IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006158
First-tier Tribunal No: EA/00706/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 19 May 2023

Before

UPPER TRIBUNAL JUDGE BLUNDELL

Between

STELLA GYIMAH
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: In person
For the Respondent: Mr Walker, a Senior Presenting Officer

Heard at Field House on 30 March 2023

DECISION AND REASONS

1. In her response to the appellant's grounds of appeal, the Secretary of State accepted that the First-tier Tribunal had erred in law in dismissing the appellant's appeal. She accepted that the First-tier Tribunal had overlooked documents which had been sent to it by the appellant's representatives on 23 March 2022. She invited the Upper Tribunal to set aside the FtT's decision accordingly.

2. At the outset of the hearing before me, I indicated that I was minded to accept that concession and to remake the decision on the appeal without further ado. The appellant and Mr Walker were content for me to do so, and what follows are the reasons for remaking the decision on the appeal by dismissing it.

Background

3. The relevant background is not in dispute and what follows is a summary of the appellant's claim, taken from the documents filed and the evidence she gave before me.

4. The appellant is a Ghanaian national who was born on 23 September 1996. She arrived in the United Kingdom on 12 October 2013, at which point she was

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seventeen years old, having been granted a Family Permit to join her father, Samuel Gyimah. He was a French national who was born on 26 December 1952 who was obviously accepted at that time to be exercising his Treaty Rights in the United Kingdom.

5. The appellant lived with her father after moving to the United Kingdom. They initially lived at an address in Thornton Heath, near Croydon, but subsequently moved to Mitcham. He provided for her essential needs when she lived with him. He was working as a security guard at that time.

6. The appellant was granted a Residence Card as her father's family member on 24 March 2014. That card was valid for the requisite five-year period. She turned 21 in September 2017 and then, at the end of that year, she left her father's house as a result of disagreements over her education. The appellant wanted to go to university to study nursing but she was unable to do so without proof of her father's nationality. He refused to provide his passport, and she was not able to follow her ambition.

7. The appellant consequently finished college in 2017 and began working as a healthcare assistant at a care home in Thamesmeade. She was self-sufficient from that point onwards, and although relations with her father improved somewhat over time, he did not support her financially after she left his house in November or December 2017.

8. The appellant was living at an address in Abbeywood from 2017. It was shared accommodation. One of the people living in the accommodation was a man called Mr Mensah. He has Indefinite Leave to Remain in the United Kingdom. The appellant had an 'on-off' relationship with Mr Mensah, as a result of which she conceived a son. Louis Antwi Mensah was born at Queen Elizabeth Hospital in Woolwich on 4 November 2018. The appellant now supports herself by plaiting hair for people. She receives a limited amount of support from Louis's father.

9. It is accepted by the respondent that the appellant's father was previously exercising Treaty Rights. He passed away from Covid-19 in January 2021.

The Appellant's Application

10. The appellant applied for a Permanent Residence Card in March 2019. The 85 page EEA (PR) application form was accompanied by a letter from the appellant's then solicitors. It was submitted in that letter that the appellant had lived in the United Kingdom for a continuous period of five years and that she was entitled to permanent residence pursuant to regulation 15(1)(b) of the Immigration (EEA) Regulations 2016. Insofar as the respondent might be concerned that the appellant had not provided her father's passport or proof that he was exercising Treaty Rights at the date of the application, the appellant's solicitors submitted as follows. The appellant's father was uncooperative. Given the prior acceptance that he was a French national, there was no need to prove the point again. The respondent had power under section 40 of the UK Borders Act 2007 to request information from HMRC in connection with the exercise of her immigration and nationality functions.

The Respondent's Decision

11. The respondent refused the application on 3 July 2019. The reasons given were succinct and might properly be reproduced in full:

> Your application has been considered under regulation(s): 15(1)(b) of the Immigration (EEA) Regulations 2016.
>
> In order for you to qualify for permanent residence you would need to evidence that you have been resident with, dependent upon your sponsor for a continuous five year period. Departmental records show that you ceased residing with your sponsor in 2016. While it is noted that you have submitted evidence f your employment for 2015, 16, 17, 18, this evidence would appear to show that you have not been dependent upon your sponsor as required under the EEA regulations 2016.
>
> This department has considered your circumstances with regard to your sponsor's ID and evidence of treaty rights. However, under the current regulations you would stil need to evidence that your were dependent upon your sponsor for the required time period.
>
> We have determined that you have not provided adequate evidence to show that you qualify for a right to reside as the family member of your EEA sponsor.

12. The appellant appealed to the First-tier Tribunal. Her appeal was heard by the First-tier Tribunal and dismissed in a decision which was issued on 14 September 2022. As I have already recorded above, it is accepted on all sides that the decision cannot stand because the judge did not have before him some material which was sent to the FtT by the appellant's solicitors in March 2022. In the circumstances, I need not say anything more about that decision.

<u>The Appellant's Claim</u>

13. I have made reference in the preceding paragraph to the appellant's solicitors. She has since the appeal to the First-tier Tribunal been assisted by a Mr Apraku of Adam Bernard Solicitors, although Mr Apraku has communicated with the FtT and the Upper Tribunal to explain that the appellant is unable to afford to pay for advocacy services from his firm. His involvement has therefore been in the preparation of the papers, and in advising the appellant.

14. Mr Apraku made clear in an email which he sent to the Upper Tribunal on the day of the hearing that the appellant continued to rely on the Appeal Skeleton Argument, the appellant's witness statement and the bundle which had been filed with the FtT. I should in the circumstances set out a summary of the appellant's case, as it emerges from those documents.

15. In the skeleton argument, Mr Apraku submitted that the First-tier Tribunal should make what has come to be known as an Amos direction (*Amos v SSHD* [2011] EWCA Civ 552; [2011] 1 WLR 2952, requiring the respondent to make enquiries of HMRC under section 40 of the 2007 Act. The appellant had made clear that relations with her father were not entirely amicable and he had in any event passed away. In the circumstances, this was the paradigm case in which such a direction was appropriate. In the absence of such a direction, the appellant could not establish that her father was a qualified person before his death.

16. In her witness statement, the appellant explained how relations between her and her father had deteriorated to the point that she left his house. She provided

letters from the University of Greenwich showing that she had been unable to enrol on a nursing course without his documents. She had left the house but she remained in contact with him. She was upset by his refusal to support her in her studies or to provide any documents in support of her application for permanent residence. He had passed away after contracting Covid-19 from his work at a testing centre. She was also upset at the respondent's failure to make enquiries to verify her father's economic activity. The appellant's account of her difficulties with her father was supported by a letter from a Ms Gold, from the Holy Ghost Christian Centre and by documents from the university and messages between her and her father. The respondent's bundle also contained evidence to show that the appellant had been in employment as above.

17. In the grounds of appeal to the Upper Tribunal, it was contended by Mr Apraku that the appellant is entitled to Permanent Residence or to a Retained Rights of Residence. The relevant regulations have been repealed as a result of the UK's withdrawal from the European Union but they are preserved for the purpose of this appeal.

Analysis

18. As I have recorded above, this is a case in which the appellant reached the age of 21 in September 2017. The significance of that is clear from regulation 7 of the 2016 Regulations. By reference to regulation 7(1)(b)(i), the appellant was automatically considered to be her father's family member whilst she was under 21. After that point, she was his family member only if she was dependent upon him, as a result of regulation 7(1)(b)(ii).

19. As her father's direct descendant, the appellant could not have been his extended family member: regulation 8(1) refers. Had that route been open to her, she would nevertheless have been required to show that she was dependent upon him or a member of his household in order to satisfy that definition. She does not claim to have been either.

20. It is common ground between the parties that the appellant was not dependent upon her father from the point at which she left his house in Mitcham in 2017. She was 21 years old at that stage. As contended by the respondent in her review before the First-tier Tribunal, the appellant could not from that point be considered to be her father's family member or, for that matter, to have any right to reside under the Directive. The fact that she held a residence card which was valid until 2019 is immaterial; such documents are merely declaratory of the underlying right and not evidence of the same.

21. It follows that the appellant did not have a right to reside in the United Kingdom beyond the point that she ceased being dependent upon her father. Whether or not he was working from September 2017 onwards (and I think it likely that he was), the reality is that the appellant was not his dependant and she no longer had any rights under the Directive as a result.

22. The appellant came to the United Kingdom in October 2013 and had accrued around four years continuous residence in accordance with the Regulations at the time that she left her father's house. She has never been entitled to permanent residence under regulation 15(1)(b) as a result.

23. There is some reference, as I have mentioned above, to the appellant having retained a right of residence under regulation 10. It is clear, however, that the

appellant cannot demonstrate that she retained a right to reside under that regulation. By regulation 10(1), a family member who retained the right of residence means a person who satisfies any of the four requirements which follow. The appellant cannot meet those requirements for the following reasons. She was not her father's family member when he died because she was over 21 and not dependent upon him, and cannot meet regulation 10(2). She was not attending an educational course in the UK immediately before her father died, and cannot meet regulation 10(3). Her child does not meet the condition in paragraph 10(3), so she cannot meet paragraph 10(4). The appellant was not married to the EEA national or in a civil partnership with him, as a result of which she cannot meet the conjunctive requirements of regulation 10(5).

24. This is not a case, therefore, in which the EEA Regulations make any provision for the appellant having retained her right to reside when she ceased living with her father and being dependent upon him. She did retain that right, and she is unable to show that she has the requisite period of residence in accordance with the Regulations in order to have a right to reside permanently in the United Kingdom.

25. I attempted to explain these conclusions to the appellant at the hearing. She was understandably upset and will wish to consider the position with the benefit of Mr Apraku's advice. As I suggested to her at the hearing, it may well be that there are alternative ways in which she might consider seeking leave to remain under the Immigration Rules. I note in that connection that her son appears to be a British citizen. These are obviously not relevant matters for the purposes of an appeal of this nature (*Amirteymour v SSHD* [2017] EWCA Civ 353 refers but may be relevant for the future.

Notice of Decision

The decision of the FtT was erroneous in law and is set aside by consent. The decision on the appeal is remade by dismissing it.

M.J.Blundell

Judge of the Upper Tribunal
Immigration and Asylum Chamber

24 April 2023