



IAC-AH-SC-V1

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

Appeal Number: IA/48705/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 15<sup>th</sup> February 2016**

**Determination & Reasons  
Promulgated  
On 25<sup>th</sup> April 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**MISS YVONNE ABROWKA GYAN  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mrs H Gore (Counsel)  
For the Respondent: Ms Brockleby-Weller (HOPO)

**DETERMINATION AND REASONS**

1. This is an appeal against a determination of First-tier Tribunal Judge Young, promulgated on 20<sup>th</sup> July 2015, following a hearing at Hatton Cross on 30<sup>th</sup> June 2015. In the determination, the judge dismissed the appeal of

Ms Yvonne Abrowka Gyan, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

### **The Grant of Permission**

2. Permission to appeal was granted in this matter by the Upper Tribunal on 2<sup>nd</sup> December 2015. The Tribunal observed the basic facts of this matter, namely, that the Appellant wanted to remain in the UK as the family member or daughter of an Italian national, in order to claim permission to enter the UK on this basis. It was alleged that the First-tier Tribunal erred by finding that the Appellant was not a direct descendant of her mother as an adopted child within Regulation 7(1) of the EEA Regulations. It was also alleged that the Tribunal erred by finding that the Appellant was not an extended family member, given their own findings at paragraph 41 of the decision, and thus the appeal failed to be allowed under Regulation 8 of the EEA Regulations.
3. The First-tier Tribunal also erred in finding that the Appellant was not dependent on her mother because the EEA national received some state benefits. The test was simply whether the Appellant was provided with her essential living needs by the Sponsor. The Tribunal granted permission on the basis that the First-tier Tribunal may have erred on the basis that the Appellant was not a direct descendant of her mother as an adopted child. It also granted permission on the basis that the Appellant was probably dependent on her mother because the EEA national received state benefits.
4. On 5<sup>th</sup> January 2016, a Rule 24 response was entered by the Respondent to the effect that the judge had given adequate reasons in finding that receiving money alone does not amount to a dependency, as reasoned in paragraph 46 of the determination. The Rule 24 response also states that the Appellant's arguments are simply a disagreement with the findings of the judge.

### **Submissions**

5. At the hearing before me on 15<sup>th</sup> February 2016, Mrs Gore argued that the judge had fundamentally erred in not applying the provisions in Regulation 8 literally. This is because Regulation 8 contained two separate bases for an extended family member to become a family member of an EEA national. The first was that such a person is "dependent upon the EEA national". The second is that such a person "is a member of his household". Only one of these needs to be proven. The judge had considered the question of whether the Appellant was dependent upon the EEA national. The judge simply failed to consider whether she was also a "member of his household".
6. For her part, Ms Brockleby-Weller submitted that the judge had looked at the question of historical dependency and observed that this had not been

met. For example, at paragraph 39 the judge observed that dependency “in general would mean financial support to meet essential living requirements.” (Paragraph 39). The judge cited authority for this. However, as the judge explained (at paragraph 45) the Sponsor, Linda Osei, indicated that she had four children. She did not know her husband’s income. She did not know whether he supported her or her children. She was in receipt of tax credits. She was in receipt of child tax credits, housing benefit, working tax credit, child benefit and occupied a housing association property. In the circumstances this would:

“Give real doubt as to the ability of the Sponsor to provide money for the Appellant for basic living needs in Ghana. The lack of evidence of money being sent prior to 2012/2013 and evidence only of sporadic payment does not aid the claim that the Appellant was dependent on the Sponsor.” (Paragraph 45).

7. Secondly, as far as the argument about the Appellant being a “member of his household” is concerned under Regulation 8, this was implausible. It is true that it was not explicitly addressed by the judge, but it was never argued expressly as a separate ground by the Appellant either. At paragraph 43 the judge did, nevertheless, make it clear that, “in the first instance the Sponsor left Ghana for Italy when the Appellant was very young (5 years old) and her return to Ghana has only been to visit the family rather than to stay for extended periods.” (Paragraph 43). In fact, as the judge explains, she had indicated in her interview that she had been to visit three times since coming to the UK five years ago ....” (Paragraph 43).
8. In these circumstances, it could hardly be said that the Appellant was a member of the household of Linda Osei. In the same way, at paragraph 48 the judge makes it quite clear that he was not satisfied that the Appellant could show on the balance of probabilities “that she was dependent on the EEA national while she was resident in Ghana”. This is because “there is insufficient evidence in my view to demonstrate that position. It seems more likely that the wider family members in Ghana (other aunts and grandparents) provided basic living requirements for the Appellant after Linda Osei left for Italy when the Appellant was 5 and that continued. So the Appellant does not satisfy the definition of an extended family member.” (Paragraph 48).
9. The judge similarly went on to dismiss the appeal on Article 8 grounds as well (paragraph 49).
10. In reply, Mrs Gore submitted that the Appellant had arrived in the UK illegally. At the time of the decision she was dependent on her aunt, Miss Linda Osei. This is because she arrived in the UK in November 2014. She was apprehended by an Immigration Officer at the port of entry. She was given temporary admission. The following month, in December 2014, the Secretary of State made a decision against her. During that time, the Appellant was living with her aunt in the UK, Linda Osei, and so to all

intents and purposes she was a dependant upon her aunt, being totally reliant upon her.

11. By the time that the appeal went to the judge in July 2015 she was still living with her aunt, Linda Osei. The judge did find that the auntie, Linda Osei, had parental responsibility for the Appellant. The judge found that the auntie had been looking after the Appellant since the Appellant was 3 years of age, and when she had to leave Ghana herself, she made arrangements through other aunts and grandparents, for the Appellant to be looked after.
12. Mrs Gore referred to Macdonald's Immigration Law & Practice which refers to being a member of a household as "living under the roof". She drew attention to the Appellant's witness statement because at paragraph 4.5 and paragraph 9 of the aunt's witness statement, it was made clear that she was responsible for the Appellant for all her essential needs during her life.
13. The Appellant was not cross-examined on this issue. Credibility was assumed. It was wrong for the judge to have said at paragraph 48 that the Appellant was looked after by other aunts and grandparents given that there was no cross-examination of the aunt when she maintained that she looked after the Appellant in her witness statement and neither was her cross-examination of the Appellant.

### **No Error of Law**

14. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows.
15. First, the judge does direct himself appropriately both in terms of the law and in terms of the factual circumstances before him. He considers whether the Appellant is dependent upon the EEA national. He is quite clear (at paragraph 42) that the issue of concern was whether the Appellant was dependent upon Linda Osei whilst in Ghana. The judge, (notwithstanding what may or may not have been said in the witness statement) is quite clear that, "the Sponsor left Ghana for Italy when the Appellant was very young (5 years old) and the return to Ghana has only been to visit the family rather than to stay for extended periods." (Paragraph 43).
16. The judge also did not accept that the Sponsor, being entirely dependent upon state assistance (see paragraph 45) was in a position to provide for the Appellant, especially given that she had four children of her own.
17. The judge was clear that there were "real doubts as to the ability of the Sponsor to provide money for the Appellant for basic living needs in Ghana." (Paragraph 45). Furthermore, at paragraph 46, the judge observes that the Appellant at the time of the application "was aged 18

and there is no evidence as to why she might still be dependent on her aunt given that she had apparently completed her education and would be able to earn a living.” (Paragraph 46).

18. As far as paragraph 48 was concerned, the judge was of the view that the Appellant could not be a dependant on the EEA national while she was resident in Ghana because “there is insufficient evidence in my view to demonstrate that position.” (Paragraph 48), and the judge gave ample reasons for this.
19. Second, insofar as the Appellant being a member of the household is concerned, it is implicit in the way in which the judges dealt with the matters already set out above, that the Appellant was not a member of the household. In fact, it is quite clear (at paragraph 43) that the Sponsor left the Appellant when the Appellant was only 5 years of age, to leave Ghana and to go to Italy, and then only returned for family visits “rather than to stay for extended periods.” (Paragraph 43).
20. The Appellant could not, on any reasonable view, have therefore been a member of the household of the Sponsor.

### **Notice of Decision**

21. There is no material error of law in the original judge’s decision. The determination shall stand.
22. No anonymity order is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

21<sup>st</sup> April 2016