



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

Appeal Number: IA/05941/2014

**THE IMMIGRATION ACTS**

**Heard at Birmingham  
On 25 February 2015**

**Determination & Reasons  
Promulgated  
On 27 May 2015**

**Before**

**UPPER TRIBUNAL JUDGE KOPIECZEK**

**Between**

**EROMOSELE EBKOZIEN**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr J Omorere, Solicitor, Bestway Solicitors  
For the Respondent: Mr N Smart, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant is a citizen of Nigeria born on 14 October 1989. On 24 February 2012 he made an application for a residence card as the extended family member of an EEA national. That application was refused in a decision dated 16 August 2012.

2. His appeal against the decision came before First-tier Tribunal Judge Bell at a hearing on 1 July 2014. Judge Bell dismissed the appeal with reference to the Immigration (European Economic Area) Regulations 2006 ("the EEA Regulations"). He further concluded that Article 8 was not engaged.

*The grounds of appeal to the Upper Tribunal*

3. In this summary of the grounds of appeal it will be evident that the way that the grounds were drafted is at best intemperate and at worst thoroughly unprofessional. Paragraph 1 of the grounds sets the tone by stating as follows:

"The case before the learned judge was a very simple one. But somehow she manages to complicate what would have been a simplistic summation."

4. At paragraph 4 of the grounds, in criticising the judge's reference to various authorities, it is stated that it is "very hard to see the relevance of these elaborate conjectures to the matter before her." The paragraph goes on to state that:

"It is therefore the case that from the outset the learned judge is clearly oblivious of the simplicity of the matter before her and only a gross exaggeration of the matter would suffice."

5. In essence, it is contended that the judge's assessment of the issue of dependency, and membership of a household is flawed. At paragraphs 6 and 7 of the grounds one finds the following:

"During the hearing the HOPO and I agreed that the appellant was living with the sponsor in Nigeria and that if that was the case all other incidental matters like free accommodation, free meals and if the dependant was at school going age, then the school fees would naturally flow from being a member of his household.

This agreement was reached in the full view of the learned judge and therefore sitting as an impartial arbiter of the hearing we should have at least have the benefit of properly being represented. Her decision therefore is tainted with bias and needs to be revisited by a panel so that justice can be seen to be done."

6. At paragraph 11 of the grounds it is stated:

"The learned judge has done herself no favours by clearly ignoring what was clearly before her."

Lastly, it is said at paragraph 13 that:

"the learned judge was on a nice walk of her own into the bright summer noon day of British sunlight and completely missed the simple matter placed before her."

7. In submissions on behalf of the appellant before me Mr Omorere contended that First-tier Judge Bell had in effect disregarded the documentary evidence in relation to dependency and membership of the sponsor's household. Reference was made to a tenancy agreement, family photographs and evidence of the payment of school fees.
8. It was also submitted that bank statements showed bank transfers to the appellant and there was other evidence in the appellant's bundle which was not considered by the judge.
9. So far as dependency is concerned, it was submitted that this need not be complete dependency on the sponsor as decided in RK (OFM - membership of household - dependency) India [2010] UKUT 421 (IAC).
10. Mr Smart said that he did not have a copy of the appellant's bundle that was before the First-tier Tribunal, although did have a copy of the tenancy agreement.
11. The suggestion that the judge had ignored certain documentary evidence is not apparent from the grounds as drafted. The judge took into account the tenancy agreement as can be seen from [22] of the determination. However, because Mr Smart did not have a copy of the appellant's bundle, he said that he was not able to make further submissions on the issue raised about the judge's failure to take into account relevant documents.
12. It was however submitted on behalf of the respondent that one of the factors considered by the judge was that the appellant had come to the UK in 2008 to study. The tenancy agreement was for the period 2006 to 2009 when the sponsor was in the UK. Dependency or membership of a household has to be a recent event, and a lapsed dependency would have no meaning within the EEA Regulations. This is a matter that is dealt with at [22] of the determination.
13. In reply, Mr Omorere submitted that there was no lapsed dependency and there was evidence of the appellant being wholly reliant on the sponsor, as the appellant was unable to work.

*The determination of the First-tier Tribunal*

14. Judge Bell set out the background to the application for a residence card, that being that the appellant claims to be the dependent nephew of a Spanish national exercising Treaty rights in the UK. He set out the legislative framework and cited relevant authorities in relation to extended family members, dependency and membership of a household.
15. Within the "Findings" section of the determination there are two sub-headings being "Dependency in Nigeria/membership of same household" and "Current dependency/membership of household". Under the former, it was noted that the appellant claims to have been dependent on his uncle when living in Nigeria and that his evidence was that he left his family home with his parents and siblings to live with his uncle when he

was aged 9. It was noted that the appellant claimed that his uncle rented a flat for them in Lagos and when he was 11 his uncle left Nigeria, leaving him in the flat. An aunt apparently came to live there with him but his uncle continued to pay the rent and support him and pay his school fees.

16. There then follows an analysis of the evidence and the judge's conclusions that he was not satisfied that the evidence established that the appellant and his uncle shared a household or that he was dependent on his uncle in Nigeria. He concluded that the oral evidence was not credible. With reference to the appellant's uncle apparently having paid for the appellant's schooling since the age of 9, he found it unclear as to why the only school letter provided would only refer to the year 2004/5. He also found that it was unlikely that the appellant's uncle would install him in a flat in Lagos, away from his parents and siblings at the age of 9 and then leave Nigeria only two years later, having to bring in an aunt to look after the appellant in the flat. It was noted that the appellant has two other siblings and parents in Nigeria and the sponsor said that he took over responsibility for the appellant when his father lost his job. However, Judge Bell thought it unclear as to why the sponsor would single out the appellant, his nephew, to live with rather than keep the family together. He concluded that it was far more likely that the appellant was living with his parents and siblings in their family home before coming to the UK to study. If he had been sharing a household with his uncle since the age of 9, he was of the view that there would be much more documentary evidence of this.
17. Thus, he was not satisfied that the appellant had shown that he was living in the same household as his uncle in Nigeria or that he was dependent on him there.
18. As to the second sub-heading, he noted that the appellant came to the UK in 2008 to study and did not apply for a family permit as the family member of the sponsor at that point. He found that there was no documentary evidence to show that his uncle was the person who paid his university fees. The evidence from the appellant's uncle was that he was not the only one who paid the appellant's school fees and he said that his other brothers also sent money. It was noted that in the witness statement the appellant said that his uncle "contributed towards" his university costs. There is reference to a payment on 16 April 2013 to the university which is likely to be for fees the judge found, but that payment did not come from the sponsor.
19. Consideration was given to receipts for transfers of funds, and bank statements. Judge Bell concluded that whilst those did show some payments of money from the sponsor to the appellant, most of the deposits into the appellant's account come from elsewhere. Those payments are further analysed at [28]. He concluded that the bank statements did not demonstrate financial dependency on the appellant's uncle in the period February to June 2013. It was noted that the

appellant's uncle's income is not substantial and he appears to be in receipt of housing benefit.

20. Consideration was given to documentary evidence submitted in support of the contention that the appellant lived, and is living, at his uncle's address. At [30] however, Judge Bell concluded that the documentary evidence was not reliable evidence of actual residency in that property as the appellant confirmed that he had always used his uncle's address as a correspondence address since being in the UK, even when living at university. In the next paragraph, it was noted that the appellant had said that he was no longer working. He had not submitted any up-to-date bank statements that would show his financial activity and circumstances as at present. Judge Bell found that there was no up-to-date documentary evidence linking him to his uncle's address, the documentary evidence to which he had referred all relating to 2013 or before. It is to be noted that the hearing before Judge Bell took place on 1 July 2014.
21. Thus, Judge Bell concluded that the appellant had not shown that he is currently financially dependent on his uncle or that he had been since coming to the UK. Nor had he demonstrated that he was a member of his uncle's household since coming to the UK, or at the date of the hearing. Likewise, he had not shown that he was a member of his uncle's household or dependent on him before coming to the UK.

*My assessment*

22. 'Dependency' means financial support needed to meet essential living requirements (see SM (India v Entry Clearance Officer (Mumbai)) [2009] EWCA Civ 1426). There is no need to establish the reason for the dependency or that it is a dependency of necessity (Lim (EEA - dependency) [2013] UKUT 00437 (IAC) and Reyes (EEA Regs: dependency) [2013] UKUT 314 (IAC)). Similarly, dependency does not have to be whole or main but there does need to be economic dependency in fact (SM (India)).
23. The grounds seem to suggest that there was agreement between the Presenting Officer and the appellant's representative that the appellant was living with the sponsor in Nigeria, an agreement apparently made before the First-tier Judge. However, there is nothing at all to support the assertion that there was any agreement between the parties, still less that there was any concession made on behalf of the respondent. As was pointed out by Mr Smart, at [19] of the determination it is clear that the respondent disputed both membership of a household and dependency, both in Nigeria and in the UK.
24. At the hearing before me it was suggested on behalf of the appellant that Judge Bell had failed to take into account documentary evidence in the appellant's bundle. Despite my repeated attempts to ascertain from Mr Omorere what documents it was suggested the judge did not take into account, I was referred to only one document in this respect. This is a

letter dated 15 July 2013 at page 122 of the bundle from one Blessing Iwezuife who is the sister-in-law of the sponsor. That letter is not specifically referred to in the judge's determination. However, all that it materially says is that there is a loving relationship between the sponsor and the appellant and that the sponsor supported the appellant "during his school in Nigeria and also his degree programme in the United Kingdom." The letter is typed but not signed and no detail of the extent of any support is revealed in the letter. The witness seemingly did not attend to give evidence.

25. I cannot see that the failure by the judge to mention specifically this particular item of evidence is in any way significant. The judge was not required to mention every piece of evidence before him. The letter itself provided scant support for the claimed dependency or membership of a household and it is abundantly clear from the determination that the judge did take into account the documents in the appellant's bundle.
26. It is suggested that Judge Bell did not have regard to the appellant's bank statements. That is plainly not the case, as is evident from [27]-[28]. It was then suggested that the appellant's driving licence was not considered, the driving licence showing the sponsor's address. However, again the driving licence is referred to at [30].
27. There is no basis for suggesting that the judge did not have regard to all the documentary evidence put before him. He considered that evidence in detail as is plain from the determination.
28. Complaint is made about the judge's assessment of the appellant's bank statements (contrary to the suggestion that bank statements were not taken into account). It is submitted that the judge was wrong to conclude that because the appellant received payment from other sources, he could not have been dependent on his uncle, because the appellant is not required to be wholly dependent on his uncle. However, Judge Bell was entitled, indeed bound, to consider the extent to which there appeared to be financial support from his uncle. The fact that there were numerous sources of other deposits and only a small proportion of funds coming from the appellant's uncle was a sufficient basis for him to conclude that he was not dependent on his uncle at all. It is also to be noted that the appellant had savings but had not submitted his savings account and his uncle at the hearing was apparently unaware that he had a savings account.
29. As regards documentary evidence addressed to the appellant at his uncle's address in the UK, Judge Bell concluded that this was not reliable evidence of actual residency because the appellant had confirmed in evidence that he had always used his uncle's address as a correspondence address since being in the UK, even when living at university. He also noted that there was no up-to-date documentary evidence linking him to his uncle's address.

30. The evidence in relation to membership of a household and/or dependency in Nigeria was, according to Judge Bell, “woefully insufficient”. His analysis of the evidence is such that he was entitled to come to that view.
31. Similarly, he gave careful consideration to the evidence in terms of the situation in the UK, and similarly found that the appellant had not established either membership of his uncle’s household since coming to the UK or dependency on him. The findings are carefully reasoned, take into account the documentary and oral evidence, and are entirely legally sustainable.
32. Nothing in the grounds or in the oral submissions before me reveals any error of law in the determination of Judge Bell in any respect.
33. In relation to my initial observations on the grounds of appeal to the Upper Tribunal, the way they are drafted does no credit to the appellant's representatives and the Upper Tribunal does not expect to see grounds drafted in that manner again.

*Decision*

34. The decision of the First-tier Tribunal did not involve the making of an error on a point of law. The decision to dismiss the appeal therefore stands.

Upper Tribunal Judge Kopieczek