of law in the decision. I do not find this established. Rather, the appeal was dismissed on the proofs and it has not been shown the judge erred in law in doing so.
14. The judge has to assess the evidence presented. No challenge was made to the factual findings made by the judge. The judge had some details of her earnings and found she had sought to underplay her income. The appellant's recent wage slips had not been provided. There were wage slips covering the period between 2011 and 2012 which indicated earnings of up to £200 a week. At paragraph 16 the judge rejected her claim that she was earning only £300 a month over the 5 years. The judge concluded that the earnings found were adequate for her to be independent.
15. Permission was granted primarily on the basis that an income of £11,000 per annum would be insufficient for the appellant to be independent of her sponsor. I have not received submissions specifically on this point of quantification.

16. The grounds upon which permission was granted are confusing. The last half, marked para 30 onwards, appears to have been cut-and-pasted from another case. There is a shorthand reference to some case law. The reference to Yunying Jia is presumably a reference to Jia Migrationsverket Case C 1/05. There the European Court considered “dependence” meant that members of the family of an EU national established in another Member State needed the material support of that EU national, or his or her spouse, in order to meet their essential needs. This test is reflected in the Reasons for Refusal.
17. Reyes v Migrationsverket (Case C-423/12) CJEU (Fourth Chamber), 16 January 2014 was also alluded to in the grounds. It was concerned with payments to the descendant necessary in order to support her in the country of origin which is not the situation here.
18. As stated, the judge’s factual findings have not been challenged. The argument appears to relate to quantification and whether £10,000 per anum is adequate. Although comparators were not given from information in the public domain it is of note that a single person over 25 currently would receive in the region of £73 per week in Income Support. I appreciate they would also be entitled to housing assistance etc. The case law suggests it is necessary to consider what material support is provided and then see if it is necessary for the persons essential needs. The application was refused on the proofs being inadequate and the judge dismissed the appeal on the same basis. Consequently, I find no material error of law established.
19. No material error of law has been shown in the decision of First-tier Tribunal Judge Young Harry. Consequently, that decision dismissing the appeal shall stand.

### Decision

The appeal is dismissed

Francis J Farrelly  
Deputy Upper Tribunal Judge.