



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

Appeal Number: EA/02161/2019 (P)

THE IMMIGRATION ACTS

**Decision under Rule 34
Without a hearing
6th June 2020**

**Decision & Reasons Promulgated
On 19th June 2020**

Before

UPPER TRIBUNAL JUDGE COKER

Between

FUNKE [A]

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS (P)

1. FtT Judge Cruthers dismissed Ms [A]'s appeal against the refusal of a residence card as the claimed dependant adult sibling of an EU national for reasons set out in a decision promulgated on 29th October 2019. Permission to appeal was granted by FtT judge Beach on 11th March 2020. Directions for the further conduct of the appeal were sent and, in the circumstances surrounding COVID 19, provision was made for the question of whether there was an error of law and if so whether the decision of the FtT Judge should be set aside to be determined on the papers.
2. The appellant's legal representatives did not make further submissions other than confirm reliance upon the bundle of documents filed with the FtT, the skeleton argument before the FtT and the grounds seeking permission to appeal. The respondent made written submissions albeit a little late, but I

extend time accordingly. Neither party objected to the decision on the error of law issue being taken on the papers and the respondent expressly consented to that course of action.

3. I am satisfied that the submissions made on behalf of the appellant and the respondent together with the papers before me are sufficient to enable me to be able to take a decision on whether there is an error of law in the decision of the FtT and if so whether the decision should be set aside, on the papers and without hearing oral submissions.

FtT decision.

4. The appellant claimed to be the adult dependant brother of an EU national exercising Treaty Rights in the UK. There was no challenge to the claimed familial relationship or that her brother was exercising Treaty Rights. The appellant relied upon medical evidence that she was suffering from recurrent depressive disorder and ([32]) the FtT judge stated that he proceeded with the hearing having regard to the relevant vulnerable witness guidance and that he had borne this in mind throughout his assessment of the evidence. The FtT judge set out the oral and documentary evidence before him. He concluded the appellant had failed to discharge the burden of proof that she was financially dependent upon her brother in accordance with EEA law.

Error of law

5. Permission was granted on both grounds pleaded: it was arguable the FtT judge had failed to consider whether the appellant had been a member of her brother's household, dealing only with the financial aspect of the claim; and failed to have adequate regard to the appellant's status as a vulnerable witness when assessing the evidence. The grounds also seem to take issue with aspects of the judge's commentary on the appellant's residence in Nigeria and the UK and her other family members being in the UK not being taken into account. Those latter issues are not relevant to determination of the issue that was before the FtT judge which was solely concerned with whether she met the EEA Regulations as an extended family member.
6. The grounds did not seek to challenge the finding by the judge that the appellant did not meet the financial requirements. The skeleton argument relied upon by the appellant before the FtT submitted that she was a member of her brother's household prior to him moving to the Netherlands in 2004, remained a member of his household in Nigeria thereafter until she moved to the UK in 2006 and started living with him in his household in the UK from August 2016. In the intervening period she lived with friends, met and married her husband (from whom she separated in 2011) and lived in local authority provided accommodation until 2016.
7. The FtT judge found the appellant was not financially supported by her brother during the period 2004 to 2006 ([44]). The judge found that between 2006 and the appellant's marriage in 2009 and then their move to [-] (the matrimonial home) in 2011, there was no evidence of any financial or accommodation support from her brother ([45]).

8. The judge specifically confirmed in his decision that he took account of the appellant's vulnerability when assessing the evidence. The judge referred in detail to the documentary evidence (or lack of it) and to the witness evidence in reaching his findings, such findings being plainly open to him on the evidence before him.
9. On the findings made by the judge, there has been no continuous dependency by the appellant on her brother and she has not been a member of his household such that she meets the requirements of the regulations. Although the judge did not make a specific numbered finding as to household membership, the findings made plainly show that she was not a member of her brother's household as required to meet the regulations.
10. There is no error of law in the decision by the FtT judge.

Conclusions:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision; the decision of the FtT dismissing her appeal stands.

Jane Coker

Upper Tribunal Judge Coker
Date 06 June 2020