



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/05431/2013

THE IMMIGRATION ACTS

Heard at Bradford
On 8 July 2013

Determination Promulgated
On 7 August 2013

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

OBED THOMPSON

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Mrs R Pettersen, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Obed Thompson, was born on 24 August 1990 and is a citizen of Ghana. The appellant had appealed against the decision of the respondent dated 8

February 2013 refusing his application for a residence card as a confirmation of right of residence in the United Kingdom as a dependent family member of an EEA national. The respondent had not been satisfied in relation to Regulation 7(1)(b) of the Immigration (European Economic Area) Regulations 2006 (hereafter referred as the “2006 Regulations”).

2. The First-tier Tribunal (Judge Gladstone) in a determination promulgated on 17 May 2013 dismissed the appeal. Permission to appeal to the Upper Tribunal was granted by Judge Blandy on 6 June 2013.
3. In the Upper Tribunal at Bradford on 8 July 2013 , Mrs R Pettersen, a Senior Home Office Presenting Officer appeared for the respondent. The appellant appeared in person and was accompanied by his father. He appeared to be unaware that his previous solicitors (Alpha Shindara Legal) had ceased to act for him; the representatives had written to the Tribunal at the beginning of July 2013 to indicate that they were no longer acting for appellant. I explained the procedures of the Tribunal to the appellant and told him to indicate to me if he did not understand any part of the proceedings. The appellant did not require an interpreter.
4. As noted above the appellant had been refused under paragraph 7(1)(b) of the 2006 Regulations:

“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 —

- (a) his spouse or his civil partner;
 - (b) direct descendants of his, his spouse or his civil partner who are —
 - (i) under 21; or
 - (ii) dependants of his, his spouse or his civil partner;
 - (c) dependent direct relatives in his ascending line or that of his spouse or his civil partner;
 - (d) a person who is to be treated as the family member of that other person under paragraph (3).
- (2) A person shall not be treated under paragraph (1)(b) or (c) as the family member of a student residing in the United Kingdom after the period of three months beginning on the date on which the student is admitted to the United Kingdom unless—
- (a) in the case of paragraph (b), the person is the dependent child of the student or of his spouse or civil partner; or
 - (b) the student also falls within one of the other categories of qualified persons mentioned in regulation 6(1).
- (3) Subject to paragraph (4), a person who is an extended family member and has been issued with an EEA family permit, a registration certificate or a residence card shall be treated as the family member of the relevant EEA national for as long as he continues to satisfy the conditions in regulation

8(2), (3), (4) or (5) in relation to that EEA national and the permit, certificate or card has not ceased to be valid or been revoked.

(4) Where the relevant EEA national is a student, the extended family member shall only be treated as the family member of that national under paragraph (3) if either the EEA family permit was issued under regulation 12(2), the registration certificate was issued under regulation 16(5) or the residence card was issued under regulation 17(4)."

5. The appellant had been 22 years old at the date of the refusal of his application to the respondent. He had been unable, therefore, to satisfy the provisions of paragraph 7(1)(b)(i) of the Regulations. In order to show that he was a family member of his father in the United Kingdom for the purposes of the Rules he was, therefore, required to show that he satisfied 7(1)(b)(ii), that is, that he was a dependent upon his father or his father's spouse/civil partner.
6. At [16] of his determination, Judge Gladstone had observed that there was a substantial balance on the appellant's bank account and, moreover, that he was earning more each month in net wages than his father. The appellant at the initial hearing confirmed that that was still the case. In the light of that evidence and the application to it of the Regulations, I find that Judge Gladstone was right to dismiss the appeal for the same reason that the respondent had refused the application.
7. The grant of permission refers to the case of **Dauhoo (EEA Regulations - Regulation 8(2)) [2012] UKUT 79 (IAC)**. That case considered the position of extended family members under the 2006 Regulations. Even assuming that the appellant would be able to show that he was an extended family member (notwithstanding the fact that he was a direct descendant of his UK sponsor and father) he would have to have shown prior dependency upon his father before he came to the United Kingdom. Alternatively, the appellant would have had to have shown prior membership of a household and present membership of the household of his father. There was no evidence before the First-tier Tribunal which indicated that this appellant had been living with his father abroad before he came to this country or that he had been dependent upon his father whilst he was living abroad. Judge Blandy, granting permission, appeared to assume such prior dependency. However, as the First-tier Tribunal noted in its determination, the burden of proof is on the appellant and I cannot see that he has discharged that burden in respect of his dependency/household membership prior to coming to this country.
8. Article 8 has also been raised in the grounds of appeal. At [20] Judge Gladstone observed that:

"The appellant is an adult. I found there was no evidence of financial dependency on the sponsor. There was no reference to Article 8 in the appeal grounds. There was no evidence before me to consider Article 8 other than the appellant having last entered the United Kingdom in February 2012 and that he has been working for a period of time."

9. Judge Gladstone's analysis is brief but I consider it to be both accurate and adequate. Indeed, far from there being any special ties of dependency between the adult appellant and his father, the appellant has shown that, other than living in his father's household, he is capable of managing his own life independently as is shown by the fact that he enjoys a higher income than his father.

DECISION

10. This appeal is dismissed

Signed

Date 30 July 2013

Upper Tribunal Judge Clive Lane