



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

Appeal Number: OA/12550/2013

**THE IMMIGRATION ACTS**

**Heard at Birmingham**

**On 6 June 2014  
Prepared 6 June 2014**

**Determination  
Promulgated  
On 27 June 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DAVEY**

**Between**

**MS MOHINDER KAUR  
(NO ANONYMITY ORDER MADE)**

Appellant

**and**

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

Respondent

**Appearances:**

For the Appellant: Mr Ishwar Singh of Rakkani Solicitors  
For the Respondent: Mr Smart, Senior Presenting Officer

**DETERMINATION AND REASONS**

1. The Appellant, a national of India appealed against the Respondent's decision to refuse to issue an EEA family permit under the Immigration (European Economic Area) Regulations 2006 (the 2006 Regulations) particularly Regulation 7. The matter came before First-tier Tribunal Judge

Colyer who on 7 February 2014 dismissed the appeal against the Respondent's decision. Permission to appeal that decision was given by First-tier Tribunal Judge Page on 10 April 2014.

2. The first issue in dispute relates to the description of the Appellant, as the mother of the UK Sponsor and an EEA national of Italy. The Appellant lives in Italy and has a right to remain given on the basis of the Sponsor's, now in the UK, status in Italy. The Sponsor seeks to bring his mother into the UK for the purposes of generally caring for her; given that she is some 80 years of age and in need of support.
3. The definition of a family member to which the Appellant would belong is under Rule 7(1)(c) of the 2006 Regulations that she is a dependent direct relative in the ascending line. It is clear that the mother is a direct relative in the ascending line but issue is taken as to whether she is his dependant.
4. The judge found and it is really undisputed that the Appellant has not been financially dependent upon the Sponsor while she has been living in Italy. It seems that the Appellant has an Italian pension sufficient to live on and whilst the Sponsor has been in the United Kingdom she has not been financially dependent upon him. The Sponsor, it is said, makes regular visits to Italy. Mr Singh's primary submission is that there is no requirement of financial dependency by the Appellant on the Sponsor. The argument developed so that even though the Appellant has no financial dependency, assuming she is required to have one, the dependency can be the care and support of the Appellant by other family members. His further submission was that, under Rule 12 of the 2006 Regulations particularly Rule 12(1)(b)(i), because the Appellant is lawfully resident in Italy there is no requirement to have any financial dependency or indeed any dependency on the Sponsor. It was extremely difficult to tie down Mr Singh's arguments for they seemed to vary particularly when the Appellant had previously asserted that she was supported financially by the Sponsor.

5. It is said, as described by the judge, the main thrust appeared to be the suggestion that the Appellant is physically and/or emotionally dependent upon the Sponsor. There is reference to her needing help for her daily requirements like preparing food and washing etc. There is also an inference that she may have some medical problems. No medical evidence has been produced. No independent assessment of the Appellant's physical and emotional needs has been carried out.
6. The judge found that such evidence as was adduced was not sufficient to show financial dependency of any kind.
7. Further on the limited evidence the wish of the Appellant and Sponsor to live together was not appropriate and acceptable evidence to demonstrate sufficient dependency to meet the requirements of the Rules. Cited to the judge were the 2006 version of the EEA Regulations also as recited in Mr Singh's skeleton argument, however the problem is that those Rules were changed in 2011 so as to alter Rule 12(1)(b), delete (i) and to change by insertion Rules 12(1A) and 12(1B) as well as some minor consequential amendments elsewhere. Thus paragraph 12(1)(b)(i) did not exist at the relevant time.
8. I find the judge considered dependency as at the date of the Respondent's decision and at the date of hearing in far wider terms than simply financial. The judge on the bare evidence of her personal circumstance carried out a holistic examination of the facts and factors with particular care to the existing and proposed relationship of dependency and present dependency. The case of Jia cited by the judge shows that dependency is not simply a calculation of financial dependency. A matter repeated in Reyes [2013] UKUT 314 (IAC) which should have been brought to the judge's attention, as should have been Lim [2013] UKUT 437.

9. I do not find the change presently to be found in the eighth edition of Phelan and Gillespie Immigration Law Handbook assists the argument because under Rule 12 the family member must be joining the EEA national in the United Kingdom. The family member as defined in Regulation 7 includes dependants as defined in Regulation 7. If 'dependants' had no material meaning it could simply have been deleted from Regulation 7. The judge addressed this issue and I do not find the reasoning discloses any error of law in the view the judge formed of Regulation 12.
10. In the circumstances the judge noted the evidence of the Appellant's personal circumstance D&R paragraphs 4-7 and at paragraphs 25, 26 and 27 addressed the dependency contemplated and for the reasons given concluded that it was not sufficient in extent or form to amount to dependency under the 2006 Regulations.
11. The judge went on to consider Article 8 of the ECHR on a freestanding basis.
12. There is no challenge in the grounds to the Article 8 decision. I do not find that the determination discloses any error of law for the judge followed the correct approach established the bare evidence that was provided and concluded that the Respondent's decision was proportionate.
13. I do not find the original Tribunal's decision discloses any error of law.

Signed

Date 23 June 2014

Deputy Upper Tribunal Judge Davey

**ANONYMITY ORDER**

No anonymity order was requested nor do I find it appropriate that there should be one.

Signed

Date 23 June 2014

Deputy Upper Tribunal Judge Davey