



IAC-HW-AM-V1

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

Appeal Numbers: IA/17638/2014  
IA/20004/2014  
IA/20005/2014  
IA/20006/2014  
IA/20007/2014

**THE IMMIGRATION ACTS**

Heard at Field House  
On 20<sup>th</sup> January 2016

Decision & Reasons Promulgated  
On 19<sup>th</sup> February 2016

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE I A M MURRAY**

**Between**

**L K F (FIRST APPELLANT)  
J E E K B (SECOND APPELLANT)  
K A A K (THIRD APPELLANT)  
Z C K (FOURTH APPELLANT)  
A T K (FIFTH APPELLANT)  
(ANONYMITY DIRECTION MADE)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Mr Ryngasamy, Lawrence Associates, Solicitors, London  
For the Respondent: Mr Avery, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellants are citizens of Cameroon born on 15<sup>th</sup> June 1979, 28<sup>th</sup> December 1960, 23<sup>rd</sup> May 1981, 16<sup>th</sup> February 1989 and 22<sup>nd</sup> February 1985 respectively. They appealed against decisions of the Respondent dated 29<sup>th</sup> March 2014 refusing the First Appellant permanent residence in the United Kingdom on the basis that he is the family member of an EEA national and has resided in the United Kingdom with that EEA national in accordance with the Immigration (EEA) Regulations 2006 for a continuous period of five years and refusing the other four Appellants' applications for residence cards as a confirmation of a right to reside in the United Kingdom as dependent family members of an EEA national who is exercising treaty rights in the United Kingdom as a worker. The appeals were heard by Judge of the First-tier Tribunal Baldwin on 21<sup>st</sup> November 2014. He dismissed the appeals under the Immigration Rules in a decision promulgated on 28<sup>th</sup> November 2014.
2. An application for permission to appeal was lodged and permission to appeal was refused by Judge of the First-tier Tribunal Foudy on 3<sup>rd</sup> February 2015. An application for permission to appeal to the Upper Tribunal was lodged and permission was granted by Upper Tribunal Judge Frances on 3<sup>rd</sup> June 2015. The permission refers to the grounds which argue that the judge erred in law in finding that comprehensive medical insurance was required, given that the EEA national was exercising treaty rights as a worker. They go on to state that the judge failed to take into account the fact that the First Appellant's son had acquired British citizenship so accordingly the First Appellant's spouse was entitled to permanent residence and the First Appellant was entitled to the same. The permission states that neither the First Appellant's spouse nor his mother attended the hearing and the Appellant's bundle was served on the day of the hearing. The judge found that the Second to Fifth Appellants had failed to show that they are dependent on the First Appellant. The permission refers to the judge not accepting the First Appellant's evidence that his wife was a qualified person under the Regulations or that his mother and brother were dependent on her. The permission states that the judge properly directed himself in relation to dependency under Regulation 8 but it is arguable that he failed to properly direct himself in relation to Regulation 15 and failed to consider the evidence that the Appellant's son had obtained British citizenship and these are arguable errors of law.
3. There is no Rule 24 response.
4. The Appellants' representative submitted that there was evidence before the First-tier Tribunal at pages 8 to 13 of the Appellants' bundle showing that the First Appellant's Polish wife, the EEA national, had been exercising treaty rights for more than five years as a worker. The representative submitted that the First Appellant's appeal should therefore have been allowed. He submitted that in 2012 a British passport was issued to the child of the First Appellant and the Polish national and that the Home Office Guidance states that if a child of an EEA national is registered as British the EEA national should be granted indefinite leave to remain in the United Kingdom.

5. The representative then referred to the dependency of the other family members. He submitted that the judge failed to properly direct himself in relation to Regulation 15 and failed to consider the evidence that the First Appellant's son had obtained British citizenship.
6. I was referred to paragraph 15 of the decision and the First Appellant's credibility. He submitted that the whole assessment of credibility has been made on a false premise. The First Appellant's previous asylum claim raises the issue of credibility. He submitted that all the evidence has to be considered when credibility is assessed and the First-tier Judge did not do this. He submitted that the case of Lim [2013] UKUT 00437 has to be given weight and the judge was wrong to question the reasons behind the dependency by stating that one is entitled to look for a good explanation as to why the First Appellant should have sent so much money. He submitted that the case of Lim clearly states that dependency can be of choice. He submitted that paragraph 16 of the decision is in error as the judge questioned the funds of the First Appellant and did not take into account that he has his own business, is working and has shown that he has £60,000. Accounts were produced to substantiate the First Appellant's financial position and his earnings and I was referred to pages 81 to 167 of the Appellants' bundle. The representative submitted that prior dependency has been shown and existing dependency has been shown.
7. The representative submitted that the judge has referred to the absence of the First Appellant's mother, the Second Appellant, at the First Tier Hearing and I was referred to a letter explaining that her health was not good so she was unable to attend the hearing. I was also referred to the entries on the First Appellant's passport. He submitted that the judge should have accepted that he has been travelling and takes money with him.
8. The representative submitted that due consideration and anxious scrutiny were not given to the evidence adduced and the appeals should be allowed and the case remitted back to the First-tier Tribunal for a de novo hearing.
9. The Presenting Officer made his submissions referring to the First Appellant's British son and the submission by the Appellant's representative, that because there is a British son, the EEA national should be granted settled status. He submitted that we do not know what evidence was given to the Nationality Department about the First Appellant's son. He was granted British nationality in 2012 but that British nationality can be lost if he is outside the United Kingdom for two years or more. He submitted that the fact that the First Appellant's son has British nationality is not determinative on its own. He submitted that this issue does not mean there is an error by the First-tier Judge. He submitted that all this shows is that in 2012 the EEA national gave evidence which satisfied the Nationality Department that she had settled status.
10. The Presenting Officer then referred to the dependants in this case. I was referred to the grant of permission and he submitted that the judge was entitled to refer to the

First Appellant's asylum claim which was rejected and his credibility questioned. He submitted that this is the starting point for the Judge's decision on the First Appellant. He submitted that the grounds of application are merely a disagreement with the findings of the judge. He submitted that the judge was entitled to come to the decision he did, based on what was before him and the Appellants are trying to reargue the case. He submitted that an error of approach by the judge has to be shown and there is no such error.

11. He submitted that there are issues with the Second, Third, Fourth and Fifth Appellants. The judge is sceptical about their dependency and he submitted that there is no material error in the judge's decision.
12. I asked the Appellants' representative if the EEA national had comprehensive medical insurance when she was studying and he explained that she was also working when she was studying so she was exercising treaty rights as a worker and comprehensive medical evidence was not required.
13. The Presenting Officer referred to the case of Lim and submitted that the Court of Appeal has disagreed with this case and dependency now has to be established.
14. The Presenting Officer referred to paragraph 18 of the decision, relating to dependency. This states that it is possible that the Appellants' all live in the First Appellant's flat at the moment though evidence of his ability to accommodate them all is lacking, but he finds the evidence about providing separate accommodation in the UK for three of them over an extended period not proven. He submitted that the evidence before the judge was not satisfactory relating to dependency and there is no error of law in the First-tier Judge's decision.
15. The Appellants' representative submitted that when credibility is assessed the judge has dealt with this on a false premise and credibility is not an end to itself. He submitted that the First Appellant's asylum appeal is irrelevant. The First Appellant has been here since 2012 and has not lost his residence.
16. He submitted that the judge was not entitled to question the reasons behind the Second, Third, Fourth and Fifth Appellants' dependency as dependency of choice can exist.
17. With regard to source of funds he submitted that if it is disputed that the First Appellant is not earning enough the Appellants' bundle shows evidence of £60,000 belonging to the First Appellant which he received as compensation for a medical claim by him.
18. He submitted that there are material errors in the judge's decision and I was asked to overturn the decision promulgated on 28<sup>th</sup> November 2014.
19. The grounds of application refer to comprehensive medical insurance not being required. Based on the evidence in the Appellants' bundle it appears that that is the

case. While the Polish EEA national was a student she was also working. This is an error by the First-tier Judge.

20. With regard to the First Appellant's child having British citizenship I have considered the MNI Guidance and note that the child of an EEA national who did not become a British citizen at birth may now have an entitlement to be registered as a British citizen. There was insufficient evidence before the judge for him to come to a conclusion about this but I accept that there is an error in the judge's decision as he did not consider this.
21. The grounds then go on to refer to the decision containing irrational findings. There is no error in the judge considering the First Appellant's refusal of his asylum claim as the starting point for this decision and credibility is raised in the asylum decision. I have noted the evidence about the First Appellant's contribution to his local community and the fact that he is involved in high profile charitable organisations but the judge finds that the financial situation of Mr Foy, based on what was before him, was not satisfactory. He finds that there was insufficient evidence to corroborate his oral evidence. The judge has considered this on the standard of proof of a balance of probabilities. The Judge refers to the Second Appellant, Mrs Bong, the First Appellant's mother, obtaining a visit visa and not returning to Cameroon within the terms of her visa. He finds this to be a credibility issue. He is not satisfied with the evidence about the First Appellant supporting the other Appellants and he refers to the lack of evidence from important witnesses and the lack of evidence from the Inland Revenue. He finds the evidence relating to the First Appellant's income to be weak and gives proper reasons for this. I find that the judge directed himself properly in relation to dependency under Regulation 8 of the EEA Regulations 2006 but I find he has not properly directed himself in relation to Regulation 15 and the First Appellant's permanent residency.
22. I find therefore that there are material errors of law in the judge's decision.

### **Notice of Decision**

There are material errors of law in the First-tier Judge's decision dismissing these appeals under the Immigration Rules, in a decision promulgated on 28 November 2014 and this decision must be set aside.

No findings of the First-tier Tribunal can stand. Under s.12 (2) (b) (i) of the 2007 Act and Practice Statement 7.2 the nature and extent of judicial fact finding necessary for the decision to be remade is such that it is appropriated to remit the case to the First-tier Tribunal. The member(s) of the First-tier Tribunal chosen to reconsider the case are not to include Judge Baldwin.

Anonymity has been directed.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Deputy Upper Tribunal Judge I A M Murray