



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: EA/02953/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 30 April 2019**

**Decision & Reasons  
Promulgated  
On 07 May 2019**

**Before**

**UPPER TRIBUNAL JUDGE KAMARA**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MR JOSEPH FRIMPONG-MANSO JR  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr L Tarlow, Senior Home Office Presenting Officer

For the Respondent: Ms M Vidal, counsel instructed by Haris Ali Solicitors

**DECISION AND REASONS**

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Lal, promulgated on 5 December 2018. Permission to appeal was granted by First-tier Tribunal Judge Saffer on 18 January 2019.

Anonymity

2. No direction has been made previously, and there is no reason for one now

### Background

3. The respondent entered the United Kingdom in February 2010 as the family member of his father who is a Spanish national. He was issued a residence card, valid until 25 October 2015. His application for a permanent residence card was refused and his appeal against that decision was dismissed in October 2017.
4. On 20 March 2018 the Secretary of State decided to remove the respondent from the United Kingdom. He appealed that decision under the Immigration (European Economic Area) Regulations 2016 on the basis that he was the family member of his father, a Spanish national and entitled to permanent residence as well as human rights grounds.

### The hearing before the First-tier Tribunal

5. At the hearing before the First-tier Tribunal, the Home Office Presenting Officer took instructions as to the scope of the appeal and accepted that the Tribunal had jurisdiction to consider the Regulations as well as Article 8 ECHR. The judge heard evidence from the respondent, his father and the respondent's partner with whom he has a child. The appeal was allowed under the 2016 Regulations, with the judge concluding that the respondent was entitled to a permanent residence card as well as Article 8.

### The grounds of appeal

6. The grounds of appeal argued that the judge's reasoning was inadequate in relation to the issue of the respondent's dependency on his father; that the judge should have considered whether the respondent truly needed the support of his father and that the judge erred in concluding that the respondent was entitled to a permanent residence card. The Secretary of State nonetheless accepted that the judge was entitled to allow the appeal on Article 8 grounds and did not seek to challenge that conclusion.
7. Permission to appeal was granted on the basis that it was arguable that the judge may have materially erred regarding the assessment of dependency.

### The hearing

8. Mr Tarlow relied on the grounds. Referring to the 2017 decision of Judge Birk, he asked me to take into consideration that she did not accept that the respondent was dependent upon his father or that the property was rented. Judge Lal made no findings to support his conclusion that the respondent was continuously dependent upon his father for a period of five years. The finding of Judge Birk was that the respondent could not be considered a family member at all.

9. Mr Tarlow confirmed that there was no challenge to the judge's Article 8 findings and that the respondent would be granted leave to remain. The sole issue being whether he was entitled to permanent residence.
10. Ms Vidal argued that there was evidence of dependency before the judge in the form of an IS96, the conditions of which prevented employment. Furthermore, the judge found the appellant and his father credible at [16]. She drew my attention to [9] of the decision, where the judge noted the findings of the previous judge. The issues before the judge were narrow and the judge was mindful of the lacunae noted in the previous decision. Ms Vidal argued that it was open to the judge to make findings regarding dependency.
11. At the end of the hearing, I announced that the judge materially erred in allowing the appeal on the basis that the respondent was entitled to a permanent residence card. That part of his decision is set aside for remaking, with all his findings preserved. There is no challenge to the Article 8 decision and that stands. In remaking the decision, I allowed the appeal on the basis that the appellant is dependent upon his father for his essential needs and thus would be entitled to a residence card.

#### Decision on error of law

12. The respondent challenged the removal directions on both EEA and Article 8 grounds. His previous appeal against a decision refusing to issue him with a permanent residence card was dismissed by Judge Birk in a decision promulgated on 13 November 2017. In short, Judge Birk did not accept that the respondent was dependent upon his father because he was working with a reasonable income and there was an absence of evidence showing that his father was paying his rent. Judge Lal took the decision of Judge Birk as his starting point at [9] but found that reliable evidence regarding the rental property had now been produced [10] and that the respondent no longer had the right to work and as such succeeded under Regulation 7(1)(b)(ii) of the 2016 Regulations. This is a reference to the respondent being a family member of an EEA national and no more. Indeed, this is the basis on which the case was argued before the judge. The Secretary of State is correct to argue that there is no support in the body of the decision for the judge's conclusion in the notice of decision that the appellant is entitled to a permanent residence card. I am satisfied that the reference to permanent residence was a slip of the pen, given the lack of any reference to the instant appeal being based on such a premise. I therefore substitute a decision allowing the EEA appeal on the basis that the respondent has provided reliable evidence to demonstrate that he is entitled to a residence card.

#### Conclusions

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law in relation to the EEA appeal.

I set aside the EEA decision to be re-made.

I substitute a decision allowing the EEA appeal.

No application for anonymity was made and I saw no reason to make such a direction.

Signed

Date : 01 May 2019

Upper Tribunal Judge Kamara

**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 and have decided a to make a fee award of any fee which has been paid or may be payable for the following reason. The appeal succeeded under Article 8 before the First-tier Tribunal and there was no challenge to that decision. The appeal has also succeeded on EEA grounds before the Upper Tribunal.

Signed

Date: 01 May 2019

Upper Tribunal Judge Kamara