



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/03193/2018

THE IMMIGRATION ACTS

Heard at: Field House
On: 15 March 2019

Decision & Reasons Promulgated
On: 21 March 2019

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

MALAYKO [R]

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Krushner, Counsel

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a national of Somalia born on 1 January 1937, appeals, with permission, against the decision of the First-tier Tribunal dismissing her appeal against the respondent's decision to refuse to issue her with a permanent residence card under the Immigration (European Economic Area) Regulations 2016 ("the EEA Regulations"), as the

direct dependent family member of an EEA national who has exercised Treaty rights in the UK for a continuous period of five years.

2. The appellant was issued with a family permit on 15 November 2005, valid until 15 May 2006 and subsequently with a residence card valid until 11 December 2011. Following several unsuccessful applications for a permanent residence card, she was issued with a residence card on 22 October 2014 valid until 22 January 2019. On 15 December 2017 the appellant applied for a permanent residence card, but her application was refused on 3 April 2018.

3. The appellant's application was considered under regulation 15(1)(b) with reference to regulation 7(1)(c) of the 2016 Regulations and was refused on the basis that the respondent was not satisfied that the appellant was the dependent direct family member of her EEA national sponsor, her son [AA]. The respondent considered that the evidence showed that the appellant was not living with the EEA national sponsor and did not accept that she was financially dependent upon him.

4. The appellant's appeal against that decision was heard in the First-tier Tribunal by Judge Easterman on 29 October 2018. The case put to the judge was that the appellant was staying with the sponsor's sister, her daughter, and that the sponsor provided the appellant £200 a month which he gave in cash to his sister for their mother's support. The appellant had previously lived with the sponsor and had managed to arrange for the Department of Work and Pensions to pay her a pension credit which was still being paid. The appellant, who was 81 years of age and had mental health problems, had no income other than that provided by the DWP and the sponsor. She had moved out from the sponsor's house in 2009 when she started to develop dementia and went to live with her daughter. Her daughter was not working and neither was her husband. They lived with their four children in temporary council accommodation. It was argued on behalf of the appellant that she was only receiving the pension credit because she was dependent upon her son, the sponsor, and that that should therefore be taken into account when assessing dependency.

5. Judge Easterman was not satisfied, on the evidence before him, that the sponsor was making a regular payment in cash to his sister for the appellant's support. He did not accept that the payments from the DWP could be counted as demonstrating dependency on the sponsor and he concluded that the appellant was dependent on the state and not on the EEA national sponsor. He considered the argument, that the appellant was dependent on the sponsor because she received pension credit from the state, was wholly circular. He did not accept the dependency and considered the respondent's decision to be in accordance with the EEA Regulations. He accordingly dismissed the appeal.

6. Permission to appeal that decision was sought and granted on the grounds that the judge had arguably erred by finding that the appellant could not rely upon public funds to show dependency.


7. At the hearing Mr Krushner relied upon the cases of Centre public d'aide sociale de Courcelles v Marie-Christine Lebon (Free Movement of Persons) [1987] EUECJ R-316/85, Maria Frascogna v Caisse des depots et consignations. [1985] EUECJ R-157/84 and Lim (EEA -dependency) Malaysia [2013] UKUT 437 in submitting that the appellant's receipt of a benefit, namely pension credit, did not prevent her from establishing dependency on the sponsor, when it was because of her dependency upon the sponsor that she was able to obtain the benefit in the first place. He submitted that the judge had erred by finding otherwise at [25] to [28].

8. Mr Walker agreed that the judge had materially erred in law in that respect and he agreed with the submissions made by Mr Krushner. He agreed that the appellant had demonstrated dependency upon the sponsor and that the appeal ought therefore to be allowed.

9. In view of Mr Walker's concession, there is no need for me to make any detailed findings. The evidence, and the caselaw relied upon by Mr Krushner, supports the appellant's claim that she is a dependent direct relative, and therefore a family member of her EEA national sponsor, her son [AA], for the purposes of regulation 7(1)(c) of the 2016 Regulations, and has been so for the relevant period of time such as to entitle her to permanent residence under the EEA Regulations 2016. Judge Easterman erred in law in concluding that her receipt of pension credit disentitled her from a finding of dependency and his decision is accordingly set aside.

DECISION

10. 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 and is re-made by allowing the appellant's appeal under the EEA Regulations 2016.

Signed: 
Upper Tribunal Judge Kebede

Dated: 18 March 2019