



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

Appeal Number: IA/31891/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 19th August 2014**

**Determination
Promulgated
On 5th September 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE MURRAY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**SAMIRATU FUSEINI
(ANONYMITY HAS NOT BEEN DIRECTED)**

Respondent

Representation:

For the Appellant: Mr Jack, Home Office Presenting Officer
For the Respondent: No representative

DETERMINATION AND REASONS

1. The Appellant in these proceedings is the Secretary of State however for convenience I shall now refer to the parties as they were before the First-tier Tribunal.

2. The Appellant is a citizen of Ghana born on 22nd July 1984. She appealed against the Respondent's decision dated 10th July 2013 refusing her an EEA residence card as the extended family member of Mr Nazir Tchelenon (the Sponsor) a German national living in the United Kingdom (UK). Her appeal was heard by Judge of the First-tier Tribunal Stokes on 28th March 2014. He allowed the appeal under the Immigration (EEA) Regulations 2006 as amended, in a determination promulgated on 15th May 2014.
3. An application for permission to appeal was lodged and permission was granted by Judge of the First-tier Tribunal Fisher on 25th June 2014. The grounds seeking permission assert that the judge erred in law by concluding that the Appellant had evidenced prior dependency, on the basis that the Sponsor had remitted to her, funds for school fees and additional expenses associated with her education. The judge also found that the Appellant had been living with her mother prior to her departure for the UK and that her mother had always supported her financially until that point in time. The permission states that it is arguable that the payment of school fees and associated expenditure does not establish that the Appellant's essential needs were being met by her Sponsor and the Appellant was in fact dependent upon her mother before he came to the United Kingdom.

The Hearing

4. The Appellant's Sponsor Nazir Tchelenon, a German national living in the United Kingdom and the first cousin of the Appellant on his mother's side, submitted that the Appellant had been unable to find a representative and that he wanted to deal with the hearing himself. I explained that this hearing is about an error of law and recommended that he and the Appellant employed a solicitor to represent them but he did not want to do that and the hearing went ahead.
5. I explained the procedure to the Sponsor and the Appellant who was also attending the hearing.
6. The Presenting Officer submitted that he is relying on the grounds of application referred to in the permission. I was referred to paragraph 29 of the determination in which the judge states that it is credible that the Sponsor's remittances to the Appellant were required for school fees and additional expenses in relation to education. Because of this the judge found that the Appellant had been dependent on the Sponsor prior to her arrival in the United Kingdom.
7. I was referred to paragraph 26 a and b of the determination. The judge refers to the Appellant's evidence that her mother always financially supported her until her arrival in the United Kingdom.

8. The Presenting Officer submitted that there were discrepancies in the evidence. At paragraph 10 the Appellant's evidence was that she could not remember when the Sponsor had started supporting her financially. At paragraph 15 the Sponsor gave evidence that the Appellant would ask him for money, for example for school fees and he would remit to her the amount she had requested. He remembered that he had paid all the appellant's tertiary education fees. At paragraph 14 the Sponsor gave evidence that he has been financially supporting the Appellant since 2006. At paragraph 26 b it is stated that the Appellant thought the Sponsor's financial support began in 2010.
9. The Presenting Officer submitted that the issue in this case is prior dependency. He submitted that present dependency is not in dispute. He referred me to paragraph 14 of the determination relating to prior dependency. This states that the Appellant mainly lived in Kumasi and visited her mother in Accra. She went to secondary school in Kumasi and then Kumasi Polytechnic. This paragraph states that when the Sponsor visited Ghana he always stayed at his family home in Kumasi where the Appellant also lived as part of the same household. His father's property is a compound. Paragraph 14 states that the Sponsor and the Appellant had formed part of the same household prior to the appellant's entry to the UK and subsequently. The paragraph goes on to state that the Sponsor had also supported the Appellant's mother financially. The Presenting Officer referred to the evidence of financial remittances which are dated 2005, 2006 and 2011.
10. At paragraph 29 of the determination it is stated that university education is not free in Ghana and the Appellant was accommodated by her mother. In this paragraph it is credible that the Sponsor's remittances were required for school fees and additional expenses relating to her education. He submitted that the question is "what is dependency" in an EEA case.
11. I was referred to the case of **Lim [2013] UKUT 437 (IAC)**. At paragraph 24 it is stated that for dependency to arise it is not necessary that a person be fully or even mainly dependent. If a person requires material support for essential needs in part, that is sufficient. The Presenting Officer submitted that university and school fees are not essential needs. He submitted that essential needs are food, clothing and accommodation. He submitted that these things were provided by the Appellant's mother, based on the evidence before the judge. He submitted that the remittances in 2005 and 2006 are too remote to be relevant, relating to prior dependency before the Appellant came to the United Kingdom. He submitted that the later money transfers were not for essential needs.
12. The Sponsor made his submissions.
13. He submitted that the money he gave the Appellant was not only for her university course. He submitted that he has been supporting the Appellant for a long time but has been unable to produce all the money receipts because he had not realised they would be relevant. He said he

often gave money to friends going to Ghana to give to the Appellant. None of these friends were in court to support his evidence at the First-tier hearing. He said he also gave these people clothes, shoes etc to give to her sometimes at her request. He submitted that he gave the Appellant money for her essential needs. He said that at the First-tier hearing the wrong questions were asked. The Appellant had not been staying with her mother in Ghana. At paragraph 26 a of the determination, he submitted that although the judge said the Appellant was living with her mother and was supported by her that was not the case. The Sponsor submitted that the Appellant was not staying with her mother in Accra in 2000. She went to live in his, the Sponsor's, family home in Kumasi. He said she was there from 2001 until 2004. The Sponsor said that at that time he was supporting his mother and his mother was supporting the Appellant. From 2005 until 2008 the Appellant was at Kumasi Polytechnic and he was still sending her money. He submitted that he had been in Germany at that time and all the remittances were sent to Kumasi.

- 14.** I asked if the Appellant's mother was sending money to her at that time and he said not that he is aware of. He said that in his culture it would be frowned on for his mother to send the Appellant's mother money. It would be an insult. He said that when he sent money to the Appellant's mother in Accra he did not want his own mother to know.
- 15.** The Sponsor referred to the case of **Dauhoo [2012] UKUT 000079 (IAC)** relating to prior dependency. He said that the First-tier Judge misinterpreted the evidence relating to prior dependency. He said that the First-tier Judge however came to the right conclusion by allowing the appeal. He said that the Appellant did her national service from 2009 until 2010 and then in 2011 she moved to Accra to go to university. He said that at that time she was not staying with her mother. She was staying in a hostel in Accra and the judge was wrong to say that she had been living with her mother in Accra.
- 16.** He submitted that the First-tier Judge had made an error by misinterpreting the evidence.
- 17.** The Presenting Officer submitted that the evidence being given in court today is new evidence and it does not help the error of law determination. He submitted that there is an error of law and the new evidence has raised credibility issues.
- 18.** The Presenting Officer referred to paragraph 23 which states that the Appellant lived in the Sponsor's father's household in Kumasi and completed her secondary tertiary education there. I was referred to the money receipts going to Accra and I was referred to the application form which refers to her attending Greenhill College in Accra. The judge found that the Appellant's mother supported her when she was there until she arrived in the United Kingdom. He submitted that the Sponsor has now stated that she was not living with her mother at that time although she moved to Accra in 2011.

- 19.** The Presenting Officer referred me to the money transfer receipts, submitting that none of the names on these are the Appellant's name. The names vary from Samra Fousseini to Samila Fuseni and yet the Sponsor is stating that they were all meant for the Appellant. The Sponsor submitted that every remittance has a code and if the name does not tally all the Appellant has to do is give the code. He said all the remittances were for the Appellant. He submitted that based on said case of **Dauhoo** not only was there prior dependency by the Appellant on him there was also prior membership of his household. The Sponsor stated that he had told the First-tier Judge that he had lived with the Appellant's mother when he was small before he moved to Kumasi.
- 20.** He stated that he and the Appellant have a brother/sister relationship.
- 21.** I asked the Sponsor what would have happened if he had not sent money to the Appellant and he said that the Appellant was dependent on his mother who was dependent on him and the Appellant's mother could not have taken care of all her needs. I asked what needs he was referring to and he said clothes, accommodation etc. He said he gave her money for essential needs as well as for university. He said that although he did not send her money to cover all her needs part of the money was for her essential needs.
- 22.** The Presenting Officer submitted that much of the evidence given at this hearing was not before the First-tier Judge. He submitted that much of this evidence contradicts the evidence given to the First-tier Judge but there is still insufficient evidence to show prior dependency. He submitted that none of the evidence given at this hearing changes this.
- 23.** He submitted that the correct test is that in the case of Lim - essential needs:- Based on this there is a material error of law in the approach taken by the First-tier Judge and the appeal should be dismissed.
- 24.** He submitted that the determination refers to Regulation 8 only, Regulation 17 has not been addressed. He submitted that a new application can be made by the Appellant but that there is a material error of law in the existing First-tier determination and the case should be reheard.

Determination

- 25.** Based on what was before the First-tier Judge there is an error of law in the determination. Based on what seems to have been before the Judge, the Sponsor was not responsible for the Appellant's essential needs but was responsible for supporting the Appellant through her university education.
- 26.** Due to the fact that the evidence given today by the Sponsor, contradicts much of what was before the judge, my decision is as follows.

Decision

- 27.** There is a material error of law in the First-tier Judge's determination. I am setting that decision aside.
- 28.** A second stage hearing before me will go ahead on 28th October 2014 at Field House on all issues.
- 29.** Anonymity has not been directed

Signed

Date

Deputy Upper Tribunal Judge Murray