



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: EA/11174/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 12 July 2018

Decision & Reasons Promulgated  
On 31 July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

OLULORO DORCAS OGUNOYE OLUDURO  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Not represented

For the Respondent: Ms. J. Isherwood, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Kinnell, promulgated on 20 February 2018, in which he dismissed the Appellant's appeal against the Respondent's decision to refuse to issue a residence card as confirmation of a right to reside in the United Kingdom.
2. Permission to appeal was granted as follows:

“Arguably the judge erred by taking a point against the appellant in regard to the sponsor’s nationality which was not relied on by the respondent and therefore arguably erred in his consideration of the sponsor’s status and the appellant’s rights under the EEA Regulations.”

3. The Appellant attended the hearing. The proceedings were translated to her by the interpreter, Mr. Wale Eboda, who confirmed before proceeding that she fully understood him. I heard submissions from Ms. Isherwood, and from the Appellant’s son, Mr. Michael Oluduro. The Sponsor also attended the hearing.
4. At the hearing I found the decision involved the making of an error of law. I set the decision aside. I remade the decision allowing the Appellant’s appeal, as was agreed and accepted by Ms. Isherwood on behalf of the Respondent.

### **Error of Law**

5. On page 1 of the Reasons for Refusal Letter it states:

“As you were previously issued with a 6 month EEA family member permit, it is evident that your relationship with Magdalena Edyta Buk has been accepted, therefore a full consideration has been given to your application.”
6. On page 2 it states:

“To conclude, your application for a residence card has been refused in line with Regulation 7(1)(c) of the Immigration (EEA) Regulations 2006, as you have failed to demonstrate that you are dependent upon your EEA national sponsor.”
7. I find that there was one issue before the Judge, which was whether or not the Appellant was dependent on her EEA Sponsor, her daughter-in-law. At [18] and [19] the Judge states:

“Ms Lockhart thought that the photocopied documents produced at the hearing, supplemented by such originals as there were, were not suspicious and I therefore accept they probably do establish that both the appellant’s son and Magdalena have the employment and income specified in those documents.

The two witnesses who gave evidence were consistent that the appellant lives with her son and daughter-in-law who provide her with food, accommodation and pocket money. She does not have a bank account. On balance, I accept that is probably also made out.”
8. In these two paragraphs the Judge finds that the Appellant is dependent upon her daughter-in-law, the Sponsor. There was no cross-appeal in relation to this finding, which was accepted by Ms. Isherwood at the hearing before me. I therefore find, as accepted by Ms. Isherwood, that the Judge found in favour of the Appellant in relation to the sole issue taken by the Respondent. The appeal should therefore have been allowed at this point.
9. However the Judge went on to consider a further issue. At [20] he states:

“There is one issue that emerged during the hearing however which was put to both the appellant and to her son for evidence. Unfortunately, the sponsor

Magdalena Oluduro was not present at the hearing to give evidence and not available for cross-examination and it is her status in the United Kingdom that is essential in this case. It is quite clear that the appellant's daughter-in-law held a Polish passport which expired in 2014. It is also clear from the evidence that the sponsor has been a British citizen since 18<sup>th</sup> February 2016 and held a British passport since 24<sup>th</sup> February 2016. The appellant did not know whether Polish nationality had been retained. Her son Michael said that it had been retained but could give no other detail about the matter of nationality, and, as I say, the essential witness on this point, the appellant's daughter-in-law, was not present to give direct evidence herself. The evidence does not establish that the daughter-in-law Magdalena is an EEA national exercising treaty rights in the United Kingdom. It is perfectly possible that she is employed in the United Kingdom as a British national in which case she is not in a position to sponsor her mother-in-law."

10. The Sponsor's nationality was not an issue which was before the Judge. The Respondent stated in the reasons for refusal letter that he was satisfied that the Appellant's daughter-in-law was an EEA national exercising Treaty rights. I find that the Judge erred in considering this issue, which had been accepted by the Respondent, and which was therefore not before him. The Judge in any event accepted that it was possible for a Polish national to retain her nationality and also to hold British nationality. Given that the Respondent was content that she was a Polish national, there was no need to consider it.
11. Ms Isherwood stated that she had done some research and had established that it is possible for Polish citizens to hold dual nationality. She accepted that this issue was not before the Judge as the Respondent had accepted that it had been established that the Appellant's daughter-in-law was an EEA national.
12. At the hearing the Appellant's son provided a letter dated 26 February 2018 from the Sponsor. This included a copy of her valid Polish ID card. The Sponsor stated in her letter that she did not submit the actual ID card during the initial application as it was not requested by the Home Office, and that only the photocopy was required during the process of the appeal. There was no objection taken by Ms Isherwood to the production of this document which shows that the Sponsor has Polish nationality. This confirms what the Respondent already knew. I find that the appeal should have been allowed.
13. It emerged from the Sponsor's letter that the Sponsor and the Appellant's son are no longer in a relationship although they are still married. It was accepted by Ms Isherwood that, for legal purposes, as at the date of the hearing before me, and as was the case at the date of the application, the Respondent's decision, and the decision in the First-tier Tribunal, nothing had changed as the Sponsor and the Appellant's son are still married, and the Appellant is still the mother-in-law of the Sponsor. Ms Isherwood pointed out to the Appellant and to her son that this was a change which may alter the situation in the future.
14. I find, for the purposes of this appeal, and as accepted by Ms. Isherwood, that the legal position is the same. The Appellant is the mother-in-law of the Sponsor. It was

established in the First-tier Tribunal that she was dependent on the Sponsor. This was not challenged by Ms. Isherwood before me. It is accepted by the Respondent that the Sponsor is a Polish national.

15. I therefore find that the Appellant meets the requirements of the Regulations. I find that the decision involves the making of a material error of law, and I set the decision aside and allow the appeal.
16. I am grateful to Ms. Isherwood for the way in which she conducted this appeal, especially given that the Appellant was not legally represented.

**Notice of decision**

17. The decision of the First-tier Tribunal involves the making of a material error of law. I set the decision aside.
18. I remake the decision allowing the Appellant's appeal under the Regulations.
19. I do not make an anonymity direction.

Signed

Date 24 July 2018

**Deputy Upper Tribunal Judge Chamberlain**

**TO THE RESPONDENT**  
**FEE AWARD**

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award. I have decided to make no fee award as evidence was provided before the First-Tier Tribunal to establish dependency.

Signed

Date 24 July 2018

**Deputy Upper Tribunal Judge Chamberlain**