



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/18631/2013

THE IMMIGRATION ACTS

**Heard at Langanside, Belfast
On 12 June 2014**

Promulgated on:

On 7 July 2014

Before

THE PRESIDENT, THE HON MR JUSTICE MCCLOSKEY

Between

**DMYTRO KALININ
(No Anonymity Order made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Barr of Creighton & Co, Solicitors

For the Respondent: Mr Matthews, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The origins of this appeal can be traced to a decision made on behalf of the Secretary of State for the Home Department (the "Secretary of State"), dated 7 May 2013, whereby the Appellant's application for a residence card under the Immigration (EEA) Regulations 2006 (the "2006 Regulations") was refused. The operative passage in the decision is the following:

“You have not provided any evidence of your dependency on your EEA national sponsor at any time, either in-country or in the United Kingdom. You have not provided any evidence that you were dependent on your EEA national sponsor immediately prior to entering the United Kingdom”.

It is common case that the decision letter erroneously referred to Regulation 8 of the 2006 Regulations, whereas the relevant provision is Regulation 7, which defines the “*family members*” of another person as including such person’s dependants. Per Regulation 17(1), the Secretary of State must issue a residence card to persons who satisfy the prescribed conditions.

2. The basic matrix is uncomplicated. The Appellant is a Ukrainian national, aged 28 years. His mother is a EEA national who, within the compass of Regulation 17(1) of the 2006 Regulations, is residing lawfully in the United Kingdom. In making his application for an EEA Family Permit, it was incumbent on the Appellant, by virtue of Regulation 7(1), to establish that he is dependent on his mother. As the excerpt above indicates, the decision-maker was not satisfied that the Appellant had discharged this burden.
3. By its determination promulgated on 8 January 2014, the First-tier Tribunal (the “*FtT*”) dismissed the Appellant’s appeal. The sole issue was whether the Appellant was dependent on his mother. The Immigration Judge formulated in correct terms the guiding principle, namely that dependency is a question of fact. While the judge acknowledged the provision of financial support to the Appellant from both his mother and United Kingdom step-father, he reasoned that this did not qualify the Appellant as a dependant under Regulation 7 on two grounds. First, the support was time-limited. Second, he was “*leading an independent life albeit eased by monies received from his mother and step-father*”.
4. It is apparent from its determination that the FtT concentrated on past events. There was no focus on the state of play at the time of the appeal hearing or in the more recent past. Thus there was a failure to give effect to the requirement enshrined in the decision in Reyes v Secretary of State for the Home Department [2013] UKUT 314, [19]. Taking into account also that English is not the native tongue of the Appellant’s mother, it is accepted on the Appellant’s behalf that the aforementioned failure may be attributable in part to the orientation of the evidence elicited from her at the hearing.
5. Whatever the explanation, I am of the opinion that the FtT erred in law for the reason stated above. Further, I consider the materiality of this error to be beyond plausible dispute since, had it been avoided, the outcome could have been different. Accordingly, I set aside the decision of the FtT.

THE DECISION RE-MADE

6. In re-making the decision, I have considered:
 - (a) All of the documentary evidence presented to the FtT.
 - (b) The additional documentary evidence which I admit under Rule 15(2A).
 - (c) The witness statements of the Appellant's mother and stepfather.
 - (d) The oral evidence of the Appellant's mother .
7. Bearing in mind the observation which I have made in [4] above, it is apparent that the evidence adduced from the Appellant's mother before this Tribunal is more extensive than her evidence at first instance.
8. I preface my findings with the observation that the Appellant's mother was an impressive witness, whose testimony was devoid of invention or exaggeration. I make the following specific findings:
 - (a) Having completed his education and undertaken his compulsory military service, the Appellant worked for some five years, from the ages of 21 to 26. This was fairly menial, though not untypical, security work. Though employed, his mother continued to support him financially.
 - (b) This financial support manifested itself particularly in the Appellant's mother paying for his wedding.
 - (c) Some months before the Appellant applied for a visitor's visa, in May 2012, his wife divorced him, the main reason being that the Appellant had no job or income. He had lost his previous jobs through redundancy.
 - (d) Post-divorce, the Appellant's mother continued her practice of sending money and parcels to both the Appellant and his estranged spouse.
 - (e) The Appellant, since his divorce, has resided in his mother's house in the Ukraine at no cost to him. All of the property's outgoings and maintenance costs have been paid by his mother and her sister.
 - (f) Having secured a visitor's visa, the Appellant visited his mother and step-father in Northern Ireland between 1 August 2012 and 31 May 2013. Throughout this period he was entirely dependent upon them for accommodation, board, clothes, pocket money and other outlays. His mother financed him for the purpose of socialising and travelling

locally. In addition, she paid for golf classes and equipment, together with the costs of attending a local gymnasium.

(g) This financial support has continued since the Appellant's return to the Ukraine. His mother has been sending him 100 Euros every month, as previously. This was discontinued temporarily on account of banking problems in the Ukraine. It is essential for the Appellant's subsistence, given that he has no earnings or other resources.

9. Based on the findings rehearsed above I conclude that the Appellant has at all material times been impecunious, the antithesis of self-sufficient and significantly dependent on his mother for financial and other material support. All the relevant evidence points to the conclusion that he has been incapable of self-support for a period approaching two years. It follows that he is a dependant under Regulation 7 of the 2006 Regulations.

DECISION

10. This is as follows:

- (a) I set aside the decision of the FtT.
- (b) I re-make the decision by allowing the Appellant's appeal.

Signed:



THE HON. MR JUSTICE MCCLOSKEY
PRESIDENT OF THE

UPPER TRIBUNAL

IMMIGRATION AND ASYLUM CHAMBER
Date: 24 June 2014

Footnote: Paragraphs [1] & [2] corrected under Rule 42, 07 July 2014.