



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/00641/2017

THE IMMIGRATION ACTS

Heard at FIELD HOUSE
On 11.7.2018

Decision & Reasons Promulgated
On 18.7.2018

Before

DEPUTY UPPER TRIBUNAL JUDGE
G A BLACK

Between

MS JANIA MARIA ALCANTARA GUALBERTO
NO ANONYMITY ORDER MADE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms G Jones (Counsel)

For the Respondent: Mr C Tarlow (Home Office Presenting Officer)

DECISION AND REASONS

1. This is an error of law hearing. The appellant appeals against a decision and reasons by First-tier Tribunal (Judge R. Sullivan) ("FtT") promulgated on 25.1.2018 in which her appeal against a decision made by the respondent to cancel her residence card as

a right of residence as a family member of an EEA national with reference to Regulation 17(4) & (5) Immigration (EEA Regulations) 2016, was dismissed.

Application for permission to appeal

2. Permission to appeal was sought on the grounds that having refused to allow cross examination on a matter that was conceded in relation to previous financial dependency, yet in the decision and reasons the FtT found that there was no financial dependency [11d & 13][18].

Background

3. The appellant was granted a residence card in September 2013 as an extended family member. She accepted that at the time of the decision she was not a member of the sponsor's household nor dependent on him, but submits that her circumstances bring her within the definition of an extended family member under Regulation 8 (**Dauhoo** (EEA Regulations – reg 8(2)) [2012] UKUT 00079 (IAC).
4. It was accepted that prior to entering the UK the appellant was either dependent on or a member of the sponsor's household (and this was a concession made by the respondent) [13]. She made a visit to Brazil and returned to the UK on 4.1.2017 where she was refused entry and her residence card cancelled. In an interview the appellant stated that she had moved out of the family home after she was given her residence card and obtained employment. Her income exceeded that of her sponsor and so she was not financially dependent on them. Her appeal before the First-tier Tribunal was on the basis that after returning to the UK she resumed member of the sponsor's household and stopped working. It was conceded by the respondent's representative that there had been previous dependency in Brazil on which basis the residence card had been granted.

FTT decision

5. The FtT decision recorded that the respondent had made a concession as to previous historical dependency/membership of household [13] and that the FtT had refused to allow cross examination on that issue. The FtT recorded that "some of the Appellant's answers in cross examination suggested that the prior circumstances were not as the respondent believed then to be." The FtT found that the appellant was earning an income and intended to return to that employment post hearing [16]. It found that the appellant "is not financially dependent on the sponsors" [18]. It further found that the appellant left the family home in 2013 and rented accommodation and that she did not move back into the sponsor's house in January 2017. The FtT inferred that payments made from her account to the person who was

her landlord, were for rent. The FtT found that the appellant has continued to live in rented accommodation [21].

Permission grant

6. Permission was granted by FT Judge SPJ Buchanan who found that there were arguable grounds that the FtT ought to have allowed the appellant the opportunity to make submissions on the issue of previous dependency before concluding that the concession was ill founded.

Rule 24 Response

7. The respondent did not produce a Rule 24 Notice.

Submissions

8. Ms Jones relied on the grounds of appeal and further submitted that the FtT erred by failing to consider Regulation 8 and focusing on Regulations 7 and 11. The findings were unclear as to where the appellant was living at the present time and the FtT failed to engage with the case as put by the appellant. There was no issue that at the date of decision the appellant was neither dependent nor a household member. She submitted that the payments made were variable amounts and were not consistent with rental payments. The FtT failed to give a Lucas direction that there could be other reasons for lying about the payments. Ms Jones acknowledged that the FtT had in fact made an explicit finding at [21] that the appellant was living in rented accommodation.
9. Mr Tarlow responded that the decision was sustainable in particular given the negative credibility findings made by the FtT [18] & [19]. Mr Tarlow conceded that the decision was unclear at [20] but as a whole it should stand.

Discussion and conclusion

10. At the hearing before me I canvassed the possibility that the FTJ who granted permission had misunderstood the grounds to the extent that the concession related to previous historical dependency and the finding made at [18] related to present dependency and so any error on the part of the FtT was not material given that the issue before the FtT was the current dependency or membership of household (see skeleton argument paragraph 12), albeit that historical dependency need to be shown in any event. The FtT clearly found that there was no reliable evidence to show that the appellant was either currently financially dependent on nor a member of the sponsor's household. I am satisfied that the FtT's findings as to payments shown in the appellant's bank statements were adequate and capable of supporting the

conclusion that the appellant was paying rent and thus not a member of the sponsor's household [21].

11. I do accept that the FtT focused largely on the issue of financial dependence which was not how the appellant's case was argued and that the FtT could have made clearer findings and given fuller reasons, but having regard to all of the evidence which included the record of interview and the FTT's clear finding that none of the witnesses were truthful, I am satisfied that there was no material error of law. The appellant has been given reasons to explain why her appeal has been dismissed largely on the basis that the FtT found all of the witnesses to be unreliable and not telling the truth [18]. The FtT made a specific finding that the appellant was living in rented accommodation [21]. The issue of historical dependence or membership of the household was never challenged as the respondent was refused permission to cross examine and prevented from going behind the concession made. I find nothing in the decision to indicate that the FtT found that the concession could not be relied on as it appeared it was. The comments made by the FtT [13] were simply that and in my view did not infect the remainder of the decision. In any event the FtT found against the appellant on the evidence of present dependency/ membership of household and thus the requirements in Dauhoo at headnote ii and iii could not be met. Any error was not material to the issues under consideration in the appeal.

Decision

12. There is no material error of law disclosed in the decision which shall stand.

Signed

Date 17.7.2018

GA Black

Deputy Judge of the Upper Tribunal

NO ANONYMITY ORDER

NO FEE AWARD

Signed

Date 17.7.2018

GA Black

Deputy Judge of the Upper Tribunal