



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/21418/2015

THE IMMIGRATION ACTS

Heard at Field House
On 2nd August 2017

Decision sent to parties on
On 11th August 2017

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

TESSIE SABAY
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance or representation

For the Respondent: Ms N Willocks-Briscoe, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of the Philippines, who appeals with permission against the decision of the First-tier Tribunal dismissing her appeal against the respondent's decision to refuse her a residence card under the Immigration (European Economic Area) Regulations 2006 (as amended) as the family member of her son-in-law, who is a Lithuanian citizen and therefore an EEA national.

2. The appellant did not attend the hearing today or arrange representation and no explanation for her absence has been received.
3. The respondent's decision was made on 26th May 2015 and therefore the 2006 Regulations applied to it. The appellant's case is that she is a family member as defined in Section 7(1)(c) of the 2006 Regulations:

“(1) Subject to paragraph (2), for the purposes of these Regulations the following persons shall be treated as family members of another person - ...

(c) *dependent* direct relatives in his ascending line or that of his spouse or his civil partner.” [Emphasis added]

4. As set out in the First-tier Tribunal Judge's decision, there is no dispute that the appellant is the ascending family member of the EEA national's spouse. The question is whether she is dependent. If the appellant is not dependent on the EEA national or his spouse, she is an extended family member, and I have no jurisdiction by way of statutory appeal (*Sala* (EFMs: right of appeal) Albania [2016] UKUT 411 (IAC)). However, if the appellant can show dependency, she is a family member, not an extended family member, and is entitled to a residence card.
5. I have no assistance from the appellant herself today, so I must rely on the facts found in the First-tier Tribunal decision. The relationship between the appellant and her sponsor did not begin until 2012 by which time the appellant had been in the United Kingdom for eleven years. The appellant's daughter met her husband some time after she came to the United Kingdom, and married him here. This appellant was not dependent on her daughter's spouse whilst in the Philippines because she had her own business there and her daughter had not yet met and married the sponsor.
6. The appellant asserted in the First-tier Tribunal that her business in the Philippines had collapsed in 2001, but no evidence whatsoever was adduced in support of that assertion and the First-tier Tribunal did not accept that fact. The evidence before the First-tier Tribunal was that the appellant works as a care worker, since coming to the United Kingdom, but that her ability to work and earn her living was interrupted for some time. However, it was also her evidence that she had now been able to return to work. The appellant was living with her pregnant daughter and the sponsor in their accommodation, and earning £350 a month. The sponsor and the daughter pay the rent.
7. The First-tier Judge directed himself by reference to the meaning of dependency as set out by Lord Justice Elias at paragraph 32 in *Lim v Entry Clearance Officer Manila* [2015] EWCA Civ 1383 and did so correctly. That passage says this:

“In my judgment, the critical question is whether the claimant is in fact in a position to support himself or not, and *Reyes* now makes that clear beyond doubt, in my view. That is a simple matter of fact. If he can support himself, there is no dependency, even if he is given financial material support by the EU citizen. Those additional resources are not necessary to enable him to meet his basic needs. If, on the other hand, he

cannot support himself from his own resources, the court will not ask why that is the case, save perhaps where there is an abuse of rights. The fact that he chooses not to get a job and become self-supporting is irrelevant. It follows that on the facts of this case, there was no dependency. The appellant had the funds to support herself. She was financially independent and did not need the additional resources for the purpose of meeting her basic needs.”

8. There is no indication that there was any evidence before the First-tier as to whether the appellant could live on £350 a month, with the addition of such benefits as she might be entitled to receive, or even without them. On the basis of the evidence which was before the First-tier Judge it was unarguably open to the judge to conclude that the appellant had not shown that she is a *dependent* direct relative in her daughter’s ascending line and accordingly she is an extended family member and the Upper Tribunal, like the First-tier Tribunal, has no jurisdiction in this appeal.
9. Appeal dismissed.

Conclusions

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.

I re-make the decision in the appeal by dismissing it.

Signed: *Judith A J C Gleeson*
Upper Tribunal Judge Gleeson

Date: 10 August 2017

