



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/08398/2013

THE IMMIGRATION ACTS

Heard at Field House
On 18 November 2013

Determination Promulgated
On 6 December 2013

Before

UPPER TRIBUNAL JUDGE ESHUN

Between

MR EHOUSSOU GUY-ROGER FAUSSOU

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No Legal Representative
For the Respondent: Miss E Martin, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant was in court with his father, Mr Aka Faussou.
2. The appellant is a citizen of Ivory Coast, born on 27 December 1985. On 9 August 2012 the appellant applied for a residence card in the United Kingdom as confirmation of a right to reside in the UK as the family member of an EEA national

who is exercising treaty rights in the UK. His application was refused on 1 March 2013 under Regulation 15(1)(b) with reference to Regulation 8 of the Immigration (EEA) Regulations 2006. The reasons for the refusal were that the appellant had not resided in the United Kingdom with his EEA family member for a continuous period of 5 years. Furthermore, he had failed to demonstrate that he was genuinely dependent upon his EEA family member. The appellant's sponsor is his father, Mr Aka Faussou who is a Swedish national.

3. The appellant's appeal against the respondent's decision was considered on the papers and dismissed by First-tier Tribunal Judge Crawford in a determination promulgated on 13 June 2013.
4. The judge stated that the appellant claims to have entered the UK in 2001. The sponsor had submitted a letter from his accountants and correspondence from HMRC. He paid no income tax for tax years 2008/9, 2009/10 or 2010/11. His Halifax Bank account showed a balance of £3,272 on 27 February 2012. The appellant had submitted copies of his payslips, which showed varying earnings between £335 and £614 per week. The sponsor submitted copies of his utility bills and bank statements. The appellant submitted a copy of a learning programme from Southwark College, a copy of his driving licence and other educational documents.
5. The judge relied on the respondent's assertion that the appellant had produced no evidence to show that he has been residing with Aka Faussou or that he has been dependent upon him for a period of five years as required for the purposes of Regulation 8. The respondent did not accept that the appellant was the extended family member and was dependent on an EEA national resident in the UK. Consequently the respondent on the balance of probabilities was not satisfied that the appellant is the extended family member of an EEA national exercising treaty rights in the UK.
6. The judge also relied on the respondent's assertion that the appellant's leave expired on 6 February 2007. He has no legal basis to reside in the UK. Any family or private life he has established in the UK has been established whilst he was resident here illegally. The respondent considered the five stage test in **Razgar** and decided that the refusal to grant the appellant a residence permit was proportionate to the UK's right to control immigration and does not breach the appellant's Article 8 rights. It was for those reasons that the judge dismissed the appellant's appeal.
7. Upper Tribunal Judge McGeachy granted permission to the appellant to appeal the judge's decision because in his grounds of appeal he asserted that he had submitted documents showing that he had lived with his father for five years after entering the UK in 2001 and that he had worked in 2008/2009. The UTJ said that the appellant had submitted documents which showed that he entered the UK with a family permit in 2001 and there were other documents which reflected that he was living with his father when he arrived at the age of 16. It was unclear when these

documents were served but it appears that they may well have been served before the hearing.

8. The respondent submitted a reply dated 22 August 2013 saying that they did not oppose the appellant's application for permission to appeal and invited the Tribunal to determine the appeal with a fresh oral hearing.
9. The appellant attended the hearing with his father, Aka Faussou. They both gave oral evidence which I found credible.
10. I accept that Mr Aka Faussou came to the UK in 1999 as a Swedish national. He became a Swedish national in 1985. He has lived at 19 Banbury House, Fenham Road, London SE15 1AA since 2000.
11. Mr Aka Faussou said that he was studying in France many years ago when he met his ex-wife who was a Swedish national. They moved to Sweden. The appellant was born to a different woman in Ivory Coast at the time he was studying in France. The appellant lived with his mother who was a petty trader. When Mr Aka Faussou moved to Sweden and started working, he sent money to the appellant's mother to help to look after him. The appellant's mother died and the appellant went to live with his grandmother in the village for a year and was not going to school. He decided that the appellant should join him in the UK and he made the appropriate application.
12. Mr Aka Faussou said that when he entered the UK he worked as a security officer for five to six years. After that he worked as an ambulance driver, ferrying ill people from their home to the hospital and back home. From about 2007 he began work as a self-employed minicab driver. He is now in part-time education studying interior design. On this evidence I accept that Mr. Aka Faussou has been exercising Treaty Rights soon after he arrived in the UK in 1999.
13. Documentary evidence establishes that the appellant arrived in the UK from Ivory Coast on 23 October 2001 on an EEA Family Permit valid from 4 October 2001 to 4 April 2002. In granting the appellant a family permit to join his father in the UK, I find that the respondent must have been satisfied that the appellant was dependent on his father, who was an EEA national exercising Treaty rights in the UK. Documentary evidence again establishes that on 27 February 2002, the appellant was granted a right of residence in the UK as the family member of an EEA national exercising Treaty rights until 6 February 2006. Again, this evidence establishes that the respondent must have been satisfied as at 27 February 2002 that the appellant who was then aged 17 was living with his father and dependent on his father.
14. The appellant submitted documentary evidence from Crossways Consortium which establishes that he studied at Deptford Green School for two years from 2002 to 2004 as a sixth form student. He also submitted evidence from Southwark College showing that in the academic year 2005/2006 he studied part-time on Tuesdays,

Wednesdays and Fridays. I find on this evidence that the appellant was a student until the end of the academic year 2005/2006.

15. Mr Aka Faussou said that he has three children with his current wife who is an Ivorian national, whom he married in 1998. She came to join him here in 2000. Their children are aged 11, 7 and 3 years old. They have four bedrooms in the house. As the house had become crowded, the appellant decided to move out and live with friends. The appellant confirmed that he moved out of the family home in 2007. In light of this evidence I accept that the appellant was residing with his father for a continuous period of 6 years, from his arrival in the UK in October 2001 until 2007.
16. It was not disputed by the appellant that he has made three applications for a Permanent Residence Card; in February 2006, July 2007 and 9 August 2012, and that all were refused as a result of insufficient evidence to establish that his father was exercising treaty rights in the UK and that he was dependent on his father prior to his arrival in the UK and since he has been in the UK. It was apparent from the sponsor's evidence that when he made two previous applications for his wife to remain in the UK with him, and she had on each occasion been granted five years right of residence, he had submitted original documentary evidence of his employment, payslips and other relevant documents to the Home Office in support of the applications. Whenever the appellant asked him for documents to support his application he gave him the documents that he had. I believe the sponsor's evidence that he thought that the appellant's application/file would be linked with his wife's file because the appellant and his wife had the same Home Office reference number, which was F1023904. He therefore believed that the documents he had submitted in support of his wife's application would also be looked at when considering the appellant's applications. He was not aware that the Secretary of State had not linked the two files and was also not aware that the appellant had acquired a different Home Office reference number. He believed that his payslips from 2001 which he had submitted in support of his wife's applications were still with the Home Office. I find that the sponsor's mistaken belief had contributed to the refusal of the appellant's applications.
17. Miss Martin submitted that the appellant has to show that he was dependent on his father, the EEA national, from 2001 to 2006 i.e. the five years the appellant had permission to live in the UK as a family member of an EEA national exercising Treaty rights. I find on the evidence before me that the appellant has established this and that his application in February 2006 ought to have succeeded when he was under 21 years old and living with his father and going to school had his father made known to the Secretary of State that the documents he had submitted in support of his wife's application should be considered in respect of the appellant's application. I find that the P60 he submitted for the tax year 2004/5 which shows that he earned £357.77 and paid £77.88 in tax would not, in my opinion, have made any difference to the success of his application. This is because the income was insufficient to support him financially. He was therefore fully dependent on his father. Likewise the application made in July 2007 when he was 21 years and 7 months and was still living at home.

18. The appellant submitted evidence of his Lloyds TSB Bank statement for November 2008 and April and May 2009 which indicates that he was living at 7 Dartington House, Union Grove, South Lambeth, London SW8 2QW. The P60 for the tax year to 5 April 2009 states that he earned £3503.85 from his employment with New Look. His father said that the appellant has had to stop working at New Look because the Home Office does not allow him to work anymore. The appellant said that even though he is not living at home, he has had a lot of financial help from his father whenever he needed it. I believe him.
19. When the appellant submitted his most recent application on 9 August 2012, he was 27 years old. He was no longer living in the family home, having moved out in 2007. The respondent said that as the appellant was over the age of 21, in order to qualify for a residence card as the extended family member of an EEA national under Regulation (8(1), he is required to produce evidence that he is related to his EEA national sponsor; evidence that he was dependent upon and, or residing with his sponsor prior to entering the UK and that since he entered the UK, he has continued to be dependent upon and, or residing with his sponsor.
20. In **Moneke (EEA -OFMS) Nigeria [2011] 00341 (IAC)** the Upper Tribunal held:
 - (i) A person claiming to be an OFM under Article 3(2) of Directive 2004/38/EC may either be a dependant or a member of the household of the EEA national: there are alternative ways of qualifying as an OFM.
 - (ii) In either case the dependency or membership of the household must be on a person who is an EEA national at the material time ...

In this appellant's case he was not a member of his father's household when he lived in the Ivory Coast prior to his entry to the UK.

(v) By contrast the dependency on an EEA national can be dependency as a result of the material remittances sent by the EEA national to the family member, without the pair of them having lived in the same country at that time before making those remittances.

In this case the fact that the ECO issued the appellant with a Family Permit as a member of an EEA national, which enabled him to join his father in the UK must be evidence that the ECO was satisfied that the appellant was financially dependent on his father when he lived in the Ivory Coast. I am satisfied with the sponsor's evidence that whilst the appellant's mother was alive, he sent money to her to look after the appellant when he moved to Sweden and began to work. He became a Swedish national in 1985, and the appellant was born in the same year. This means that his financial contribution towards the care of the appellant must have begun soon after the appellant was born.

21. In light of the evidence before me I find that the appellant has been financially dependent on his father since he entered the UK in October 2001. He was fully dependent on his father when he lived in the family home until 2007 when he moved out. I find that the income he earned in 2008 was not sufficient to support him. He has had to give up employment on the instructions of the UKBA. Consequently, although he is not living at the family home, I accept his and his father's evidence that he has been dependent on his father for financial support. I find that financial dependency has not ceased simply because the appellant no longer lives at home. His father continues to exercise treaty rights.
22. I allow the appellant's appeal.

Signed

Date 29/11/2013

Upper Tribunal Judge Eshun