



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/32544/2014

**THE IMMIGRATION ACTS**

Heard at Field House  
On 30 March 2016

Decision & Reasons Promulgated  
On 13 April 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

FUNMILAYO REMI OSHINBOWALE  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation**

For the Appellant: Mr A Adebayo, instructed by A2 Solicitors

For the Respondent: Mr T Wilding, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Nigeria born on 31 December 1966 whose application for a residence card as the extended family member of an EEA national was refused. She

subsequently appealed to the First-tier Tribunal (“FtT”). Her appeal was heard by FtT Judge Housego who, in a decision promulgated on 10 September 2015, dismissed the appeal.

2. The background to this appeal is that the appellant’s sister (“the sponsor”) became a German citizen on or shortly before 17 July 2006 and moved to the UK in 2007. The appellant, with her mother, then travelled to the UK, also in 2007.
3. In May 2009 the appellant applied for a residence card. Her application was refused.
4. On 25 February 2014 the appellant made a further application for a residence card. This application was refused on the basis that she had failed to provide evidence of dependency on the sponsor either prior to or since entering the UK and therefore did not meet the requirements under Regulation 8(2) of the Immigration (EEA) Regulations 2006 (“the 2006 Regulations”) to be classified as an extended family member.

#### Relevant provisions of the 2006 Regulations

5. The key issue before the FtT, and in this appeal of the FtT’s decision, is whether the appellant met the definition of an “extended family member” by satisfying the conditions in Regulation 8(2) of the 2006 Regulations. These provide as follows:

*(a) the person is residing in a country other than the United Kingdom and is dependent upon the EEA national or is a member of his household;*

*(b) the person satisfied the condition in paragraph (a) and is accompanying the EEA national to the United Kingdom or wishes to join him there; or*

*(c) the person satisfied the condition in paragraph (a), has joined the EEA national in the United Kingdom and continues to be dependent upon him or to be a member of his household*

#### Decision of the FtT

6. The FtT found that:
  - a. The sponsor has been a German citizen since 17 July 2006, when she was issued with a German passport, and moved to the UK in 2007 as a German citizen.
  - b. The sponsor is in employment earning over £30,000.
  - c. The appellant moved to the UK in 2007 and has been living with and dependent upon the sponsor since doing so.
7. However, it concluded that although the appellant had been dependent on the sponsor since entering the UK she was unable to satisfy Regulation 8(2) as she was not

dependent on (or a member of the household of) the sponsor before entering the UK. It found that there was no documentary evidence of the transmission of money to Nigeria between the time the sponsor became a German citizen and the appellant entered the UK and that even if, during this time, money had been transported by friends, as claimed, this would not be consistent with the need for money to the extent required for dependency.

8. At paragraph [51] the FtT concluded that:

*“... there was only a limited time when the sponsor was an EU citizen in the UK exercising treaty rights. Any dependency while the sponsor was either a Nigerian citizen or was not in the UK exercising treaty rights would not enable the appellant and her mother to show dependency within the 2006 Regulations. The evidence was not sufficient to show dependency before the arrival of the appellant in the UK even had the period been the entirety of the sponsor’s EU citizenship.”*

### Grounds of appeal and submissions

9. The first ground of appeal is that the FtT applied too high a standard of proof. It is argued that, having accepted that the sponsor sent money to the appellant through friends, the FtT should have recognised that the evidence before it was sufficient to corroborate the appellant and the sponsor’s evidence thereby establishing dependency.
10. The second ground of appeal contends that the FtT misconstrued the evidence by concluding that trips to Nigeria by two of the sponsor’s friends were not relevant when those trips took place whilst the sponsor had German citizenship.
11. The third ground is that the FtT misdirected itself as to the relevance it placed on the absence of a letter from the appellant’s former employer confirming she had lost her job when her employment position had no bearing on the appeal.
12. The fourth ground argues that the FtT erred by finding that dependency whilst the sponsor was not in the UK exercising treaty rights does not show dependency within the 2006 Regulations.
13. On 3 March 2016 the respondent submitted a response pursuant to Rule 24 of the Upper Tribunal Procedure Rules in which she stated that she did not oppose the appellant’s application for permission to appeal. No reasons were given. Prior to the hearing the respondent informed the Upper Tribunal that she would not be relying on the Rule 24 response.
14. At the error of law hearing, Mr Wilding formally withdrew the Rule 24 response. I asked Mr Adebayo if he objected and he did not.
15. Mr Adebayo argued that the appeal turns on a narrow point; namely, whether there was sufficient evidence to support there being dependency between the date the

sponsor became a German citizen and the date the appellant moved to the UK. He contended that there was. He maintained that because the relevant events transpired in 2007 it is not surprising receipts of money being transferred have not been kept. He argued that the appellant and sponsor have provided evidence in the form it is available, through witness evidence of friends who confirm they took money to the appellant during the relevant time period. There is a pattern of money being transferred and the appellant's evidence was that she relied on that money.

16. Mr Wilding, like Mr Adebayo, considered that the appeal turned on whether dependency could be established during the period after the sponsor became a German Citizen up until the date when the appellant moved to the UK. He argued that the FtT made clear findings that the appellant and sponsor were unable to show dependency and that the evidence they sought to rely on was not persuasive.

### Consideration

17. In accordance with Regulation 8(2) of the 2006 Regulations, the appellant was required to show, on the balance of probabilities, that (a) she was dependent on or a household member of the sponsor before she entered the UK; and (b) she has been dependent on or a household member of the sponsor after entering the UK.
18. The FtT's finding as to dependency and household membership after the appellant entered the UK is not challenged. Nor is there any dispute as to whether, before the appellant entered the UK, she was a member of the sponsor's household. (She was not). The only live issue under Regulation 8(2) is whether the appellant was dependent on the sponsor before she entered the UK in 2007.
19. It was made clear in Moneke (EEA-OFMs) (Nigeria) [2011] UKUT 00341 (IAC) that dependency under Regulation 8(2) can only be on a person who is an EEA national at the material time. The FtT's unchallenged finding is that the sponsor became a German citizen on or soon before 17 July 2006. Therefore, any dependency prior to this date will not satisfy the 2006 Regulations and the key question for the FtT was whether the appellant was dependent on the sponsor between 17 July 2006 and the date in 2007 when she entered the UK.
20. I accept the argument made in the fourth ground of appeal that the FtT made an error in delineating the period during which dependency had to be shown. At paragraph [51], and again at paragraph [53], the FtT found that the date from which dependency had to be shown was not the date the sponsor became German (July 2006) but rather the date she began exercising treaty rights as an EEA national in the UK (which was sometime in 2007). That is not correct. There is no need, in order for this part of Regulation 8(2) to be satisfied, for the sponsor to be exercising Treaty rights in the UK. Rather, what is required is that the sponsor is an EEA national whose dependent is outside the UK. Accordingly, the relevant date is 17 July 2006, not the date the sponsor entered the UK.

21. However, although the FtT made an error in delineating the relevant period during which dependency must be shown, the error was not material. The FtT's findings did not turn on whether the start date for the dependency was taken as July 2006 or a date in 2007 and had the FtT properly directed itself as to the relevant period of assessment the outcome of its consideration of the evidence would not have changed. Indeed, this was made clear in the decision where it is stated that the dependency test would not be satisfied even if the period under consideration had been the entirety of the sponsor's German citizenship (ie the correct period). At paragraph [51] the FtT found:

*"The evidence was not sufficient to show dependency before the arrival of the appellant in the UK even had the period been the entirety of the sponsor's EU citizenship." (emphasis added).*

22. The appellant argues that the FtT applied the wrong standard of proof and misdirected itself as to evidence relevant to showing her dependency on the sponsor whilst she was in Nigeria. These arguments have no merit. At paragraph [19] the FtT properly directed itself as to the relevant standard of proof and there is no indication in the decision that a higher standard has been applied.

23. There was very limited evidence before the FtT to show that, during the relevant period (between July 2006 and the date in 2007 when appellant entered the UK), the appellant was dependent on the sponsor. There was no documentary evidence of money being transferred to the appellant. Two friends claimed to have taken funds to the appellant during the relevant period but the number of trips taken was very limited (one friend travelled to Nigeria in August 2006 and the other in August/September 2007).

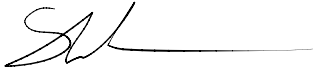
24. There was also only limited evidence to establish that the appellant depended on money transferred to her by the sponsor. At paragraph [50] the FtT noted that the appellant was not clear as to whether she had lost her job in 2005 or 2007, the relevance of this being that the absence of employment would help substantiate her claim to be reliant on funds transferred from the sponsor. The FtT also commented that the sponsor had sent money to the appellant in order to support her in raising her four children but the appellant's children had all become adults by the time the sponsor became a German citizen.

25. As the Upper Tribunal found in Moneke, dependency is not the same as mere receipt of some financial assistance. The recipient of support must need it in order to meet essential needs. The burden of proof was on the appellant to show that she was dependent on the sponsor between the date the sponsor became a German citizen and the date the appellant entered the UK. I am satisfied that, based on the evidence before it, the FtT was entitled, for the reasons it gave, to reach the view that the appellant failed to discharge this burden.

Decision

- a. The appeal is dismissed.
- b. The decision of the First-tier Tribunal did not involve the making of a material error of law and shall stand.

Signed

A handwritten signature in black ink, consisting of a stylized 'S' followed by a horizontal line.

Deputy Upper Tribunal Judge Sheridan

Dated: 9 April 2016