



**Upper Tribunal
Immigration and Asylum Chamber
EA/02851/2018**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 15 October 2018**

**Decision and Reasons
Promulgated
On 18 October 2018**

Before

Upper Tribunal Judge Kekić

Between

Mildred Renner
(anonymity order not made)

Appellant

and

**Secretary of State for the
Home Department**

Respondent

Representation

For the Appellant: Ms E Lanlehin, of Counsel, instructed by JF Law Solicitors

For the Respondent: Ms A Fijiwala, Senior Home Office Presenting Officer

Determination and Reasons

Background

1. The appellant is a Ghanaian national born on 23 May 1994. She seeks a permanent residence card as the family member of her EEA sponsor, her father. The respondent refused her application on the basis that she had failed to establish that she had been a dependant of her father for five years. Regulation 7(1)(b)(ii) applies.

2. The appeal was decided on the papers on the appellant's request by First-tier Tribunal Judge Randall and was dismissed by way of a determination promulgated on 4 July 2018.
3. The grounds argue that the judge misdirected himself in failing to appreciate that dependency had to be assessed at the point of entry and that a subsequent independence did not alter that assessment. Reliance was placed on Reyes [2014] ALL ER (D) 223. It was also argued that the judge was wrong to have found that Reyes only applied to cases of entry. Permission to appeal was granted by First-tier Tribunal Judge Grimmett on 15 August 2018.
4. There has been no Rule 24 response from the respondent.

The hearing

5. I heard submissions from both parties at the hearing before me on 15 October 2018.
6. Ms Lanlehin elaborated on the two grounds by relying on extracts from Reyes. She argued that having employment and living independently did not mean the appellant was no longer a dependent family member. She added an additional point; she maintained that the appellant was in fact still reliant upon her father for her rent and for emotional support.
7. In response, Ms Fijiwala submitted that there was no material error. There had been no error of law. The judge had addressed all the points in the skeleton argument and gave reasons as to why he found Reyes did not apply to the appellant's circumstances and was not authority for what the appellant argued. Moreover, the appellant had entered as a minor, so the issue of dependency did not have to be established on entry. It was only after the age of 21 in May 2015 that this became an issue. There was no evidence at all of any financial support after December 2016. The judge had also considered the judgment in Lim (Manila) [2015] EWCA Civ 1383 which had itself referred to Reyes and concluded that the family member must need the support from his/her relative in order to meet his/her basic needs. Emotional dependency of which no evidence had been provided was not enough. The IDI guidance had not been met either.
8. Ms Lanlehin replied. She argued that the Regulations permitted dependants to work. If she had to remain financially dependent upon the sponsor then the rules which allowed her to work would have no relevance.

9. That completed submissions. I then reserved my determination which I now give with reasons.

Findings and conclusions

10. I have carefully considered all the evidence before me and the submissions that have been made by both parties.
11. The issue before the First-tier Tribunal was a simple one; had the requirements of the Regulations been met; that is to say, had the appellant shown that she had been residing in accordance with the Regulations for a five-year period.
12. The judge found that this had not been shown. The appellant argues that he was wrong. Her case, as now put, is that she does remain dependent upon her father for basic needs but that even if this is not accepted, it does not matter as dependency does not have to be shown.
13. The judge considered the evidence in the context of relevant case law. He took account of Reyes and he also considered Lim. Lim post-dates Reyes and takes it into account. Notwithstanding what is said by the judge about Reyes (at paragraphs 17-19) with which the appellant disagrees, the position of dependency is clarified and confirmed in Lim. There the court held that it was not enough for financial support to be provided by the EEA sponsor; the family member was rqd to show that the support was needed to meet basic needs (at 25). It was held that *"it is still necessary to determine that a family member is dependent in the sense of being in need of the assistance"* (at 29) and that *"the concept of dependency must mean that the claimant is not financially independent and therefore requires support"* (at 30). I do not therefore accept Ms Lanlehin's submission that the judge erred in finding that dependency needed to be established.
14. It is also worth pointing out that despite Ms Lanlehin's submissions about dependency only having to be established at the point of entry, the appellant did not of course have to show any dependency at that time as she was under 18 years of age and fell for consideration under reg. 7(1)(b)(i). This requirement arose after she reached the age of 21. The judgment of Rahman C-83/11 [2013] OB 249 referred to in the grounds accepts that a member state may impose its own particular requirements as to the nature and duration of dependence.
15. Turning then to the new ground that the appellant was in fact dependent upon her father, the sponsor, I note that the appellant's own evidence to the respondent was that she had not been dependent upon him since she found work in November 2014,

having moved out of the family home in September 2014. The appellant maintains that her father paid the rent for her accommodation after she moved out and rental receipts were adduced but as the judge found these only continued until December 2016. From that date onwards, there was no evidence of financial support. The judge remarked on this lack of evidence at paragraphs 14 -16. Given that the appeal was decided in May 2018, the period without evidence of dependency was lengthy. It is also noteworthy that the appellant's own evidence to the respondent was that she was not dependent on her father other than emotionally (at paragraph 10). This was later clarified in her statement as going on outings, having him listen to her and to ensure she had iron supplements (at 6.3). This claim was properly considered by the judge at paragraphs 21 and 23. Even if dependency was established by the rental payments, it was only shown until December 2016.

16. It follows that I conclude that the judge properly considered the evidence that had been adduced and that he made no errors of law in his examination of that material. If the appellant has fresh evidence she wishes to put forward, it is open to her to make a fresh application to the respondent.

Decision

17. There are no errors of law in the determination of the First-tier Tribunal Judge. The decision to dismiss the appeal stands.

Anonymity order

18. There has been no request for an anonymity order at any stage and I see no reason to make one.

Signed:



**Dr R Kekić
Judge of the Upper Tribunal**

Dated 15 October 2018