



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: EA/01720/2019

**THE IMMIGRATION ACTS**

Heard at Field House  
On 8 November 2019

Decision & Reasons Promulgated  
On 19 November 2019

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

E A  
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Unrepresented

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. This appeal comes before me following the grant of permission to appeal by Upper Tribunal Judge Grubb on 27 September 2019 against the determination of First-tier Tribunal Judge E M M Smith, promulgated on 2 July 2019 following a hearing at Birmingham on 28 June 2019.
2. The appellant is a Ghanaian national born on 30 January 1981. He entered the UK on 20 April 2004 with leave as a student until 30 April

2008. On 9 July 2007, he applied for a residence card which was refused on 30 November 2007. On the 26 March 2008, 27 July 2009 and 1 May 2010 he made applications for residence cards with his cousin as a sponsor. All were refused. On 4 April 2012, 7 December 2012 and 26 October 2015 he made applications for residence cards based on his marriage by proxy to a French national. Those were refused too. The appellant and his wife divorced in May 2015. They have no children. On 13 April 2017, the appellant made an unsuccessful human rights application. On 13 May 2017, he made an asylum claim which was refused on 28 June 2017. A further residence card application was made on 28 June 2018 and refused on 6 February 2018. On 7 March 2018, 27 June 2018, 9 October 2018 and 20 November 2018, he made applications for residence cards with his mother as a sponsor. Those were all refused. I have no information as to the reasons for any of these many refusals.

3. The most recent application was made on 26 January 2019. It was refused under Reg. 7 because the respondent was not satisfied that that the appellant was dependent upon his mother.
4. The appeal was heard by First-tier Tribunal Judge Smith. He heard evidence from the appellant and the sponsor and found the latter to be an "unconvincing" witness who "struggled to answer questions" put to her. He found that the sponsor's bank accounts showed monies that were in excess of what she claimed to earn and that there were regular payments in and out which suggested that her account was used as a clearing account for many individuals. He also found that in view of the pattern of deposits and payments he could not be satisfied that the monies paid out to the appellant were actually emanating from the sponsor as the payments followed deposits from a third party of the same amount and because the sponsor's own income was insufficient to enable her to make such large payments to him especially when she had herself and a teenage daughter to support. He concluded that he was not satisfied as to the source of funds that went towards the appellant's maintenance and was of the view that the sponsor's niece was "*contributing if not the whole but in part to the appellant's maintenance*". He found that the appellant lived with the sponsor who paid the rent, but he was not satisfied as to the running of the accounts or the source of the funds. Accordingly, he dismissed the appeal.
5. Permission to appeal was granted on the basis that if the third party was only maintaining the appellant in part then the rest of the maintenance would arguably have been from the sponsor as the appellant had claimed to have no other source of income. Arguably also his living circumstances showed his dependency upon his mother.

## The Hearing

6. The appellant was unrepresented but content to proceed. He was clearly familiar with the evidence, the determination and the law. He submitted that the judge had accepted that he lived with his mother who paid the rent and that was enough under EU law for him to qualify as a dependant as he had no other source of income. He stated that the funds his mother paid to him were not just for his support but also to enable him to pay the rent and other bills on her behalf as she did not speak English. He said the rent was £395 per month and was paid at the start of each month. He also used the funds transferred to him to assist his mother to buy materials for her mobile hair dressing business. He said he had not worked for three years as he had been told not to work by the Home Office.
7. The appellant said that his mother had an account with Starling Bank, an internet only bank. Until recently, when transactions were permitted at post offices, no cash deposits could be made and so his mother gave her cash earnings to other people who then transferred corresponding sums to her account. He provided figures for her earnings both from her cleaning jobs and from her hairdressing business. He said that the income declared included expenses and so the profit was less than the sum declared.
8. The appellant said he had been dependent upon his mother since 2015.
9. With respect to the judge's finding on the sponsor's oral evidence, the appellant stated that evidence had been given through an interpreter and it may be that things got lost in translation. Nevertheless, he stated that the judge had accepted that he lived with his mother, that she paid the rent and that she was exercising treaty rights. As she was meeting part of his essential basic needs, that was sufficient according to the Secretary of State's own guidance for him to qualify as a dependant under the Regulations.
10. Mr Melvin responded. He submitted that the judge had heard evidence from the appellant and his mother. The appellant had made 16 attempts to remain here and the judge had to carefully consider whether there was an abuse of the rules. He assessed the evidence and found that it was not credible in terms of the tenancy agreement and the transfers of money. He said it was unclear why the sponsor had chosen to open an internet bank and why her customers could not make payments direct into her bank account. The judge had been concerned about the large amounts of money paid into the appellant's bank account and he found

the sponsor to be unconvincing. He urged me to uphold the decision and to dismiss the appeal.

11. The appellant replied. He pointed out that the judge had not expressed any problems with the tenancy agreement and had accepted that the appellant lived with his mother and that she paid the rent. He said that the choice of a bank was up to an individual and that Starling Bank had been voted best UK bank. His mother had, however, recently opened a Barclays account too. He said that due to the nature of her work she preferred cash payments rather than letting a customer make a BACS payment after the hairdressing session had been completed. He submitted that the money transferred to him was intended to cover rent, food, household bills and his mother's purchases for her business. He said his mother came to live in the UK in 2014. He helped her with her accounts. He had studied accounting at Exeter University for three years.
12. A request was made for an anonymity order.
13. That completed submissions. At the conclusion of the hearing, I reserved my determination which I now give with reasons.

### **Discussion and Conclusions**

14. I have considered all the evidence and the submissions made. I take note of Mr Melvin's submission that the appellant has made some 16 applications to remain in the UK and that care must, therefore, be had to avoid any abuse of the rules. However, in the absence of any information as to why those applications were all refused, and nothing in the decision letter which would point to abuse, I cannot speculate as to the merit or lack of merit in the previous applications or on whether there was any abuse of the rules and Regulations. It may simply be that the appellant did not provide the evidence to support the claims he made. Certainly, no attempt has been made by the respondent to seek to remove him over the years that he has been making the applications.
15. I also have regard to the judge's concerns over the numerous transactions made by the sponsor but note that there was evidence before him, in the form of witness statements and oral evidence to explain them. Given that the judge accepted that the sponsor was earning an income both through her cleaning jobs and mobile hairdressing, there is no reason to take issue with the explanation that the sponsor's cash earnings were paid into her account by bank transactions by third parties due to the difficulty of making cash deposits into an online bank account. I can also understand the

sponsor's reluctance to allow her customers to make direct transfers to her account once she had completed work on their hair and left their homes.

16. The respondent has not taken any issue with the sponsor's exercise of treaty rights and, therefore, it is safe to assume that it has been accepted that she is making a living in the UK. Although Mr Melvin took issue with the sponsor's bank of choice, I do not consider that has any bearing on the issue before me. No previous challenge was levelled against the sponsor's employment/self-employment and in fact Starling Bank has been voted as the best British bank of 2019 as the appellant stated. Whilst the judge may not have been satisfied as to the sponsor's running of her account and the source of all the funds paid into it, he did accept that she was receiving an income from her cleaning jobs and from her hairdressing business and that she was not in receipt of benefits (at 23).
17. Mr Melvin relied on the judge's dissatisfaction with the sponsor's oral evidence however the judge gave no reasons for his adverse finding (at 29). Although he maintained that the sponsor was an unconvincing witness who struggled to answer the questions put to her, there is no clarification of what questions were put, what the responses were or what was unconvincing about her testimony. It is not helpful for a judge to make such observations without further explanation or clarification. The record of proceedings records lengthy cross examination and lengthy replies.
18. Although Mr Melvin's submitted that the judge found problems with the tenancy agreement, I can find nothing in the determination which would support that. Indeed, the judge confirmed that he was satisfied that the appellant was and is living with his mother (at 21) and that she paid the rent (at 31).
19. Having found that the sponsor was in the UK exercising treaty rights, that she was the appellant's mother, that she and the appellant lived together in the same household, that she paid the rent, and that another relative was partially supporting appellant, the judge went on to dismiss the appeal because he was not happy with the running of the appellant's and sponsor's bank accounts. It was on that basis that permission was granted to the appellant and it is on that basis that I conclude the judge erred. The error is material because it impacts on the outcome of the appeal and I therefore set the decision aside. No further evidence is required, and I now proceed to re-make the decision.

20. I take account of the Judgment in Lim [2015] EWCA Civ 1383 where the court held: "...the critical question is whether the claimant is in fact in a position to support himself or not...That is a simple matter of fact. If he can support himself, there is no dependency, even if he is given financial support by the EU citizen. Those additional resources are not necessary to enable him to meet his basic needs. If, on the other hand, he cannot support himself from his own resources, the court will not ask why that is the case, save perhaps where there is an abuse of rights. the fact that he chooses not to get a job and become self-supporting is irrelevant" (at 32). In the present case, the appellant has no income of his own and there is no evidence that he has savings which he could have used to be self supporting. He has not worked for some three years because he was not given permission to do so by the respondent. The evidence shows he is reliant on his mother, the EU citizen, at least for his accommodation, as the judge himself found. That, as the appellant rightly pointed out, is a basic need and that alone qualifies him to remain as a dependant. Additionally, the judge found, that part of the maintenance which was said to come from his mother, was likely to come from a third party. As pointed out in the grant of permission, however, that suggests that the remainder of support came from the sponsor.
21. I also have regard to the respondent's guidance on EEA dependants (of 24 July 2018) where it is made clear that "*an applicant does not need to be dependent on the relevant EEA national to meet all or most of their essential needs*" (at p. 12). Partial dependence is sufficient.
22. On the basis of the judge's findings, summarised in paragraph 19, the reasons above, the respondent's guidance and the case law, I conclude that the appellant has shown that he is dependent upon his EEA sponsor for at least some of his essential needs. As such, he meets the terms of Regulation 7.

### **Decision**

23. The decision of the First-tier Tribunal is set aside. I re-make the decision and allow the appeal.

### **Anonymity**

24. I make an anonymity order pursuant to the appellant's request.
25. Unless and until a tribunal or a court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction

applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

A handwritten signature in black ink, appearing to read "R. Keir" with a period at the end. The signature is written in a cursive, slightly slanted style.

Upper Tribunal Judge

Date: 14 November 2019