



IAC-HW-AM-V1

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

Appeal Number: OA/07845/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 3rd November 2015**

**Decision & Reasons Promulgated
On 30th November 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

**MISS RUTH CAROLINA LEON GAMBOA
(ANONYMITY ORDER NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER – RIO DE JANEIRO

Respondent

Representation:

For the Appellant: Ms Judith Veronica Leon Gamboa, Sponsor
For the Respondent: Ms Emma Savage, Home Office Presenting Officer

DECISION AND REASONS

The Appellant

1. The Appellant is a citizen of Peru born on 20th May 1981. She appeals against a decision of Judge of the First-tier Tribunal Myers sitting at Bradford Hearing Centre on 30th January 2015. The Judge dismissed the Appellant's appeal against a decision of the Respondent dated 17th June 2014 which was to refuse to issue entry clearance to the Appellant as a dependant extended family member of an EEA national. The

Appellant wished to join her sister Ms Judith Gamboa a citizen of Spain exercising treaty rights in this country ("the Sponsor").

2. In order to satisfy Regulation 8 of the Immigration (European Economic Area) Regulations 2006 ("the 2006 Regulations") the Appellant had to show that she was an extended family member of the Sponsor and, assuming the relationship this meant she had to show that she was dependent upon the Sponsor (Regulation 8(2) *ibid*). The Respondent refused the application as he was not satisfied on this point. The decision was reviewed by the Entry Clearance Manager on 25th November 2014 who conceded the family relationship between the Appellant and the Sponsor but nevertheless upheld the refusal on grounds of lack of dependency.

The Decision at First Instance

3. The matter came before the Judge on the papers who directed herself that the only issue she had to consider in deciding dependency was whether the Appellant needed financial support from the Sponsor to meet the Appellant's essential needs (paragraph 8 of the determination).
4. At paragraph 9 the Judge gave her reasons for finding against the Appellant on this point stating:

"The Appellant has submitted that she has been a freelance human resources generalist since 2010 and has no fixed income. She states that her EEA national relative, her sister is required to transfer significant sums of money in order to support her and her parents. Her father is terminally ill and her mother is a full-time carer for him and her sister has had to transfer money to pay for accommodation and to meet family debts. She has provided a monthly budget which shows the monthly expenses of the household in Peruvian soles for housing, utilities and living expenses total 4,798 Pen. The Appellant has also included a sum for debts which I have not included as I do not regard these payments as amounting to essential needs. She receives freelance income of 1,604, financial support from her sister of 2,481.30, money from her brother of 1,750 and support from other relatives in the sum of 500. Her appeal bundle shows evidence of regular money transfers from her sister. The Appellant lives with her parents and therefore in my judgment the money sent by her sister is needed for all three of them and the Appellant's essential needs equate to a third of the monthly living expenses for the household i.e. 1,599 Pen. As her freelance income exceeds this amount, I find that she has not established dependency on her EEA national family member and I must therefore dismiss the appeal."

The Onward Appeal

5. The Appellant appealed against that decision in lengthy grounds of onward appeal which set out Regulation 8 of the 2006 Regulations and the guidance to decision makers issued to Entry Clearance Officers (which had also been quoted by the Judge at paragraph 7 of her determination). The Appellant's case was that although she worked independently as a human resources generalist the income from this work was not enough for basic maintenance which included the cost of housing, utilities and living expenses. It was for this reason that the Sponsor had had to transfer money to support the Appellant and to cover the Appellant's basic needs. Such

transfers could be corroborated by deposits made by the Sponsor. The Appellant received a freelance income of 1,600 Pen (at 5 Pen to the £ = £320), evidence of that attached, an amount which was insufficient to pay for rental housing which itself amounted to 1,900 Pen (£380) comprising 1,700 Pen (£340) for rent and 200 Pen (£40) for light and water bills per month. Evidence of that was attached. This evidence had not been contradicted by the Tribunal and the effect was that the rent and utilities exceeded the freelance income by 300 Pen (360).

6. There was a deficit to be met. The father of the Appellant and the Sponsor was terminally ill which generated a significant increase in expenditure not only by the family as a whole but specifically by the Appellant who gave her meagre revenue to cover her father's expenses as shown in her claim.
7. The second point made in the grounds was that the First-tier Judge was wrong to consider that payment of debts by the Sponsor did not constitute dependence by the Appellant upon her. The debts were incurred because of the need to pay for expenses which exceeded the purchasing power of the Appellant. The debts included loans to pay taxes and health costs for the father's care. The Appellant's salary could not cover these debts.
8. The application for permission to appeal came on the papers before Judge of the First-tier Tribunal Page on 28th April 2015. Refusing permission to appeal he noted that the application for permission to appeal was out of time by some six days. No application for an extension of time had been made and therefore permission to appeal was refused. Judge Page did not consider the merits of the permission to appeal application. The Appellant renewed her application for permission to appeal to the Upper Tribunal arguing that her application for permission was in time. It was submitted by email after the decision was received on 25th February and thus only fourteen days after receipt of the determination not more than 28.
9. The renewed application for permission came before Upper Tribunal Judge Grubb on 16th July 2015. In granting permission to appeal he acknowledged that the application was out of time and time was not extended but permission had been refused under the 2014 First-tier Procedure Rules. Rule 21(7) of the Tribunal Procedure (Upper Tribunal) Rules 2008 now applied and he was thus able to consider the application. He granted permission stating at paragraph 2:

"It is arguable that the Judge has wrongly assessed the Appellant's 'needs' and therefore whether she is dependent upon her sister in the UK:

- (1) by assuming that her share of the family's household costs should be taken as one third of the total; and
- (2) by wrongly excluding debts paid to cover, it is arguable, costs of the Appellant."

The Respondent replied to the grant of permission by letter dated 17th August 2015 stating that Judge Myers had directed herself appropriately.

The Hearing before Me

10. In consequence the matter came before me to determine whether there was an error of law in the First-tier decision such that it fell to be set aside. If there was not the decision at first instance would remain. The Sponsor attended on behalf of the Appellant but was not legally represented. She indicated that she relied upon the grounds for permission to appeal (which I have summarised above). In reply the Presenting Officer indicated that what was in issue was a narrow point, the issue of dependency under Regulation 8 of the 2006 Regulations. The Tribunal had set out the relevant test whether the Appellant needed financial support from the Sponsor to meet the Appellant's essential needs. (See **Reyes (EEA Regs: dependency) [2013] UKUT 00314 (IAC)** which held that: "Whether a person qualifies as a dependent under the Regulations is to be determined at the date of decision on the basis of evidence produced to the Respondent or, on appeal, the date of hearing on the basis of evidence produced to the tribunal".
11. The Presenting Officer argued that the Judge had found that family debts could not constitute essential needs which were confined to food and accommodation. In any event the nature of the debts was unclear, they were labelled as family debts. The Judge correctly found that she could not take into account the expenses of the whole family when considering the essential needs of the Appellant. The needs of the whole family unit were not relevant; it was only the Appellant's that mattered. The Tribunal was correct to calculate what proportion related to the Appellant and to find that the Appellant's income exceeded her own essential needs. The evidence did not show that the Sponsor's money transfers were used solely for the Appellant's needs as opposed to the needs of the whole family. The evidence had not demonstrated that the requirements of Regulation 8 were met and the determination should stand.
12. In response the Sponsor acknowledged that she sent money to her family in Peru and that her sister the Appellant was working. The parents of the Appellant and Sponsor did not work and one of them, their father had a terminal illness. Everything the Appellant earned was given for that and she and the Appellant had to pay debts for a lot of medical expenses. The idea of the Appellant coming to join the Sponsor in the United Kingdom would be that the Appellant would be able to work in this country and it would be financially easier for both the Appellant and the Sponsor to then send money back to Peru from the United Kingdom. The Appellant was having problems in Peru earning enough money to cover all of the debts.

Findings

13. In order to establish dependency and thereby satisfy Regulation 8 the Appellant had to show that her essential needs were being met by the EEA citizen, her sister. What was clear from the evidence was that the Appellant was working but her income was not enough to cover the expenses of having to look after her parents including a terminally ill father. The Sponsor was sending money to the family as a whole and the Appellant was using that money to pay both the medical costs of care for her

father, the living accommodation and food and utilities costs of her parents and her own costs insofar as her own income was insufficient.

14. In those circumstances given that what effectively was happening was a pooling of resources in order to pay for the costs of all three family members the Judge had to find a method for calculating separately what the essential needs of the Appellant would be. It was not possible to simply take the financial needs of the whole family; apart from anything else the parents of the Appellant and the Sponsor were not applying to join the Sponsor in the United Kingdom. They were not parties to the case and whatever was paid for them could not be classified as payment for essential needs.
15. One point overlooked in the grant of permission was that the Judge had found that the money was not coming simply from the Sponsor in the United Kingdom but a number of other family members were also contributing to the costs of the Appellant and the Appellant's parents. The other family members do not appear to be qualified persons within the meaning of the 2006 Regulations and the extent to which the Appellant is reliant upon funds from other family members would as a matter of law reduce any dependency she might have on the Sponsor in the United Kingdom.
16. Overall it is difficult to see how taking the Appellant in isolation from the rest of her family she can be said to be dependent upon the Sponsor for her essential needs. The debts were not as Judge Grubb was under the impression, debts incurred by the Appellant for her own use but rather debts incurred mainly for the medical expenses of looking after the father of the Appellant and the Sponsor. Such was the cost of accommodation, food and utilities for the family as a whole that other debts may have been incurred to meet those costs as the grounds for permission to appeal indicated but they would still not be debts which could be solely laid at the door of the Appellant.
17. The Judge had to find a way through that difficulty as it would have been wrong in law if she had taken the debts and other expenses incurred by the Appellant's parents into account in deciding the Appellant's dependency. I do not accept that there was any error of law in relation to point 1 raised by Upper Tribunal Judge Grubb at paragraph 2 of his decision to grant permission to appeal. In relation to the second point, as I have indicated the debts were not in the main expenses of the Appellant but of her parents. The Judge dealt with the matter in a straightforward way to look at the fact that the Appellant was working and to consider whether her income from employment met her essential needs. If one strips out that part of the expenditure on rent etc. which is for the benefit of the parents, it is clear that the Judge was right in her conclusion that the income of the Appellant exceeded the Appellant's basic needs. The expenses of the parents were not an essential need of the Appellant and could not be taken into account in assessing the Appellant's claim for dependency upon the Sponsor. Overall there was no material error of law in the determination and I dismiss the appeal.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold the decision to dismiss the Appellant's appeal.

Appeal dismissed

I make no anonymity order as there is no public policy reason for so doing.

Signed this 24th day of November 2015

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Deputy Upper Tribunal Judge Woodcraft

TO THE RESPONDENT
FEE AWARD

As the appeal has been dismissed there can be no fee award.

Signed this 24th day of November 2015

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Deputy Upper Tribunal Judge Woodcraft