



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/14172/2016

THE IMMIGRATION ACTS

Heard at Birmingham Employment Tribunal
On 22 August 2018

Decision and Reasons promulgated
On 03 September 2018

Before

UPPER TRIBUNAL JUDGE HANSON

Between

ARIEL MAUTNER MENDES DA SILVA
(anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Toora, instructed by Tann Law Solicitors.

For the Respondent: Mrs Aboni, Senior Home Office Presenting Officer

ERROR OF LAW FINDING AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Watson who in a decision promulgated on 26 January 2018 dismissed the appellant's appeal against the respondent's refusal to issue him a Residence Card as the dependent family member of an EEA national.
2. Permission to appeal has been granted by a Designated Judge of the First-tier Tribunal, the operative part of the grant being in the following terms:

- “3. The grounds are arguable, notwithstanding the judge’s observation that there had been a deliberate abuse of the Immigration Rules. The Appellant had to show either prior dependency or membership of the same household before the sponsor left Brazil. Although finding that there was no relevant prior dependency, the judge found the Appellant was a member of the same household before his mother left Brazil, which meant that arguably only one condition remains to be met and (probably) was. All grounds may be argued.”
3. The Secretary of State in her Rule 24 response dated 10 July 2018 states at [2]:
- “2. The respondent does not oppose the appellant’s application for permission to appeal and invites the Tribunal to allow the appellant’s appeal on the basis of the findings at [28] of the determination of the First-tier Tribunal, as per [3.b] the appellants grounds dated 6 February 2018.”
4. At [28] the Judge wrote:
- “28. The appellant entered the UK on a visit Visa and within six weeks has applied for an EEA family member residence card. I find on the balance of probabilities that he entered intending to do this and to circumvent the Immigration Rules. He did not intend to return to Brazil within the time of his visit Visa and had wished to finish his course in the UK. I find that there is no genuine dependency upon his EEA sponsor or the mother. I have no doubt that the mother sent money when she has been able to do so in order that the appellant can use it on things such as a mobile phone, university fees, and holidays or travel just as described by the appellant. These are not necessities. There has been no genuine dependence upon the mother of the EEA national whilst in Brazil over the past few years. Of note is the fact that the appellant has been working himself and with his accommodation and food costs covered by his grandparents with whom he was living. I accept that since he arrived in the UK on a visit Visa and has been staying with his mother in the UK he has been supported by her here. This is not a genuine dependency, and his mother would have had to confirm her support for him for the purposes of the visit Visa. The appellant has entered the UK intending to make an EEA application and to manipulate the Rules.”
5. Although the Judge finds the appellant has manipulated the Immigration Rules there is no specific finding, supported by adequate reasons, that the appellant’s actions represent a breach of the fundamental principle of EU law or principles. Based upon the findings above the appellant sought permission to appeal pleading at [3.b] the following:
- “3.b Making a material misdirection of law. At [28] the Judge states, ‘I accept that since he arrived in the UK on a visit Visa and has been staying with his mother in the UK he has been supported by her here.’ This finding is sufficient to satisfy 7 (Regulation 7 Immigration (European Economic Area) Regulations 2006) and the judge should have allowed the appeal. The fact the Appellant entered on a visit Visa does not undermine his dependency, as a matter of fact, and the Respondent’s decision does not argue abuse of rights.”
6. In light of the above, and placing emphasis upon the respondent’s concession, I find the Judge erred in law in a manner material to the decision to dismiss the appeal and set the decision aside.

7. I substituted decision, in light of the respondent's position set out in the Rule 24 response, to allow the appeal under the EEA Regulations.

Decision

8. **The First-tier Tribunal Judge materially erred in law. I set aside the decision of the original Judge. I remake the decision as follows. This appeal is allowed.**

Anonymity.

9. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....

Upper Tribunal Judge Hanson

Dated the 22 August 2018