



**Upper Tribunal
(Immigration and Asylum Chamber)
EA/02234/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Manchester
On 22nd April 2017**

**Decision & Reasons
Promulgated
On 3rd May 2017**

Before

UPPER TRIBUNAL JUDGE CHALKLEY

Between

**JOSHUA OSAHENOMA EVBOTA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance by or on behalf of the appellant
For the Respondent: Mrs Abonie, a Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Nigeria who was born on 28th June, 1993, and who made application for a residence card to the respondent. On 29th January, 2016 the respondent refused the application and the appellant appealed to the First-tier Tribunal.
2. On 15th July, 2016 First-tier Tribunal Judge R G Handley decided the appeal in the absence of an oral hearing and refused the same. In his determination the judge pointed out that it was necessary for the appellant to show that he had been dependent on his mother prior to his

arrival in the United Kingdom, but his application pointed out that he had been living at an address in Spain for two years while his mother was working in the United Kingdom. The appellant gave no indication in his application form that he was presenting any documents which would show that he was in receipt of financial support from his mother, either now in the United Kingdom or previously when he was living in Spain.

3. The judge noted that he had before him a letter from a firm of solicitors in which they advise that the appellant was emotionally and financially dependent on his mother, but they adduced no evidence to show the nature and extent of that support. Although there were documents attached to that letter, the judge pointed out that none of the documents supported the claim that the appellant had been receiving financial support from his mother prior to his arrival in the United Kingdom. As far as the judge was able to determine from the bank statements supplied, there were no transfers of money to the appellant in Spain.
4. Additionally, the judge noted that in the appellant's Notice of Appeal the appellant had actually stated that while he was living in Spain he was living with his aunt and that he had been working, consequently there had been no need for his mother to send him any money. The judge found that in the circumstances he could not be satisfied that the requirements of the EEA Regulations had been met.
5. The appellant gave Notice of Appeal but, failed to identify any error of law in the judge's determination. He merely pointed out that he was fully dependent on his mother and brother and they are Spanish citizens.
6. In granting permission to appeal, First-tier Tribunal Judge Scott-Baker says that a reading of the decision, "displays an insufficient consideration of Regulation 7 of the Immigration (European Economic Area) Regulations 2006 and the necessity to establish prior dependency". It goes on to suggest that the judge failed to make any adequate findings as to the issue of dependency in the United Kingdom.
7. At the hearing before me today the appellant failed to attend. I was satisfied that he had been given notice of the date, time and place fixed for the hearing of the appeal on 24th February, 2017 by notice which was sent to him by first-class post. Not having given any reason for his non-attendance, I concluded that I was required to proceed with the hearing in his absence.
8. I have concluded that there is no error in this determination of Judge R G Handley. He has, with respect to the judge who granted permission to appeal, made a clear finding that in the two year period prior to arriving in the United Kingdom, the appellant was not being financially supported by his mother. In *Oboh and Others v Secretary of State for the Home Department; Halauder v Secretary of State for the Home Department* [2013] EWCA Civ 152 it was confirmed that the claimants had to show that they were dependants or members of the household of the EU citizen in the country from which they had come and the words of the Directive

should be given their literal meaning even though it excluded relationships formed within a Member State from the scope, of Article 3(2).

9. It was incumbent upon the appellant to demonstrate that he met the requirements of the Regulations. However, he has failed to discharge that burden because he has failed to demonstrate the nature and extent of the support he received (if any) from his mother, an EEA national, which is merely described as being “emotional and financial” by solicitors acting on behalf of the appellant, without providing any evidence of it. In any event, the appellant could not qualify because, as the judge pointed out, on the available evidence it is clear that in the two year period prior to arriving in the United Kingdom the appellant was not being financially supported by his mother.
10. The making of the decision by First-tier Tribunal Judge R G Handley did not involve the making of an error on a point of law. I uphold the appeal.

Richard Chalkley

A Judge of the Upper Tribunal
April 2017

Date 30th

TO THE RESPONDENT
FEE AWARD

There is no fee award.

Richard Chalkley

A Judge of the Upper Tribunal