



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: EA/14378/2016

**THE IMMIGRATION ACTS**

Heard at Bradford  
On 20 September 2018

Decision & Reasons Promulgated  
On 24 September 2018

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

CLIFFORD QUADOO

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the appellant: Mr Medley-Daley, Solicitor instructed by Immigration Legal Advice Centre

For the respondent: Mr Diwnycz, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. The appellant is a citizen of Ghana who was born in 1986 and is now 32 years old. On 7 December 2016, the respondent refused to grant him permanent residence pursuant to the Immigration (EEA) Regulations 2006 ('the 2006 Regs'). The basis of the appellant's claim was that at all material times he was dependent upon his father ('the sponsor'), a direct family member and an EEA Citizen residing in the UK for the purposes of regulation 7. The respondent was not satisfied that there was sufficient evidence of dependency particularly in light of the appellant's net income from employment of £1500 per month.

### **The appeal to the First-tier Tribunal**

2. The appellant appealed to the First-tier Tribunal ('FTT'). Judge Ince dismissed the appellant's appeal in a decision dated 23 January 2018. He accepted that the appellant and sponsor provided credible evidence. He therefore accepted that the appellant earned more than the sponsor but had been living in his household at all material times and the sponsor paid all household bills including rent, Council tax and utilities.
3. The FTT calculated that the appellant's essential expenditure was represented by one-third of the household bills i.e. £500. The FTT observed this to be significantly less than half the appellant's income. The FTT concluded that the appellant could demonstrably afford all his essential needs and was not dependent on the sponsor, and dismissed his appeal.

### **The appeal to the Upper Tribunal**

4. The appellant sought permission to appeal to the Upper Tribunal on the basis that: (i) the FTT erred in law in failing to find that the dependency may not be necessary but there was a dependency of choice, and; (ii) the FTT failed to consider regulation 8 in the alternative to regulation 7.
5. On 16 March 2018, the FTT (Designated Judge Manuel) granted the appellant permission to appeal observing it to be arguable that Judge Ince failed to engage with the consequence of the separate issue of membership of the same household, which the Judge accepted.
6. At the hearing before me, Mr Daley-Murdoch relied upon the grounds of appeal. I invited him to address me on Lim v ECO [2015] EWCA Civ 1383; [2016] Imm AR 421. Mr Daley-Murdoch was unable to identify any material error of law in the FTT decision, if as he acknowledged, the critical question is whether the appellant could support himself from his own resources. For this reason, Mr Daley-Murdoch turned his attention to the second ground of appeal. He was however unable to explain how it could properly be said that the FTT erred in law in not considering regulation 8 when this did not form the basis of the grounds of appeal to the FTT against the respondent's decision dated 7 December 2016 and formed no part of the submissions advanced on the appellant's behalf by Counsel before the FTT.
7. After hearing from Mr Medley-Daley, I did not need to hear from Mr Diwnycz. I announced I would be dismissing the appeal with reasons to follow.

## **Discussion**

### *Ground 1 – dependency*

8. I have no hesitation in concluding that the FTT was entirely correct in determining that the appellant is not dependent upon the sponsor for the purposes of regulation 7 of the 2006 Regs.
9. The Court of Appeal have relatively recently examined the question of whether a family member is a 'dependent direct relative' for the purposes of regulation 7(1)(c) in Lim v ECO (supra). At [32] Elias LJ described the critical question as follows:

“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.”

10. In Lim, the Malaysian mother-in-law of an EU national living in the UK was not dependent on him, despite the fact that she received financial support from him: she was financially independent and did not need the additional resources for the purpose of meeting her basic needs. Similarly, given the undisputed factual matrix, this appellant was financially independent and did not need the support of the sponsor to meet his essential needs. The FTT was therefore fully entitled to conclude that notwithstanding the sponsor's payment of household bills for the appellant, the appellant did not need help to pay for his essential needs and was not actually dependent on the sponsor for the purposes of regulation 7.
11. Mr Daley-Murdoch faintly submitted that the FTT erred in law in failing to address whether the appellant could afford to support himself if he did not share household expenses. As I pointed out at the hearing, this was not included in the grounds of appeal and it was too late to raise the submission at the hearing. In any event, it is clear from the findings of fact that the FTT regarded this appellant as a person who had been and could continue to independently support himself.

### *Ground 2 – Regulation 8*

12. The respondent's decision refused the application for a residence card solely on the basis of regulation 7. This reflects the appellant's application itself. Section 13 addresses dependent family members and is fully completed. Section 14, which

addresses extended family members ('EFM') is not fully or properly completed. Further, the grounds of appeal to the FTT were completed by solicitors. Section 6 makes no reference to the appellant being an EFM in the alternative. Similarly, there was no argument based upon regulation 8 before the FTT. It follows that in failing to consider a matter that did not form part of the grounds of appeal or any argument before the FTT, there has been no error of law.

13. For all the above reasons, the FTT did not materially err in law in dismissing the appellant's appeal.

### **Decision**

14. The decision of the First-tier Tribunal to dismiss the appellant's appeal did not involve the making of a material error of law. That decision stands.
15. Accordingly, the appellant's appeal to the Upper Tribunal is dismissed.

Signed

*M. Plimmer*

Melanie Plimmer  
Judge of the Upper Tribunal

Dated

20 September 2018