



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

Appeal Number: OA/12874/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 10 June 2014**

**Determination
Promulgated
On 8 July 2014**

Before

**LORD MATTHEWS
SITTING AS A JUDGE OF THE UPPER TRIBUNAL
UPPER TRIBUNAL JUDGE KING TD**

Between

MS CHRISTIANA EDIALE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss K Anifowoshe of Counsel

For the Respondent: Mr T Melvin, a Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal by Ms Christiana Ediale against a determination of First-tier Tribunal Judge Woolley dated 18 March 2014 refusing her appeal against a decision to refuse a family permit, for a period of two months, under Regulation 7(1)(c) of the Immigration (European Economic Area) Regulations 2006 as a family member of an EEA national.

2. It is common ground that in order to succeed in her appeal she would have had to demonstrate that she was a dependent family member. Permission to appeal was granted principally on the basis that the judge appeared to consider the matter on the basis that it was an appeal against entry clearance refusal rather than an appeal in connection with a family permit but as the case has gone on it does not appear that that is a matter which is of any materiality.
3. The real issue which was before the judge and on which the judge made her decision was the question of dependency and before us today Counsel argued that there was sufficient evidence which should have enabled the judge, in fact driven the judge, to infer that the appellant was dependent on her family in this country. There is evidence that certain payments were sent over to Nigeria.
4. There is evidence that she is a pensioner, although the circumstances of that pension are not entirely clear as it pointed out in paragraph 25 of the determination. There is evidence that she lives in a house owned by a daughter.
5. The difficulty the judge had was one which was foreshadowed in the Reasons for Refusal Letter that, while the appellant stated that she was dependent on her son-in-law and daughter, she had not submitted any evidence of that. The refusal letter was dated 16 May 2013 and the judge had found on the information before her that the situation was exactly the same, namely that there was no sufficient evidence of dependency.
6. We do not agree with the submissions of Counsel that the judge must have been driven to infer that the situation was one of dependency merely because certain payments were made. In our opinion the judge was quite correct to indicate that she would have expected the appellant to have provided a list of regular outgoings and describe how they were made by her family.
7. The judge indicated that there was a question about the appellant's pension but that matter was not fully ventilated in evidence. The witnesses, it was said by the judge, were vague as to how much money they sent to the appellant and how frequently. There was no account of the appellant's income or her daughter's income or what contributions she made to her mother.
8. Mr Eson could not specify the contributions by his wife to her mother-in-law, nor could he state what her outgoings in Nigeria were. He could not say what her costs were. There was nothing to indicate any financial arrangement in relation to her house if there was any such arrangement. There was no statement from Stephen Draughan about his role in the money which was sent over and which appeared to be sent to him.

9. In summary, the judge could have found that the appellant depended on her family if she accepted such evidence as there was and if she was prepared to draw the necessary inference but the judge was not required to accept that evidence or draw that inference. She regarded the lack of supporting evidence of actual need as being significant. We cannot see that she fell into any error of law in reaching that conclusion. One would have thought that in light of the letter of refusal the appellant would have been put on notice as to precisely what type of evidence she should have presented but she did not do so, and the judge cannot be criticised for taking the view that she was not prepared to make the findings desiderated. Evidence of payments of money is not the same as evidence of need for the money on the part of the recipient.
10. In these circumstances the appeal is refused.

Signed

Date

Lord Matthews
Sitting as a Judge of the Upper Tribunal