



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

Appeal Number: IA/46925/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 3 June 2014**

**Determination**

**Promulgated**

**On 9 July 2014**

**Before**

**UPPER TRIBUNAL JUDGE ALLEN**

**Between**

**MISS MAUREEN KHABUYA**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr P Richardson, instructed by Ivy Solicitors

For the Respondent: Ms S L Ong, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. This is an appeal against the respondent's decision of 28 October 2013 refusing the appellant's application for a residence card. The appeal was heard by Judge Miles at Hatton Cross in March this year.

2. The key issue as it has developed is a finding of the judge at paragraph 21 of his determination that there is no documentary evidence to prove that the appellant's aunt on whom she claimed dependency and of whose household she claimed to have been a member in Germany had in fact been living in Germany between 2000 and 2002 which was the time when the appellant claimed to have been a member of her household and to have been dependent on her during that time.
3. The documentary evidence that was provided in that respect was a German passport which had been issued in 2008. The appellant and her aunt both gave oral evidence to the effect that her aunt, Mrs Schuler, had become a German citizen in August 1998 but there was no documentary evidence to support that.
4. That having been said, issue was not taken with the aunt's German nationality at that relevant time of 2000 to 2002 in the decision letter and one can see that set out in paragraph 2 and also at paragraph 17 as well in the letter also contained in the file.
5. It is unclear to what extent the judge raised this as an issue at the hearing. It would seem remarkable if he had been raising this concern if Counsel, who was Mr Richardson, had not sought an adjournment for the matter to be clarified since documentary evidence has been provided with the grounds of appeal to show that Mrs Schuler had a German passport dated 1998 from the time when she became a citizen and therefore covering that relevant period.
6. But the judge, as I say, noted at paragraph 21 that there was no documentary evidence to prove she was a German national from 1998 as claimed and in particular in the period between 2000 and 2002 when they both said that they were together in Germany.
7. The judge went on to make a point that they might not have been aware of the significance of this but it was a fundamental point that their advisers should have been aware of, and as Mr Richardson makes the point quite rightly I think that the appellant can only reasonably be expected to address issues that were the concerns of the respondent in the decision letter and if there are further concerns, which course can always be raised by the respondent in the hearing, and if they cannot be addressed then there may need to be an adjournment, and he reminded me of the appropriate course of action in this case. It might not have mattered and I take the point that Ms Ong reminded me of as made in the Rule 24 response as to the argument as to a lack of materiality of this error as I find to be on the part of the judge but that is a matter that has not had any judicial decision made on it. It may well be that Ms Ong and the respondent are right at the end of the day but the judge had made it entirely clear in paragraph 23 of his determination that the finding that he made that the absence of evidence to show that Mrs Schuler was an EEA national in 2000 to 2002 meant that it was unnecessary for him to make

any findings on the issue of whether or not the appellant was a dependant or a member of her household in Germany between 2000 and 2002 or whether she continued to be a dependant or a member of the household of the EEA national after she entered the United Kingdom in 2002. These are matters upon which clearly findings need to be made, and since the appellant has not had the benefit of findings in that regard and indeed made as yet by a judge then this is a proper case in the practice statement for a matter to be remitted for a full hearing by a Judge of the First-tier Tribunal on the relevant issues. So to that extent the appeal is allowed.

Signed

Date

Upper Tribunal Judge Allen