



**Upper Tribunal  
(Immigration and Asylum Chamber)  
IA/07748/2015**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 11 February 2016**

**Decision & Reasons  
Promulgated  
On 22 February 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE APPLEYARD**

**Between**

**WISDOM AWUAH  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr. S. Unigwe, Counsel.

For the Respondent: Mr. P. Duffy, Home Office Presenting Officer.

**DECISION AND REASONS**

1. The appellant is a citizen of Ghana who appealed against a refusal by the respondent to grant his application for a residence card under the Immigration (European Economic Area) Regulations 2006.
2. His appeal was heard in Birmingham and in a decision promulgated on 22 July 2015 Judge of the First-tier Tribunal Jessica Pacey dismissed it.

3. The appellant sought permission to appeal which was granted by Judge of the First-tier Tribunal J. M. Holmes on 9 November 2015. His reasons for so doing are:-
  - “1. In a Decision promulgated on 22 July 2015 Judge Pacey dismissed the Appellant’s appeal against the Respondent’s decision to refuse to issue him with a residence card as the dependent descendant of an EEA national by reference to Reg 7 of the EEA Regulations.
  2. It was not in issue that the Appellant was the adult son of the sponsor – but it was disputed by the Respondent that he was dependent upon the sponsor at the date of decision.
  3. The Judge rejected the claimed dependency. Whilst this is an extremely brief decision that in several respects is less than clear, it is arguable that she did accept that they lived together. If so, that raised the question of whether the sponsor was telling the truth when he claimed to have paid all of the utility bills for the accommodation they shared. Arguably there is no decision upon that issue. If the decision is to be interpreted as including such a finding, and if it is adequately reasoned, and is sustainable, then it is arguable that she failed to go on to engage with the true nature of the test of ‘dependency’ in the Reg 7 context.
  4. There might have been no need for the Judge to go on to consider in the alternative whether the Appellant met the requirements of Reg 8, as the EFM of the sponsor, if an earlier decision of Upper Tribunal Judge Craig of 18 May 2012 had rejected the Appellant’s claim that when he lived in Ghana he had been dependent upon, or had been a member of the household, of the sponsor, who was then living in the UK. Given however the arguable failure of the Judge to identify precisely what findings were made in this decision, and to relate them to the chronology of the Appellant’s life in Ghana prior to travelling to the UK it is arguable that she did need to do so, and that she failed to do so.”
4. Thus the appeal came before me today.
5. Mr. Unigwe argued that it was incumbent upon the First-tier Tribunal Judge to firstly consider the two types of dependent family members – membership of the household and dependent family member. He argued that the judge should have allowed the appeal and that she had erred in ignoring the appellant’s membership of the same household, that of his sponsor. Beyond that it was wrong of her to go on to consider other aspects of the appeal. Not only has the judge got it wrong, but she has failed to appreciate the dependency is purely a factual test. The judge had wrongly placed emphasis on an application previously made in Ghana

and has failed to give reasons for coming to the conclusion that there was in this appeal no dependency.

6. I referred Mr. Duffy to paragraph 3 of Judge Holmes's reasons for granting permission to appeal. He accepted that it was difficult for him to resist the reasoning therein.
7. I share the analysis of Judge Holmes having further considered not just the arguments put forward by the appellant's Counsel, but also the written material before me. I find the judge did accept that the appellant lived with the sponsor. That raised the question of whether the sponsor was telling the truth when he claimed to have paid all of the utility bills for the accommodation that they shared. There is no decision on this particular issue. If, however, the decision is to be interpreted as including such a finding which is adequately reasoned, the judge has also failed to go on to engage with the true nature of the test of "dependency" in the context of Regulation 7. For those reasons there is within this decision a material error of law.
8. The issue then arose as to how I should dispose of the appeal before me today. Mr. Unigwe argued that I should proceed to allow the appeal outright. Mr. Duffy sought to persuade me that the appropriate way forward was remittal to the First-tier Tribunal.
9. I preferred the arguments of Mr. Duffy. This is an appeal where one party has been deprived of a fair hearing. Facts have to be found on various issues which require substantial evidence to be given. For all these reasons I find the decision of the First-tier Tribunal contains errors of law and has to be set aside in its entirety. It is appropriate for the appeal to be considered once more and decided afresh by the First-tier Tribunal.

### **Decision**

10. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal to be dealt with afresh, pursuant to Section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), before any judge aside from Judge Jessica Pacey.
11. No anonymity direction is made.

Signed

Date 15 February 2016.

Deputy Upper Tribunal Judge Appleyard