



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002071
UI-2022-002072
UI-2022-002073
UI-2022-002074
First-tier Tribunal No: EA/04656/2020
EA/04657/2020
EA/04658/2020
EA/04659/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 6 April 2023

Before

UPPER TRIBUNAL JUDGE CANAVAN
DEPUTY UPPER TRIBUNAL JUDGE JOLLIFFE

Between

GEORGE BOATENG
ANASTACIA KONADU YIADOM
AUGUSTINA ASANTE
AMOS SMITH DANKWA
(NO ANONYMITY ORDER MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr M. Yakuba of R & A Solicitors
For the Respondent: Mr C. Avery, Senior Home Office Presenting Officer

Heard at Field House on 09 February 2023

DECISION AND REASONS

1. The appellants appealed the respondent's decisions dated 28 July 2020 to refuse to issue family permits facilitating entry as the extended family members of an EEA national. The appeal was brought under The Immigration (European Economic Area) Regulations 2016 ('the EEA Regulations 2016').

2. First-tier Tribunal Judge S. Meah ('the judge') dismissed the appeal in a decision sent on 14 February 2022. Having considered the reasons for refusal and the evidence before him the judge was satisfied that:
 - (i) There was evidence to show that the EEA sponsor is a Dutch national [23];
 - (ii) The appellants were likely to be related to the EEA sponsor as claimed [24];
 - (iii) There was evidence to show that the EEA sponsor was a qualified person exercising rights of free movement in the UK [25]; and
 - (iv) That the appellants had been financially dependent upon the EEA sponsor for their essential needs since 2018 [26][31][37][38].
3. The judge went on to consider 'prior dependency/membership of household before the EEA national came to live in the UK' and quoted from the decisions in *Dauhoo (EEA Regulations - reg 8(2))* [2012] UKUT 79 (IAC) and *Moneke (EEA - OFMs) Nigeria* [2011] UKUT 00341 (IAC). Earlier in the decision, he had also referred to the decisions in *Lim v ECO (Manila)* [2015] EWCA Civ 1383 and *Bigia & Ors v ECO* [2009] EWCA Civ 79. The judge dismissed the appeal on the ground that the appellants could not show that they were dependent upon the EEA sponsor before he came to reside in the UK in 2006 [32]-[33].
4. The appellants applied for permission to appeal to the Upper Tribunal on the following grounds:
 - (i) The judge applied an old version of regulation 8 of the EEA Regulations 2006 and not the version contained in the EEA Regulations 2016.
 - (ii) The judge erred in his application of the law by requiring the appellants to be dependent upon the EEA sponsor before he came to the UK. The appellants only needed to be dependent on the EEA sponsor before they join him in the UK.

Decision and reasons

5. It is not necessary to set out detailed reasons for finding that the First-tier Tribunal decision involved the making of an error of law because Mr Avery accepted that it did, and we agreed.
6. The principle outlined in *Bigia*, and subsequently applied in cases such as *Dauhoo* and *Moneke*, which were the cases relied on by the First-tier Tribunal judge, has long since been overtaken by the binding decision of the Court of Justice of the European Union (CJEU) in *SSHD v Rahman & Others* [2012] EUECJ C-83/11 (05 September 2012); [2013] QB 249. The CJEU made clear that the family member only needs to show that a situation of dependence exists in the country from which the other family member comes from, at the very least at the time when they apply to join the Union Citizen on whom they are dependent. The EEA Regulations were amended to reflect this interpretation.
7. The judge applied the principle first outlined in *Bigia* but that approach amounts to an error of law in light of the later decision in *Rahman*. The judge's understanding of the relevant legal framework, including the relevant regulations, was many years out of date.

8. The Upper Tribunal pointed out that the judge had made unchallenged factual findings that the appellants had been dependent on the EEA sponsor for their essential needs since 2018. In light of those findings, it did not seem necessary to hear any further submissions. Mr Avery did not object, nor ask to make any further submissions. We are satisfied that those factual findings are sufficient to find that the appellants met the requirements to show that they are dependent extended family members.
9. We conclude that the First-tier Tribunal decision involved the making of an error on a point of law. The decision is set aside.
10. The decision is remade and the appeals are allowed under the EEA Regulations 2016 (saved provisions). We conclude that the decisions breached the appellants' rights under the EU Treaties in respect of entry into or residence in the United Kingdom.

Notice of Decision

The First-tier Tribunal decision involved the making of an error on a point of law

The appeals are ALLOWED under the EEA Regulations 2016

M.Canavan
Judge of the Upper Tribunal
Immigration and Asylum Chamber

13 February 2023