Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number EA/02138/2015**

THE IMMIGRATION ACTS

Heard at Field House **Decision and Reasons Promulgated**
On 11th April 2018 **On 25th April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

REGINA OMENEBELLE OFEKE
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr V Ogunbusola (Counsel, instructed by Chancery CS Solicitors)
For the Respondent: Ms A Everett (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant applied for a residence card as the dependent of her son, the Sponsor, who is a German citizen. The application was refused on the 19th of October 2015. The Appellant's appeal was first heard by First-tier Tribunal Judge Hemborough who dismissed the appeal for the reasons given in a decision promulgated on the 13th of April 2016. That decision was set aside by Upper Tribunal Judge Blum on the 20th of October 2016 and remitted to the First-tier Tribunal for re-hearing. On that basis the appeal came before First-tier Tribunal Judge Anstis at Hatton Cross on the 28th of June 2017, the appeal was allowed for the reasons given in the decision promulgated on the 4th of July 2017.

2. The Judge found that the Appellant, a family member of an EEA national in the UK exercising treaty rights, was not working in the UK and that she was dependent on the Sponsor for her basis needs.
3. The Secretary of State sought permission to appeal to the Upper Tribunal in grounds of application of the 14th of July 2017. Concentrating on paragraph 34 of the decision which was set out in the grounds it was argued that the Judge had reversed the burden of proof to the Secretary of State to prove another source of funds. The failure of the Appellant to provide credible evidence to the appropriate standard meant that the Appellant had not discharged the burden of proof relying on MA(Somalia) [2010] UKSC 49 (IAC) at paragraphs 47-48. Initially rejected permission was granted by Upper Tribunal Judge Coker on the 15th of February 2018.

4. In paragraph 34 the Judge stated “Given the contrast between their witness statements and what emerged in cross-examination, there are reasons to consider that the Appellant and her son have not been entirely frank in their evidence. I have no evidence as to what the present status is of the Appellant's daughter, or of her involvement with her mother and her mother’s needs. However, what I ultimately have to decide in this case is whether the Appellant is dependent for her basis needs on her EEA Sponsor in the United Kingdom. Whilst, as I say, there is reason to believe that the Appellant had another source of income in Nigeria, there is nothing of that nature in the United Kingdom, nor anything to suggest she is independently wealthy. She and her son have said that she is dependent on him in the United Kingdom, and while I have doubts about their evidence there is nothing in this case to suggest any other source of funds or to suggest that she is anything other than entirely dependent on her son for her basic needs in the United Kingdom. Accordingly, I am satisfied that she is dependent on her son, and the requirements of regulation 7 are met. The appeal must be allowed.”

5. At the hearing the Home Office relied on the grounds of appeal and the grant of permission. In submissions it was maintained that paragraph 34 was contaminated by error by shifting the burden. The Judge had doubted their evidence and the credibility and the error lay in the Judge looking for evidence of other funds. If the Judge found that the Appellant had not made out the claim then it followed that the Appellant had not discharged the burden of proof. The evidence had been found largely unreliable.

6. Not surprisingly the Appellant's representative maintained that the Judge had not erred. Although the Judge had doubts about some of the evidence he found that the Appellant was entirely reliant on the Sponsor. There was no alternative suggestion and no other evidence.

7. At the end of the hearing I indicated that I found that there was no error in the decision of the First-tier Tribunal and reserved my decision and reasons which now follow. There are criticisms to be made of the decision of the First-tier Tribunal which could have been more effectively worded. It would have been helpful if the Judge had said exactly what his doubts were with regard to the evidence that would have helped to place the findings then made in context.

8. However the decision is sustainable as the Judge set out his findings in this form “there is nothing in this case to suggest any other source of funds or to suggest that she is anything other than entirely dependent on her son”. The basic finding of the Judge was that the Appellant is dependent on her son, the Sponsor, that was justified on the evidence and it cannot be shown to be perverse or not otherwise open to the Judge on the evidence that was presented. The observations can be read that the Judge had regard to the overall picture presented by the evidence and not that the Home Office had any burden to discharge or that having failed to do so the Appellant won on that basis.

CONCLUSIONS

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I make no order.

Fee Award

The First-tier Tribunal order with regard to fees remains.

Signed: 

Deputy Judge of the Upper Tribunal (IAC)

Dated: 23rd April 2018