



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: EA/12695/2016

**THE IMMIGRATION ACTS**

**Heard at Birmingham Civil Justice Centre  
On 16<sup>th</sup> April 2019**

**Determination & Reasons Promulgated  
On 23<sup>rd</sup> April 2019**

**Before**

**UPPER TRIBUNAL JUDGE COKER**

**Between**

**SHARON AGBOR BATEY**

Appellant

**And**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr J Dewa of Immigration Advisory Service

For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. Ms Batey is a citizen of Cameroon, date of birth 1<sup>st</sup> January 1990. Her father is a German citizen; she lived with him in Germany from 2005 until 2008 when he came to the UK. In 2010 she came to the UK, initially as a visitor and then (after a successful appeal in 2011) as a dependent family member of an EU national exercising Treaty Rights. The issue before the First-tier Tribunal was not that she had not been a dependant at some time in the past, but that she had ceased to be dependant prior to completing five years residence in accordance with the regulations, in the UK.

2. The respondent refused her application for permanent residence for reasons set out in a letter dated 1<sup>st</sup> October 2016. The respondent identified in that letter that Ms Batey had failed to provide evidence that she was dependant on her father and that she required financial support from him to meet her essential needs and that she had failed to provide evidence that her father had been exercising Treaty Rights for five years. She appealed that decision.
3. In support of her appeal, Ms Batey relied upon a bundle of documents. That bundle of documents did not include a schedule of her income and expenditure.
4. By a decision promulgated on 22<sup>nd</sup> January 2018, First-tier Tribunal judge Fox dismissed her appeal. He recorded the evidence before him including, inter alia, that the appellant had provided 'random' sample payslips; that there was no documentary evidence to demonstrate a paper trail of funds from her father to her because he claimed to have provided her with cash; that she did not provide details of her claimed dependency despite being given the opportunity to do so; that she claimed her father subsidised her living costs whilst she was a student although there was no documentary evidence (other than witness statements) to support this; that she claimed to be heavily in debt on the conclusion of her studies although no documentary evidence of liabilities to creditors was provided; that the sponsor paid for the appellant's car although there was no evidence of car ownership; that the evidence provided of her father's income does not cover five years continuous employment.
5. Permission to appeal was granted on the submission that the judge had failed to have regard to the appellant's membership of her father's household in Germany and in the UK before commencing her nursing training and that too little weight had been placed upon her statement in an application form where she said that she was independent.
6. The appellant qualified as a nurse in 2014 and has been working full time as a nurse since then. Although it is of course possible that a person may remain a dependant for the purpose of the EEA Regulations even having completed studies or working, a person is still required to identify what level of dependency there is. The difficulty this appellant has, is that she did not identify dependency to the First-tier Tribunal Judge other than in vague and general terms. Although pressed, Mr Dewa could not point me to any document in the bundle before the First-tier Tribunal that identified her rent, her living expenses or what her debts were either since she started working full time or whilst she was a student. Nor could he identify documents which showed that her father was exercising Treaty Rights (and able to pay the sums he claimed he was paying in cash) during the time of her claimed dependency. Although there were cash withdrawals (as identified from his bank statements in the bundle), those withdrawals, although asserted to be made by the appellant, using her father's cash card, were in London whereas the appellant lives in the Midlands. As said by the First-tier Tribunal judge, the cost involved in undertaking such travel would negate the benefit of the cash.
7. It cannot be said that, absent a detailed explanation, payment of car expenses is a necessity.

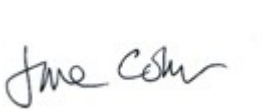
8. There was simply inadequate evidence to support the appellant's claim that she was dependant on her father, not only after she qualified as a nurse but also during her studies. Had there been more disclosure of documents both in relation to her and her father, the outcome may have been different, but the First-tier Tribunal judge can only take a decision based on the evidence before him. It is correct that the judge did not make a finding on her residence with her father in Germany – but apart from the fact that there was no evidence other than witness statements and oral evidence as to that, she claimed to be independent when she made her visa application and the evidence as to dependency after she started her nursing training was simply inadequate as was the evidence of her father's exercise of Treaty Rights.
9. The judge looked at the documentary evidence, took fully into account the oral evidence and reached conclusions that were plainly open to him, namely that the appellant had failed to prove on the balance of probabilities that she was dependent for the requisite period of time.
10. Mr Dewa submitted that the Regulations should be interpreted purposively, and that consideration should be given to the fact that having qualified as a nurse, the appellant should not be required *not* to work in order to retain any possible dependency status. This seems to be a misunderstanding of the Regulations. They do not exist in order for a dependant family member to achieve some sort of settled status but to enable an EU citizen to move around the EU exercising Treaty Rights. The inability of individual family members who are dependant to move with that person may well be a hindrance on the free movement of labour. This appellant has not shown that she is dependant. There is no hindrance on his freedom of movement if she does not get a residence permit – even assuming that he has been exercising Treaty Rights for the periods he claims, which was not apparent from the evidence that was before the First-tier Tribunal.
11. The decision by the First-tier Tribunal does not disclose an error of law such that the decision is set aside to be remade.

Conclusions:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision. The appeal is dismissed.

Date 16<sup>th</sup> April 2019



Upper Tribunal Judge Coker