



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/03053/2017

THE IMMIGRATION ACTS

Heard at Field House
On 11 May 2018

Decision & Reasons Promulgated
On 21 May 2018

Before

UPPER TRIBUNAL JUDGE COKER

Between

STANLEY [G]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

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

DECISION AND REASONS

1. This is the appeal of Stanley [G] who was granted permission to appeal the decision of the First-tier Tribunal which was promulgated on 14 November 2017. First-tier Tribunal Judge Powell dismissed Mr [G]'s appeal against a decision to refuse him a permanent residence card, that decision being made by the Secretary of State on 5 March 2017. Mr [G] was born in Ghana in 1974 and his father, a German citizen, commenced working in the UK according to Judge Powell some time after 1989, but according to witness statements it seems to have been in about 2005. The judge says

that Mr [G] Senior continued to exercise treaty rights until 25 June 2015. It is possible that Mr [G] Senior had permanent residence at that time but there is no finding in that regard. He died on 8 September 2017.

2. The appellant, Mr [G], arrived in the UK in either 2004 or 2007, illegally. On 14 March 2011 he was granted a residence card as a non-EU family member having been successful in an appeal against an earlier refusal. That decision was not appealed by the Secretary of State and thus he was granted the residence card on 14 March 2011. First-tier Tribunal Judge Powell in the decision promulgated on 12 November 2017 made findings that the appellant's father had ceased activity in accordance with the Regulations on 25 June 2015, that the appellant had not lived with his father for about five years, was no longer reliant on his father's financial support, and that he was working full-time and was in a family unit with his own wife and two children. He made a finding that the appellant was essentially independent and that he was unable to find that the appellant was dependent on his father. He found that the dynamic described by the appellant was not one of dependency, but of natural love and affection between a father and son at the direst of times. The decision by Judge Powell was, as it should be, very sympathetic to the difficulties that Mr [G] Senior had been through and the distress that his death would have caused to the appellant.
3. Permission was granted by Deputy Upper Tribunal Judge Zucker on the basis that it was arguable that the appellant may be able to demonstrate five years' continuous residence from 2007 and that although the residence card that was issued in 2011 did not confer any right it may be evidence of a right with time running from 2007. Neither First-tier Tribunal Judge Powell nor Deputy Upper Tribunal Judge Zucker had details of the appellant's history in the UK. From the history that Mr Melvin provided, the earliest time at which the appellant could have been treated as a dependant of his father would have been October 2010. The appeal that led to the grant of the residence card in March 2011 was heard some time in January 2011 and therefore the maximum length of time that it is likely that he could be said to have possibly been exercising living in accordance with the Regulations would have been from January 2011.
4. Mr [G] refers to Regulation 10 of the 2016 Regulations and relies on Regulation 10(2), namely that he is a family member of a qualified person or of an EEA national with a right of permanent residence when the EEA national dies, and has resided in the UK in accordance with the Regulations for at least a year immediately before the death of the EEA national. Mr [G] honestly says that he was not living with his father for the year before his father died. In any event, the findings by the First-tier Tribunal Judge that Mr [G] was not dependent on his father are findings that were open to the judge on the basis of the evidence before him. Mr [G] therefore does not meet the criteria in Regulation 10 because he was not residing in the UK in accordance with the Regulations for at least a year immediately before the death of his father. He is not, and was not, dependent on his father from about 2011 when he set up his own independent family unit. For those reasons the decision of First-tier Tribunal Judge Powell dismissing Mr [G]'s appeal is not infected by an error of law and I do not set

aside the decision. The decision of the First-tier Tribunal stands, namely the appeal is dismissed under the Immigration (EEA) Regulations 2016.

Conclusion

There is no error of law in the decision of the First-tier Tribunal. I do not set aside the decision of the First-tier Tribunal.

The decision of the First-tier Tribunal stands.

No anonymity direction is made.



Signed

Upper Tribunal Judge Coker

dated 15 May 2018