



IAC-FH-CK-V1

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

Appeal Numbers: IA/33132/2014  
IA/34213/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 6 November 2015**

**Decision & Reasons Promulgated  
On 20 November 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MR HENRY AGYEMANG  
MR GILBERT MANU  
(ANONYMITY DIRECTION NOT MADE)**

Respondents

**Representation:**

For the Appellant: Ms E Savage, Senior Home Office Presenting Officer  
For the Respondents: Ms N Nnamani, Counsel, instructed by Simon Bethel Solicitors

**DECISION AND REASONS**

**Introduction**

1. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge Andonian (Judge Andonian) promulgated on 12 May 2015 in which he allowed the appeals of the two Respondents, Mr Agyemang and Mr Manu. Those appeals were in turn against the Secretary of State's

refusal to issue permanent residence cards under the Immigration (European Economic Area) Regulations 2006 (the Regulations). The refusals were dated 30 July 2014.

2. The two Respondents are citizens of Ghana. They are the stepbrothers of the Sponsor in the United Kingdom, who is herself an Austrian national. The two Respondents were originally issued residence cards as extended family members valid from 12 March 2008 to 12 March 2013. An application was made on 6 March 2013 seeking the issuance of a permanent residence card.
3. The appeal was first heard by First-tier Tribunal Judge Scott-Baker. Her decision was promulgated on 15 April 2014. Judge Scott-Baker found that the Sponsor had in fact been exercising her Treaty rights for a continuous period of five years. In the light of this finding Judge Scott-Baker allowed the appeals on the limited basis that the decisions of the Secretary of State were not otherwise in accordance with the law because the discretion under Regulation 17(4) of the Regulations had yet to be exercised. She reached this conclusion notwithstanding the fact that the Respondents had applied for permanent residence cards, not residence cards.
4. The Secretary of State then made a fresh decision. In that decision it was said that neither of the Respondents had in fact been extended family members within the meaning of Regulation 8(2) of the Regulations for a continuous period of five years. They had failed to show residence in the United Kingdom either as members of the Sponsor's household and/or as her financial dependants.
5. On appeal to Judge Andonian the Respondents maintained their claim that they were in fact entitled to permanent residence cards. Judge Andonian noted that in his view Judge Scott-Baker had been wrong to send the matter back to the Secretary of State on the basis of Regulation 17(4) of the Regulations. He then set out aspects of the evidence provided by the Respondents and ultimately concluded that as there was a "connection" between the Respondents and the Sponsor, the former had acquired a permanent right of residence in this country and were therefore entitled to the relevant documentation.
6. The Secretary of State sought permission to appeal to the Upper Tribunal arguing that Judge Andonian had failed to deal with relevant evidence and had failed to engage with relevant issues in the appeals. Permission to appeal was granted by First-tier Tribunal Judge Pirota by a decision dated 31 July 2015.

### **The hearing before me**

7. At the hearing before me Ms Savage for the Secretary of State relied upon the grounds. In addition to the grounds she submitted that the term "connection" used by Judge Andonian on repeated occasions was unclear,

that he had failed to address the relevant dependency test, that there were effectively no findings of fact on relevant issues, and that in any event he had misdirected himself in law as to the relevant requirements for permanent residence under Regulation 15 of the Regulations.

8. Ms Nnamani for the Respondents submitted in essence that Judge Andonian's decision was sustainable, that he had had regard to relevant evidence, had deemed the Respondents to be credible and had made relevant findings albeit, she accepted, perhaps not as clearly as he may otherwise have done. It was her submission, expressed perhaps somewhat tentatively, that his legal direction was adequate and that as a whole the decision should stand.

### **Decision on error of law**

9. In my view Judge Andonian has made a number of material errors of law. He has failed to address relevant evidence, in particular that cited in the Secretary of State's refusal letter in respect of evidence given before Judge Scott-Baker in the first appeal. He has failed to resolve material conflicts in the evidence. He has failed in fact to make any clear findings in relation to either the issue of membership of a household or financial dependency. He has failed to express or apply the relevant test of dependency; that being whether the Respondents' essential living needs were being met by financial support from the Sponsor. He has failed to explain adequately or at all what was meant by the term "connection", a word used repeatedly in his decision, and he has, in my view, misdirected himself in law as to the correct test under Regulation 15(1)(b) of the Regulations.
10. In this last regard, it is not enough that the Respondents were simply living in this country and that the Sponsor had been exercising her Treaty rights for five continuous years. It was necessary for the Appellants to show that they had been residing for the five continuous years as *extended family members of the Sponsor*, and this meant that they had to show that they had satisfied the requirements of Regulation 8(2) of the Regulations throughout the relevant period.
11. On the basis of the numerous errors of law stated above, I set aside the decision of Judge Andonian.

### **Disposal**

12. In terms of disposal of these appeals, I have considered whether to retain the cases within the Upper Tribunal or, unusually, to remit them back to the First-tier Tribunal. Having heard from Ms Savage and Ms Nnamani I conclude that in these particular cases I should remit back to the First-tier Tribunal having regard to paragraph 7 of the relevant Practice Statements. I have taken this course of action because there has in effect been a complete failure to make any relevant findings of fact on what is extensive and contentious evidence on a number of material issues.

13. It will take careful consideration of all the evidence including additional oral evidence from the Respondents and the Sponsor in order for a sound final determination of these appeals to be made. In light of that the appeals will go back to the First-tier Tribunal to be reheard.
14. There is one finding made previously that will be preserved in respect of the remitted hearings before the First-tier Tribunal, and that is that the Sponsor has already acquired a permanent right of residence in this country by virtue of her exercising Treaty rights for the requisite five continuous years. Other than that preserved finding the issues in respect of the Respondents are at large and fall to be determined by the First-tier Tribunal in due course.

### **Notice of Decision**

**The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.**

**I set aside the decision of the First-tier Tribunal.**

**I remit the case to the First-tier Tribunal.**

### **Procedural Directions:**

- 1. These appeals are to remain linked;**
- 2. The appeals are remitted to the First-tier Tribunal for rehearing on a date to be fixed by the Taylor House hearing centre;**
- 3. The appeal shall not be reheard by First-tier Tribunal Judges Andonian or Scott-Baker.**

### **Substantive Directions:**

- 1. The only preserved finding that shall apply in the remitted hearing is that referred to in paragraph 14 of my Decision, above;**
- 2. The issues to be determined in the remitted appeals are: first, whether either Mr Manu and/or Mr Agyemang have acquired a permanent right of residence in the United Kingdom; second, if not, whether, depending on the factual findings of the First-tier Tribunal, they nonetheless have an extended right to reside in the United Kingdom as extended family members of the Sponsor (see, for example, paragraph 44 of MDB [2010] UKUT 161 (IAC)).**

No anonymity direction is made.

Signed

Date: 19 November 2015

Deputy Upper Tribunal Judge Norton-Taylor