



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/01088/2018

THE IMMIGRATION ACTS

Heard at: Field House
On: 23 September 2019

Decision & Reasons Promulgated
On: 25 September 2019

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

KENNEDY [N]

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E F Ogbonna instructed by Dorcas Funmi & Co Solicitors
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a national of Nigeria born on 8 April 1986, appealed against the respondent's decision to refuse to issue him with an EEA residence card under the Immigration (European Economic Area) Regulations 2016 ("the EEA Regulations") as an extended family member (cousin) of [AE], an Austrian national exercising treaty rights in the UK.
2. The appellant entered the UK after being issued with an EEA family permit as the extended family member of [AE] on 29 September 2015. He was subsequently refused a residence card as Mr [E]'s extended family member on two occasions, on 6 October 2016

and 3 March 2017, and he then made a third application on the same basis on 16 March 2017.

3. The appellant's application was refused on 29 September 2017 on the grounds that the respondent did not accept that he remained dependent upon Mr [AE] and that he did not, therefore, satisfy the requirements of Regulation 8(2). The respondent did not accept that the appellant currently resided with the EEA sponsor and did not accept that he was financially dependent upon him.

4. The appellant appealed against that decision and his appeal was heard by First-tier Tribunal Judge Abebrese on 2 May 2019. The judge accepted that the appellant resided at the relevant property but did not accept that he was financially dependent upon Mr [E]. He dismissed the appeal on all grounds.

5. The appellant sought permission to appeal that decision to the Upper Tribunal on the grounds that the judge had failed to make a finding on whether the appellant was a member of the sponsor's household and failed properly to assess the evidence in relation to the question of dependency.

6. Permission was granted on 9 August 2019.

7. In a Rule 24 Notice dated 9 September 2019 the respondent confirmed that the appellant's application for permission was not opposed.

8. At the hearing Mr Ogbonna asked that the matter be remitted to the First-tier tribunal, whereas Mr Clarke was content for the matter to be re-made by the Upper Tribunal on the basis that the evidence which had been before the First-tier Tribunal did not demonstrate that the appellant was a member of the sponsor's household.


9. It is not in dispute that Judge Abebrese had erred in law by failing to make a finding on whether the appellant was a member of the sponsor's household, given that membership of an EEA national's household was an alternative, under Regulation 8(2)(b)(ii), to demonstrating dependency upon the EEA national. The basis upon which the judge dismissed the appeal is therefore entirely unclear and his decision simply cannot stand and must be set aside.

10. It seems to me that this is a matter that has to go back to the First-tier Tribunal to be heard again. An assessment of the question of membership of the EEA sponsor's household requires there to be oral and documentary evidence together with full and proper findings on that evidence, and whilst membership of the same household and dependency are alternatives under Regulation 8(2)(b)(ii), the matters are necessarily interlinked and thus require an assessment of the evidence as a whole. Accordingly, the most appropriate course would be for the matter to be remitted to the First-tier Tribunal.

DECISION

11. 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 Abebrese.

Signed 
Upper Tribunal Judge Kebede

Dated: 23 September 2019