

THE IMMIGRATION ACTS

At **Field House**
on **22.07.2013**

Decision signed: **22.07.2013**
sent out: **On 23.07.2013**

Before:

Upper Tribunal Judge
John FREEMAN

Between:

Oksana TARASKINA

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellant: *Carlo Talacchi* (counsel instructed by Kanth & Kanth)

For the respondent: Mr Laurence Tarlow

DETERMINATION AND REASONS

This is an appeal, by the respondent to the original appeal, against the decision of the First-tier Tribunal (Judge Nadine Finch), sitting at Taylor House on 17 May 2013, to dismiss an EEA appeal by the holder of a Latvian alien's passport, born 21 May 1976: this is a type of document issued to persons of Russian origin who have been living in the Baltic states since they were part of the Soviet Union, but who are not regarded as citizens by those states' authorities, so are not EEA citizens either. It is not clear that the appellant's daughter (the sponsor) has any other kind of citizenship herself; but the present application seems to have been dealt with by the Home Office on the basis that she was an EEA citizen from Latvia.

2. The only point the Home Office took when they refused the appellant a residence card as the sponsor's family member was that the sponsor had failed to provide evidence that she was a 'qualified person', in terms of reg. 6 of the Immigration (European Economic Area) Regulations 2006 [the EEA Regulations]. As they failed to field a presenting officer before the judge, she cannot in any way be blamed for dealing with the case on the basis that this

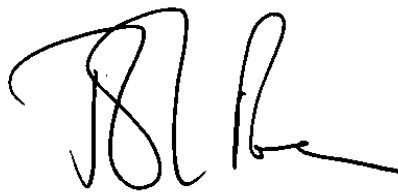
was the only issue before her. However the Home Office then noticed the following provisions of reg. 7

(1) Subject to paragraph (2), for the purposes of these Regulations the following persons shall be treated as the family members of another person—

(c) dependent direct relatives in his ascending line or that of his spouse or his civil partner;

3. The Home Office grounds of appeal pointed out that the judge had not dealt with the dependency requirement for relatives in the ascending line, such as this appellant: they might reasonably have been expected to take the blame for the writer of the refusal letter not having noticed it in the first place, but did not. The fact remains, as Mr Talacchi realistically acknowledged, that this country is under no Treaty obligation to provide a residence card for the ascending relative of the sponsor (supposing he herself is an EEA citizen in the first place), unless she can show she is dependent on her.
4. Mr Talacchi recognized that for this reason the judge's decision could not stand; but he asked me to direct a fresh hearing, so that it could be re-made, dealing with the issue of dependency which had now arisen. I referred him to the evidence recorded by the judge at paragraph 9: by the date of the hearing the sponsor had left her previous job with TTC Homecare, and was "... working for two different clients for three hours a week as a housekeeper and earned £160 per month".
5. Mr Talacchi referred to the appellant's having been living here with the sponsor for some time; but it is not easy to see how those earnings could have supported one person to any standard accepted in this country, let alone two. In my view the judge would not have been entitled to make a finding of dependency on the evidence before her, with the result shown below. If the position has changed since then, it will be open to the appellant to make a fresh application to the Home Office, with full evidence of any current dependency.

Home Office appeal against judge's decision allowed
Judge's decision reversed: appellant's appeal dismissed



(a judge of the Upper Tribunal)