



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

Appeal Number: IA/38669/2014

**THE IMMIGRATION ACTS**

**Heard at Centre City Tower, Decision & Reasons Promulgated  
Birmingham  
On 12<sup>th</sup> May 2016**

**On 29<sup>th</sup> July 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**MR PERCY STEVE MASSALA  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: No legal representation

For the Respondent: Mr D Mills (HOPO)

**DECISION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge T G Bradshaw, promulgated on 3<sup>rd</sup> March 2015, following a hearing “on the papers” at Belfast on 17<sup>th</sup> February 2015. In the determination, the judge dismissed the appeal of the Appellant. The Appellant applied for, and was subsequently granted permission to appeal to the Upper Tribunal, thus the matter comes before me.
2. The Appellant is a male, a citizen of the Democratic Republic of Congo, and was born on 17<sup>th</sup> September 1974. He made his application for a residence card as confirmation of his right to reside in the United Kingdom

[in] July 2014, and by a decision dated 16<sup>th</sup> September 2014, the application was rejected. Reasons given were that the failed to provide evidence of his dependency on his EEA national Sponsor, who was his brother, at the time either in the Congo, or in the United Kingdom, and the Appellant had not provided any evidence that he was dependent on his EEA national Sponsor immediately prior to entering the United Kingdom.

3. It is a feature of his case, that although the Appellant claimed that he had been dependent upon his brother, both in the Congo, and in France, before coming to the UK, the judge nowhere makes reference to his claimed dependency on his brother in France, and only deals with his claimed dependency in the United Kingdom. The judge had regard to the fact that the Appellant's brother, Tristan Jocelyn Massala was specified as being French (see paragraph 9). There was a letter from the landlady of the Appellant, Zanab Bibi, dated 3<sup>rd</sup> July 2014 which said that Tristan Jocelyn Massala is a tenant and resides at the address with his brother, the Appellant.
4. The judge held that there "was no further information contained within this letter" (paragraph 10). The judge also observed that there was a letter dated 4<sup>th</sup> July 2014 "from the Appellant stating that he married Lisa J Walker in January 2010, but the relationship ended in 2013", and that the Appellant was currently "out of work and he depended on his brother to support him financially" (paragraph 13).
5. He then went on to conclude that the concerns of the Respondent in terms of the reasons for refusal letter of 16<sup>th</sup> September 2014, in respect of the issue of evidence of the Appellant's dependency "on his EU national either in Congo or the UK are valid" (paragraph 15). He further stated that looking at all the evidence in the round, "it does not seem to me that the Appellant in his appeal documentation has satisfactorily addressed the valid concerns of the Respondent in terms of the issue of dependency" (paragraph 16). The appeal was dismissed.

### **Grounds of Application**

6. The grounds of application state the judge had failed to heed properly Regulation 8 of the 2006 Regulations which covers extended family members. The Appellant had been out of work when he applied. He is dependent on his brother for the payment of the rent of the premises where he lived, with his brother. The grounds further state that, "Also, I lived with my brother France, and more importantly in the UK at the time applied in July 2014. The payslip show the address we both lived in had been ignored by the Home Office and the judge".
7. On 24<sup>th</sup> April 2014, permission to appeal was granted by the Tribunal on the basis that there was clear evidence before the judge that the Appellant was residing in his brother's household in the United Kingdom, namely, a letter from the landlord, Zanab Bibi, and two payslips. However, there appears to be no mention of the fact that the Appellant was a member of his brother's household in France. The Grounds of Appeal go on to say that,

“The applicant came to the UK in 2004 – prior to coming to the UK he resided with his brother in France where he was financially dependent on his brother. The applicant resided five to six months and claimed asylum – reference number 2003-03-03012-AFMIMR2”.

In granting permission, the judge also held that the Appellant had clearly stated in his additional grounds that he has a child in the UK who is a British national. The grant ends by stating that it would be appropriate for any further hearing to be an oral hearing and not on the papers.

8. At the hearing before me on 12<sup>th</sup> May 2016, the Appellant stated that the judge had erred in assessing his dependency because he had lived with his brother in France. The Appellant was assisted by a French interpreter, Ms Ebin, but it quickly transpired that he was extremely fluent in the English language, and occasionally broke into speaking English fluently. He stated that he also was dependent upon his brother. There were payslips that he had submitted which had not been considered by either the Home Office or the judge. He showed that he and his brother lived at the same address. In this context, what the landlady Zanab Bibi said, acquired a different complexion and her letter of support should have carried greater weight than it did, because it should not have been considered as a single piece of documentary evidence standing alone. He said that he had also produced bank statements which showed that he and his brother lived in the same apartment. In 2003 he and his brother lived in the same house in France. This was part of the documentary evidence that was before the judge to consider in an appeal court “on the papers” and it had been overlooked.
9. For the Respondent, Mr Mills submitted that the Appellant had provided little documentation. He had asked for a “paper hearing”. He had not attended the hearing and the judge decided as best as he could. Whereas it was true that the position of dependency in France had not been considered, it had been considered in relation to the Appellant’s situation in the United Kingdom, and the Appellant had satisfied dependency both in France and in the United Kingdom. Given that the judge had properly found that he could not satisfy dependency in the UK, it mattered not that the judge had overlooked the evidence in relation to dependency in France, because it would not have made a material difference to the outcome of the appeal. Finally, the judge granting permission had gone further than she should have because reference is made to the Appellant having a child. Indeed, the Appellant has been granted leave to remain in the UK precisely on the basis of his British citizen child, and there are no removal directions in place, so the only issue was his EEA residence card, and it is open to him to make another application, where he can attend and give evidence orally with his brother (who was not in attendance at today’s hearing) with a view to satisfying the relevant requirements of Regulation 8.
10. In reply the Appellant stated that the judge did not mention the brother’s payslips and did not deal with the question that they were living together

in France. These are material considerations and the judge failed to take them into account. The evidence was before the judge.

### **Error of Law**

11. I am satisfied that the making of the decision by the judge involved the making of an error of law (see Section 12(1) of TCE 2007) such that I should set aside the decision. My reasons are as follows.
12. First, Mr Mills is entirely right that the Appellant has to demonstrate dependency both in France and the United Kingdom to succeed under Regulation 8. He is right that where the judge considered the position in the United Kingdom, it was open to him to conclude that the Appellant (who after all had asked only for a “paper hearing”), had faced an uphill task in being able to discharge the burden of proof. However, a failure to consider possible dependency in France, is not such which as Mr. Mills maintains, could not have led to a different result.
13. This is because even in the consideration of the position in the UK, the judge failed to have regard to the payslips of the brother in the United Kingdom, and the bank statements, and the fact that the brother paid the rent, in premises at which the Appellant himself lived. Had this been taken into account, the landlady’s letter of Zanam Bibi could doubtless have been given greater weight. Therefore, even the position in the United Kingdom was not comprehensively assessed on the evidence before the judge.
14. Second, and in the light of this, a failure to consider the position in France, on the available documentation before the judge in the appeal papers, was one which could have led to a favourable decision. This is because there was material evidence which was not taken into account, and the position not fully assessed in relation to the application of Regulation 8.
15. It is unfortunate that the Appellant’s brother was not in attendance today, but the Appellant himself was not legally represented, and did not expect a final decision to be made, and in the circumstances, this matter is remitted back to a First-tier Tribunal Judge other than Judge T J Bradshaw, for what is to be an “oral hearing”, with evidence given both by the Appellant and his brother so that a proper assessment can be made of the entire picture which the Appellant wishes to present before the Tribunal.

### **Notice of Decision**

16. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is remitted back to a judge other than Judge Bradshaw to be determined again on the basis of Practice Statement 7.2(B).
17. No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

29<sup>th</sup> July 2016