



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/10973/2014**

THE IMMIGRATION ACTS

**Heard at Field House
On 16 April 2015**

**Determination Promulgated
On 21 April 2015**

Before

Deputy Upper Tribunal Judge MANUELL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MRS MELINDA RUPERTA VERIDIANO

Respondent

Representation:

For the Appellant: Mr P Duffy, Home Office Presenting Officer

For the Respondents: Ms S Iqbal, Counsel
(instructed by Alcantara Consultancy Services)

DETERMINATION AND REASONS

1. The Appellant (the Secretary of State) appealed with permission granted on 8 January 2015 by First-tier Tribunal Judge Colyer against the decision and reasons of First-tier Tribunal Judge McIntosh allowing the Respondent's appeal against the Secretary of State's refusal to issue her with a residence card under regulation 9(2) of the Immigration (European Economic Area)

Regulations 2006 (as amended) (“the EEA Regulations”). The decision and reasons was promulgated on 23 December 2014.

2. The Respondent is a national of the Philippines, born on 27 March 1969, who had entered the United Kingdom as a Tier 4 (General) Student Migrant in 2009. In December 2013 the Appellant had sought an EEA residence card, sponsored by her father, a British Citizen by naturalisation who worked as a housekeeper in London. In the same capacity her father had been required to work for his employers in Evian, France. The Secretary of State had not accepted that the Respondent’s father had been so employed or that she was his EEA family member. The judge found that the Respondent had proved her case: see [25] of the decision and reasons.
3. Permission for the onwards appeal was granted by Judge Colyer because he considered it was arguable that the judge had erred by applying the previous unamended version of paragraph 9 of the EEA regulations, and had also failed to address the issue of dependency.
4. By notice under rule 24 of the Upper Tribunal Procedure Rules, the Respondent indicated that she opposed the application for permission to appeal. The Respondent was entitled to rely on the transitional provisions which were applicable, and which had been the basis of the Secretary of State’s refusal decision. Dependency had not been in issue and was not mentioned in the reasons for refusal letter. S and G v Minister voor Immigratie, Integratie en Asiel (Articles 20 TFEU, 21(1) TFEU and 45 TFEU – Directive 2004/38/EC) Case C-457/12 showed that a person would be entitled to a right under regulation 9 if their sponsor was regularly working in another EEA country. The decision and reasons was accordingly correct.
5. Mr Duffy for the Appellant accepted that the permission to appeal had been made and granted on a mistaken basis. He accepted that the transitional provisions applied, as contended in the Respondent’s rule 24 notice. Nevertheless, it remained the case that dependency had not been considered by the judge and so the decision and reasons was inadequate.
6. Ms Iqbal relied on the rule 24 notice. Dependency had not been an issue.
7. As the Secretary of State had conceded that the transitional provisions applied and had not challenged the judge’s positive findings about the sponsor’s employment in France, the only live point in the onwards appeal was whether the judge had been required to investigate the claimed dependency in more depth. It is easy to see why the Secretary of State has raised the

dependency point, since the Respondent is very much a mature adult and it appears has been working for long periods in the past. But the time for the dependency issue to be raised in the current proceedings was in the reasons for refusal letter, and certainly at the First-tier Tribunal hearing at latest. It is plain that the Secretary of State failed to raise any such issue notwithstanding its obvious nature. The judge was under no duty to raise the matter herself and therefore had no obligation to consider the question.

8. It would be procedurally improper and wholly unfair to permit a second bite at the cherry at this late stage. If the Secretary of State contends that the Respondent's claim for a residence card is an abuse of EEA law other remedies are available.
9. The tribunal accordingly finds that there was no material error of law in the decision and reasons, which stands unchanged.
10. No application was made to the tribunal for an anonymity direction and the tribunal can see no need for any such order.

DECISION

There was a no material error of law and the First-tier Tribunal's decision and reasons stand unchanged.

Signed

Dated 16 April 2015

Deputy Upper Tribunal Judge Manuell