Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: EA/00817/2019

THE IMMIGRATION ACTS

Heard at Royal Courts of Justice	**Decision & Reasons Promulgated**
On 20 January 2020	**On 30 January 2020**

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

MR EMMANUEL ASIEDU AFARI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Miss D Ofe-Kwatia, Counsel instructed by Solomon Shepherd Solicitors
For the Respondent: Mr S Kotas, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Ghana. His date of birth is 1 October 1992. On 4 January 2019 he made an application for a residence card pursuant to the Immigration (European Economic Area) Regulations 2016 ("the 2016 Regulations").

2. This application was refused by the Secretary of State on 1 February 2019. The Appellant appealed against the decision. His appeal was dismissed by Judge of the First-tier Tribunal P Quinn in a decision dated 18 August 2019 following a hearing at

Hatton Cross on 1 August 2019. Designated Judge of the First-tier Tribunal Manuell granted permission to the Appellant on 6 December 2019.

3. The application was made under Regulation 8 of the 2016 Regulations. The Appellant's case was that he is an extended family member of a person exercising treaty rights in the UK. The Appellant's immigration history is that he came to the UK on 4 February 2018 having been granted a family permit to join his aunt Jullana Sarfowaa, an Italian national excercising treaty rights. I shall refer to her as the Sponsor. The Respondent accepted that during the application process the Appellant provided sufficient evidence of his relationship with the Sponsor and evidence of prior dependency. However, the Respondent concluded that there was insufficient evidence to confirm that he was still reliant on the Sponsor as he claimed or that he was residing at the address with his Sponsor as claimed.

4. The Appellant case was advanced on the basis of prior membership of a household and present membership of the Sponsor's household and present dependency.

The decision of the First-tier Tribunal

5. The Appellant gave evidence before the First-tier Tribunal. His evidence was that he lived with the Sponsor and thus was member of her household and it is on this basis that he met the requirements of the 2016 Regulations. The judge found that the evidence did not establish on the balance of probabilities that the Appellant was living with the Sponsor (see [23]). The Appellant's evidence was that he was dependent on the Sponsor stating that she gave him £60 to £100 a week. Her evidence was that she gave the Appellant £20 or if he needed more, maybe £21 or £23 per week. The evidence of the Sponsor was that she fed the Appellant and treated him as her son. The Appellant's uncle said that the Sponsor gave the Appellant £20 pocket money. The judge took into account that none of the witnesses mentioned in their statements how much financial support the Sponsor was giving to the Appellant and that the Appellant's oral evidence was at odds with that of his Sponsor and uncle. The judge found, at [31], that in relation to dependency the evidence of the Appellant and the EEA Sponsor was "wildly different" and this had persuaded him that the Appellant was not telling the truth and he treated his evidence with caution.

6. The Appellant was not named on the tenancy agreement, however the Sponsor explained why this was. She said that she had given the names of the occupants to the council by the time that the Appellant had arrived in the UK (see [28]). The Appellant's uncles said that the family had been allocated new premises when the Appellant came to the UK and that is why he was not included on the tenancy. However, the judge noted that the Appellant had arrived on 4 February 2018 and yet the tenancy agreement was not signed until 14 March 2018 and thus he found that there had been ample time to inform the council of the Appellant's presence in the UK and to have him added on the tenancy which would have given him security and would have proved that he was living at that address. The judge did not accept the uncle's evidence that he had told the council of the Appellant's presence at the

property. The judge found that "had they mentioned it to the council I was of the belief that the council would have inserted him in the tenancy document as an authorised occupant".

7. The judge attached weight to the absence of a letter from the local authority confirming that they were aware of the presence of the Appellant at the address. The Appellant was not on council tax records for the property. The judge said at [40] that he would have expected the Appellant to have appeared on the council tax bill if the local authority were aware that he was living at the premises. The judge did not find that the Sponsor and the Appellant's uncle were giving an honest account of the situation. The judge took into account that there were a few letters addressed to the Appellant at the relevant address, but he found, at [32], that these did not establish that the Appellant was living there. He found that "the senders of those letters would simply have sent them to the address provided and they did not need to carry out any residence checks".

8. The judge found that the uncle was an "unreliable" witness. Having noted his evidence was that the family had moved in March 2018 and that the Appellant had arrived in April 2018, however he then corrected himself and said that the Appellant came in February. The judge found that "his lack of certain knowledge about the Appellant's movements led me to believe that I was not being told the truth." At [41] the judge found as follows:

> "41. The evidence produced was not sufficient to persuade me to the evidential test that the Appellant was living with his aunt and uncle and was dependent on them. The fact that the Home Office had previously made a finding of dependency before the Appellant came to the UK did not necessarily mean that the Appellant was still dependent on them. In any event the information supplied previously may not have been genuine in the light of what I have heard.
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> 42. In my view the Appellant had failed to show that he was dependent on his aunt and uncle and had failed to show that he was residing with them at their address".

9. The judge concluded at paragraph 44 that the evidence was not sufficient to confirm cohabitation or financial dependency. He concluded that he could not rely on any of the witnesses to give him an honest and straightforward account of the real situation.

The Grounds of Appeal

Ground 1

10. At paragraph 41 the judge intimates that the evidential test is that the Appellant was living with his aunt and uncle and was dependent on them. Having satisfied the prior dependency, the Appellant was not required to satisfy both dependency and membership of household.

11. The judge at [41] made adverse findings regarding evidence already admitted by the Secretary of State in the Appellant's successful family permit application without having sight of the same or giving the Appellant an opportunity to respond.

12. At [42] the First-tier Tribunal repeatedly uses the term "was" referring to the past. The judge was required to consider the evidence at the date of the hearing.

13. The judge has failed to make findings in respect of crucial documentary evidence. At page 40 of the Appellant's bundle there is a tenancy agreement for 198A High Street for the EEA Sponsor. The First-tier Tribunal failed to adequately consider that this is consistent with the HMRC national insurance letter addressed to the Appellant at the same address (see page 62 of the Appellant's bundle). In addition, on page 63 of the Appellant's bundle there is an NHS registration letter addressed to the Appellant at 49 Cherry Road which correlates with the tenancy agreement of the same address relating to the Sponsor that can be found on page 54 of the Appellant's bundle. There was other evidence such as the Home Office refusal letters at page 64 and 65 of the Appellant's bundle addressed to the Appellant at both of the above addresses.

14. On the issue of dependency the Sponsor and the Appellant's uncle's evidence was consistent but the judge does not make a finding about this.

The Law

15. The issue in this case is whether the Appellant can establish that he was an extended family member of the EEA Sponsor. The relevant law is contained in the case of Dauhoo (EEA Regulations – reg 8(2)) Mauritius [2012] UKUT 79 which states as follows:

> "Under the scheme set out in reg 8(2) of the Immigration (European Economic Area) Regulations 2006, a person can succeed in establishing that he or she is an 'extended family member' in any one of four different ways, each of which requires proving a relevant connection both prior to arrival in the UK and in the UK:
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> (i) prior dependency and present dependency;
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> (ii) prior membership of a household and present membership of a household;
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> (iii) prior dependency and present membership of a household;
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> (iv) prior membership of a household and present dependency".

Conclusions

16. I heard submissions from both representatives.

17. The Appellant has to establish that at the date of the hearing he was either a member of the Sponsor's household or present dependency on the Sponsor. It is asserted that the judge misunderstood the legal test and this is disclosed by what he says at [41] of the decision. However, this argument is undermined by the fact that the judge

having considered both dependency and membership of household, found against the Appellant on both. Moreover, from what the judge said at paragraph 44, it is clear that the judge understood the legal test and applied it.

18. The judge at [41] stated "in any event the information supplied previously may not have been genuine in the light of what I have heard". This does not disclose an error of law. The judge was aware that the Secretary of State had previously accepted that the Appellant was dependent on the Sponsor before he came to the UK, however, he rationally concluded that this did not necessarily mean that he continued to be dependent on them. His finding must be considered in the context of the significant discrepancy in the evidence of the Appellant and the Sponsor (and the Appellant's uncle). It is clear from a proper reading of the decision that the judge rejected the evidence of dependency on the basis of the serious discrepancy. Whilst he did not specifically refer to the evidence of the aunt and uncle being reasonably consistent, this was not arguably capable of rectifying the significant discrepancy between their evidence and that of the Appellant. The use of the past tense in [42] does not disclose that the judge was not considering whether the Appellant met the requirements of the 2016 Regulations at some day in the past. A proper reading of the decision discloses that such a suggestion is unarguable. This argument was not pursued in oral submissions.

19. The judge at [32] accepted that there were a few letters addressed to the Appellant at the Sponsor's address. It is unarguable that he did not take into account the documentary evidence identified at [6] of the grounds of appeal. The judge took this evidence into account when considering the evidence in the round. It was not incumbent on the judge to identify each and every piece of evidence. His finding at [32] about them is rational.

20. On the basis of the grounds before me and having heard Counsel's submissions on behalf of the Appellant, there is no properly identified error of law. The judge considered the evidence in the round and reached conclusions that were open to him.

Notice of Decision

21. The decision of judge of the FtT to dismiss the appeal under the 2016 EEA Regulations is maintained.

No anonymity direction is made.

Signed *Joanna McWilliam* Date 23 January 2020

Upper Tribunal Judge McWilliam