

Subject-matter concerned	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - linked to which article of the Directive 2004/38 – <a href="#">Article 2 (2) (d)</a> <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Full reference	<i>Lim v Entry Clearance Officer, Manila, Court of Appeal (Civil Division), 28 July 2015, [2015] EWCA Civ 1383, available at: <a href="http://www.bailii.org/ew/cases/EWCA/Civ/2015/1383.html">www.bailii.org/ew/cases/EWCA/Civ/2015/1383.html</a>.</i>
Decision date	28 July 2015
Deciding body (in original language)	Court of Appeal (Civil Division)
Deciding body (in English)	/
Case number (also European Case Law Identifier ( <a href="#">ECLI</a> ) where applicable)	[2015] EWCA Civ 1383
Parties	Lim v Entry Clearance Officer
Web link to the decision (if available)	<a href="http://www.bailii.org/ew/cases/EWCA/Civ/2015/1383.html">www.bailii.org/ew/cases/EWCA/Civ/2015/1383.html</a>
Legal basis in national law of the rights under dispute	Regulation 7 Immigration (European Economic Area) Regulations 2006

<b>Key facts of the case</b> (max. 500 chars)	<p>The Secretary of State appealed against a decision that the respondent, a Malaysian citizen, was entitled to enter the UK as a family member of an EU national. The respondent, Ms Lin, sought entry clearance as a family member of her Finnish son-in-law. The issue was whether she was a “dependent direct relative” within Regulation 7 (1) (c) of the EEA Regulations. Since 2012 Ms Lin’s daughter and son-in-law had sent her around £450 a month to cover her living expenses and Ms Lin did not wish to draw upon her savings because she wanted to pass the funds on as an inheritance to her children and grandchildren. The Secretary of State submitted that Ms Lin had, as a matter of fact, no need to rely on her daughter and son-in-law's resources as she owned a property in Malaysia and had sufficient savings to meet her own needs.</p>
<b>Main reasoning / argumentation</b> (max. 500 chars)	<p>The Court of Appeal deviated from the Upper Tribunal’s earlier decision. The Upper Tribunal, in support of its conclusion that Ms Lin was a dependent relative, had referred to the observations in <i>Pedro v Secretary of State for Work and Pensions [2009] EWCA Civ 1358</i>. In <i>Pedro</i>, the court held that the reason why the family member was dependent did not matter; the status of dependency was characterised by the material support for that family member provided by the EU national who had exercised their free right of movement. However, the court of Appeal considered the CJEU judgement in <i>Reyes v. Migrationsverket</i> which made it unambiguously clear that receipt of support was a necessary but not sufficient condition. The court stated that the family member must need this support from his or her relatives in order to meet his or her basic needs. Therefore, the reason why he/she could not support him/herself was irrelevant; the fact that he/she could not do so was critical. In the present case, the court concluded that Ms Lin was financially independent and did not need the additional resources for the purpose of meeting her basic needs.</p>
<b>Key issues (concepts, interpretations) clarified by the case</b> (max. 500 chars)	<p>The Court of appeal interpreted the notion of “dependent direct relative” in Regulation 7 (1) (c) of the EEA Regulations and Article 2 (2) (d) of the Directive considering both domestic and CJEU case law.</p>
<b>Results (e.g. sanctions) and key consequences or implications of the case</b> (max. 500 chars)	<p>The appeal was allowed.</p>
<b>Key quotations in original language and translated into English with</b>	<p>“The last sentence of paragraph 27 precisely reflects the argument now being advanced by the Secretary of State. She submits that the respondent has no need to rely on the resources of her daughter as a matter of fact; she is financially independent”. [Para. 21]</p>

**reference details**  
(max. 500 chars)

"In a judgment handed down three weeks after SM, namely Pedro v Secretary of State for Work and Pensions [2009] EWCA Civ 1358, [2010] 2 CMLR 20, Goldring LJ (with whom Mummery and Sullivan LJ agreed) again considered the question of dependency and the true ratio of Jia. This was a case on the Citizens Directive. A 62-year-old Portuguese national had come to the UK in 2004 to join her son. At that point she was able to support herself in Portugal. Subsequently she relied upon her son for support. She claimed state pension credit. This depended upon whether she was a dependent family member within the meaning of the Citizens Directive. The Secretary of State said that, in accordance with Jia, she was not since she could support herself in her country of origin at the time when she applied to come to the UK. She contended that she had become dependent on her son since leaving Portugal and that this was enough to make her a dependent family member within the meaning of the Citizens Directive. The Court of Appeal agreed. Goldring LJ distinguished Jia on the grounds that it was concerned with a different directive. He held that the Citizens Directive went further than earlier Directives on freedom of movement and did not require in all cases that the question of dependency should be assessed by reference to the circumstances in the state of origin. However, Goldring LJ accepted (paragraph 61) that where the only basis of an alleged dependency was support in the state of origin, it would be appropriate to apply Jia, citing the decision of the Court of Appeal in Bigia v Entry Clearance Officer [2009] EWCA Civ 79, [2009] 2 CMLR 42". [Para. 22]

"I do not, therefore, read Pedro as affecting the appropriate principles to apply in a case of this nature; it does not address the specific question that we have to resolve. In any event, I very much doubt whether it can now stand in light of the third and most recent decision of the CJEU, namely Reyes v Migrationsverket 2014/C-423/12, [2014] QB 1140. Reyes was concerned with the question whether an EU direct descendant aged 21 or older could be treated as a dependant within the meaning of Article 2.2(c) of the Citizens Directive. The same principles would apply equally to ascendants under paragraph (d)". [Para. 23]

"The case concerned a 25-year-old Philippine national who said that she had been unable to find work in the Philippines. She was financially supported by her mother, who had become a German citizen, and her mother's cohabiting partner, a Norwegian citizen, who both resided in Sweden. The first question in the reference by the Swedish court was, in essence, whether, in order to be regarded as dependent and so fall within the concept of family member, a direct descendant had to show that he had tried without success to find employment in his country of origin or to obtain a subsistence allowance or some other means of supporting himself. Both the Advocate General and the Court held that this was not necessary, which was of course entirely in accordance with the earlier authorities. The Advocate General summarised his conclusions as follows (paragraph 69):

"On a proper construction of Article 2(2)(c) of Directive 2004/38/EC of [the Citizens Directive] ... any member of the family of a Union citizen who, for whatever reason, proves unable to support himself in his country of origin and in fact finds himself in such a situation of

dependence that the material support provided by the Union citizen is necessary for his subsistence, is to be considered to be a 'dependant'. As regards members of the nuclear family deemed to be dependants, such a situation must really exist and may be proved by any means."

So the reason why the party cannot support himself or herself is irrelevant; the fact that he or she cannot do so is critical. This is inconsistent with the notion that dependency is established merely from the fact that material support is provided. The court essentially adopted the same approach, it said this:

"20. In that regard, it must be noted that, in order for a direct descendant, who is 21 years old or older, of a Union citizen to be regarded as being a 'dependant' of that citizen within the meaning of Article 2(2)(c) of Directive 2004/38, the existence of a situation of real dependence must be established (see, to that effect, Jia, paragraph 42).

21. That dependent status is the result of a factual situation characterised by the fact that material support for that family member is provided by the Union citizen who has exercised his right of free movement or by his spouse (see, to that effect, Jia, paragraph 35).

22. In order to determine the existence of such dependence, the host Member State must assess whether, having regard to his financial and social conditions, the direct descendant who is 21 years old or older, of a Union citizen, is not in a position to support himself. The need for material support must exist in the State of origin of that descendant or the State whence he came at the time when he applies to join that citizen (see, to that effect, Jia paragraph 37).

23. However, there is no need to determine the reasons for that dependence or therefore for the recourse to that support. That interpretation is dictated in particular by the principle according to which the provisions, such as Directive 2004/38, establishing the free movement of Union citizens, which constitute one of the foundations of the European Union, must be construed broadly (see, to that effect, Jia, paragraph 36 and the case-law cited).

24. The fact that, in circumstances such as those in question in the main proceedings, a Union citizen regularly, for a significant period, pays sum of money to that descendant, necessary in order for him to support himself in the State of origin, is such as to show that the descendant is in a real situation of dependence vis-à-vis that citizen.

25. In those circumstances, that descendant cannot be required, in addition, to establish that he has tried without success to find work or obtain subsistence support from the authorities of his country of origin and/or otherwise tried to support himself.

26. The requirement for such additional evidence, which is not easy to provide in practice, as the Advocate General noted in point 60 of his Opinion, is likely to make it excessively difficult for that descendant to obtain the right of residence in the host Member State, while the facts described in paragraph 24 of this judgment already show that a real dependence exists. Accordingly, that requirement

	<p>is likely to deprive Articles 2(2)(c) and 7 of Directive 2004/38 of their proper effect.</p> <p>27. Furthermore, it is not excluded that that requirement obliges that descendant to take more complicated steps, such as trying to obtain various certificates stating that he has not found any work or obtained any social allowance, than that of obtaining a document of the competent authority of the State of origin or the State from which the applicant came attesting to the existence of a situation of dependence. The Court has already held that such a document cannot constitute a condition for the issue of a residence permit (<u>Jia</u> paragraph 42).” [Para. 24]</p> <p>“In my judgment, this makes it unambiguously clear that it is not enough simply to show that financial support is in fact provided by the EU citizen to the family member. There are numerous references in these paragraphs which are only consistent with a notion that the family member must need this support from his or her relatives in order to meet his or her basic needs. For example, paragraph 20 refers to the existence of "a situation of real dependence" which must be established; paragraph 22 is even more striking and refers to the <u>need</u> for material support in the state of origin of the descendant "who is not in a position to support himself"; and paragraph 24 requires that financial support must be "necessary" for the putative dependant to support himself in the state of origin. It is also pertinent to note that in paragraph 22, in the context of considering the Citizens Directive, the court specifically approved the test adopted in <u>Jia</u> at paragraph 37, namely that:</p> <p style="padding-left: 40px;">"The need for material support must exist in the State of origin of those relatives or the State whence they came at the time when they apply to join the Community national.” [Para. 27]</p> <p>“This, as I say, makes the analysis in <u>Pedro</u> highly problematic. I doubt whether it is compatible with <u>Reyes</u>”. [Para. 26]</p>
<p><b>Has the deciding body referred to the Charter of Fundamental Rights. If yes, to which specific Article.</b></p>	<p>No.</p>