



**Upper Tribunal
(Immigration and Asylum Chamber)
EA/02238/2018**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 26 November 2018

Promulgated

On 03 January 2019

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

**KEVIN ALEXANDER PORCEL LEMA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L Appiah of Counsel, Vine Court Chambers

For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. There is now just one appellant in this case, Kevin Lema who was born on 27 July 1994. He is a national of Bolivia.
2. The appellant's parents came to this country in 2002/3 in their own right as students and were here lawfully until about 2009 when their leave, which had been extended on occasions, expired, since when they have overstayed. In June or July 2007 this appellant, together with a sister, arrived in the UK. Because they were both teenagers they went to secondary school in the UK where the appellant's sister met a Polish national to whom she is now married. It is accepted that at material times

the Polish national (the sponsor) has been exercising treaty rights in this country.

3. Another child was born in May 2008 and I am told she is now a British citizen, an application having been made on her behalf on the basis that having been born in this country and having lived in this country for ten years she was entitled to British citizenship.
4. The appellant's sister, having married the sponsor, was granted a residence card. It is the family's case that the appellant's parents, together with him and his younger sister, were all dependants of the sponsor and on this basis on 1 February 2016 they all applied for residence cards as family members of the sponsor. The appellant's parents applied under Regulation 7 of what was then the 2006 Regulations (which has been replaced in similar terms in the 2016 Regulations); within Regulation 7(1)(c) a family member entitled to a residence card includes "dependent direct relatives in his ascending line or in that of his spouse or his civil partner" and so on this basis, provided that the appellant's parents were indeed dependants of the sponsor they would be entitled to residence cards under Regulation 7. The appellant and his younger sister, who had been born in May 2008 applied for residence cards on the basis that they were extended family members under the relevant Directive. The respondent refused the application essentially because it was not accepted that either the parents or the appellant and his sister were dependants of the sponsor. The appellant, together with his parents and his sister, appealed against this decision and their appeal was heard before First-tier Tribunal Judge Clark, sitting at Taylor House on 27 June 2018.
5. In a decision and reasons promulgated on 23 July 2018 Judge Clark allowed the appeals of the appellant's parents under Regulation 7 because she accepted that they (and indeed the appellant and his younger sister) were indeed dependent on the sponsor but she felt obliged to dismiss the appeal of the appellant and his younger sister. The reason for this is that under Regulation 8(2) of the 2006 Regulations it is clear that in order to succeed under this Regulation the appellant and his sister would have to establish prior dependency before entering the UK, which of course they could not do. The appellant entered the country even before his sister had even known the sponsor and the younger sister was born in this country, so clearly they had not been dependent before entering the country.
6. The appellant and his younger sister appealed but the appeal on behalf of the younger sister has now been discontinued as she is now a British national. The basis of the appeal (for which leave was surprisingly granted by First-tier Tribunal Judge Boyes on 11 October 2018) is that Regulation 8(2) does not comply with the Directive.
7. The difficulty with this submission is that this precise point was considered by the Court of Appeal in *Oboh and others v SSHD* [2013] EWCA Civ 1525 in which the Court of Appeal concluded that the Directive meant what was set out within the 2006 Regulations. Accordingly, (and Ms Appiah sensibly

did not seek to persuade me otherwise) I have no alternative other than to dismiss this appeal as this Tribunal is bound by the decision of the Court of Appeal.

8. I note, as did Judge Clark, that this decision does not preclude the appellant making an application for leave to remain under Article 8, but as this has not yet been made, that is not an issue which now falls to be determined by this Tribunal.
9. Accordingly, there being no material error of law in Judge Clark's decision relating to this appellant, this appeal must be dismissed and I will so order.

Notice of Decision

There being no error of law in the decision of the First-tier Tribunal, the appellant's appeal is dismissed.

No anonymity direction is made.

Signed:

A handwritten signature in black ink that reads "Ken Craig". The signature is written in a cursive style with a long, sweeping tail on the letter 'p'.

Upper Tribunal Judge Craig
December 2018

Date: 27