



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

Appeal Number: IA/26364/2013

THE IMMIGRATION ACTS

Heard at Field House

On 22 April 2014

Determination

Promulgated

On 2nd May 2014

Before

UPPER TRIBUNAL JUDGE WARR

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

**MISS JOY KOKOGHO
(No anonymity direction made)**

Appellant

Respondent

Representation:

For the Secretary of State: Ms A Holmes

For the Respondent: Unrepresented

DETERMINATION AND REASONS

1. This is the appeal of the Secretary of State but for convenience I will refer to the original appellant, a citizen of Nigeria born on 5 February 1987, as the appellant herein.

2. On 4 April 2013 the Secretary of State refused to issue the appellant with an EEA residence card as confirmation of a right of residence in the United Kingdom as an extended family member of an EEA national exercising the right of free movement under the Treaty of Rome. The Secretary of State referred to Regulation 8 of the Immigration (EEA) Regulations 2006 and was not satisfied that the appellant had provided sufficient evidence to prove that she was an extended family member. She had not shown she had been dependent on the EEA sponsor – her sister Jessica.
3. Refusal was on a number of grounds. However, the appellant appealed against the decision and at the hearing before the First-tier Judge on 19 December 2013 the parties were able to agree a number of issues. It was indeed accepted that the appellant and her sister had resided together in Nigeria from 2002 until 2007 and that they had lived together in the United Kingdom and that the appellant’s sister was exercising treaty rights as a student in the United Kingdom. The appellant herself had arrived in the UK as a student. The only remaining issue was the principle of dependency.
4. The First-tier Judge heard oral evidence from the appellant and her sister.
5. The judge concluded that the appellant had produced satisfactory evidence to confirm that she was an extended family member of the sponsor. There was credible evidence that the appellant and her sister had lived together since her sister’s arrival in the UK in 2011. The appellant’s sister had both a German ID card and a German passport since at least 2010. In paragraph 47 of her determination she stated:

“I find that the appellant has lived in the same household with her EEA national sponsor for many years, in Nigeria from 2002-2007 and in the UK since 2011 and that she has provided for her including paying for her university fees.”
6. Accordingly the judge allowed the appeal being satisfied that the appellant was an extended family member of an EEA national – her sister.
7. The Secretary of State appealed on the point that the judge had erred in finding that the appellant had established past dependency. By reference to **Moneke [2011] UKUT 00341 (IAC)** it was necessary to establish dependency or membership of the household on a person who was an EEA national at the material time. The sponsor had become an EEA citizen in 2010 and any dependency while the appellant was in Nigeria and while the sponsor was not an EEA national did not establish the appellant’s case that Regulation 8 was met. The appellant had entered the United Kingdom as a student in 2010 and any dependency acquired in the United Kingdom, even if the EEA national was not resident themselves in the United Kingdom at that time, could not assist. Reference was made to **Aladeselu v Secretary of State [2013] EWCA Civ 144.**

8. On 17 March 2014 Designated Judge McClure granted permission to appeal on the basis that the grounds were arguable.
9. In a very well-prepared bundle the appellant prepared a response. While she accepted that her sister had obtained German nationality in December 2010 she had been dependent on her sister and had lived in her household between 7 May 2011 and 11 June 2011. Her sister had obtained EU citizenship before her arrival in the United Kingdom in September 2011. The appellant referred to her sister's evidence before the First-tier Tribunal confirming the support that her sister had given the appellant during that period and additional evidence to show that the appellant had been part of her sister's household in Nigeria during the relevant time. A schedule was prepared showing how and when the photographs were taken.
10. Unfortunately the bundle had not reached Ms Holmes and so I put back the case to enable her to consider the material.
11. When the hearing resumed Ms Holmes acknowledged that it did appear that the appellant had always been dependent on the sponsor and the statement before the First-tier Tribunal confirmed funding by the sponsor. Ms Holmes referred to paragraph 40 of **Moneke** and the need to show prior qualification.
12. She could not say much in support of the Secretary of State's appeal given the very helpful bundle. She pointed out that the grounds would have been prepared without the benefit of the material before the First-tier Tribunal which included a bundle approaching 400 pages.
13. While the appellant and her sister were present and ready to give evidence she did not consider there was anything doubtful about the evidence and did not need to ask them any questions. It appeared the judge had accepted the oral evidence from the appellant and her sponsor. The one issue had been resolved.
14. I indicated at the hearing that I would be allowing the appeal in the circumstances. It is clear that the First-tier Judge accepted all the evidence that she heard, the appellant's sister was cross-examined as the appellant points out in her representations in response to the Secretary of State's grounds of appeal at paragraph 10. The appellant and her sister were willing to give further evidence in support of the case but Ms Holmes quite properly conceded that the only remaining issue had been addressed.
15. In the light of the fact that Ms Holmes does not wish to argue in support of her appeal the Secretary of State's appeal is dismissed. The decision of the First-tier Judge allowing the appeal of the appellant stands.

Signed

Date 30 April 2014

Upper Tribunal Judge Warr