



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: EA/01545/2020  
EA/01541/2020

**THE IMMIGRATION ACTS**

Heard at Field House, London  
On Monday 8 November 2021

Decision & Reasons Promulgated  
On Monday 22 November 2021

Before

UPPER TRIBUNAL JUDGE SMITH

Between

(1) BODE KELLY TALABI  
(2) DAMILOLA EVELYN TALABI

Appellants

-and-

ENTRY CLEARANCE OFFICER

Respondent

**Representation:**

For the Appellant: Mr A Akindele, Solicitor, Defank Solicitors  
For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**BACKGROUND**

1. The Appellants appeal against the decision of First-tier Tribunal Judge Kaler promulgated on 4 June 2021 (“the Decision”). By the Decision, the Judge dismissed the Appellants’ appeals against the Respondent’s decisions dated 14 and 17 January 2020 respectively, refusing each of them an EEA family permit as the extended family members of Fola Talabi (hereafter “the Sponsor”). The Sponsor is accepted to be a

Dutch national exercising Treaty rights in the UK. It is also accepted that the First Appellant is the son of the Sponsor's sister (therefore her nephew) and the Second Appellant is the Sponsor's cousin.

2. The Appellants claim to be financially dependent on the Sponsor. The Judge did not accept that to be so. She therefore dismissed the appeals.
3. The Appellants appeal on two grounds. First, they assert that the Judge misdirected herself in law "relating to the quantum of financial assistance needed to establish dependency". It is said that the Judge "erroneously concluded [based on the Appellants' bank statements] that the appellants were either receiving money from employment or from third parties". It is suggested that the Judge misread the evidence before her. I will come to the detail of that submission below. The second ground is headed "Misconception of the evidence leading to a flawed assessment". It is suggested that it was not open to the Judge to make certain findings based on the reasons given. Again, I will come to the detail of this argument below as it was developed by the Appellants.
4. Permission to appeal was granted by First-tier Tribunal Judge Boyes on 20 July 2021 in the following terms so far as relevant:
  2. The grounds assert that the Judge erred in respect of the applicable law as to dependency and secondly with regards to the factual matrix.
  3. Having considered the grounds and the judgment I am satisfied that the grounds are arguable and permission is therefore granted."
5. The matter comes before me to determine whether the Decision contains an error of law and, if I so conclude, to either re-make the decision or remit the appeal to the First-tier Tribunal to do so. I have before me a core bundle including the Respondent's bundle, the Appellant's bundle before the First-tier Tribunal (referred to as [AB/xx]) and some loose documents as well as a skeleton argument prepared by the Appellants' solicitors.

## **DISCUSSION**

6. Mr Akindele relied on his skeleton argument. That developed the Appellants' arguments under two grounds similarly to the original grounds save that the second ground is now headed "Misdirection in factual matters". I will address each ground in turn.

### **Ground One: Misdirection in Law**

7. The Judge set out the relevant case-law at [22] to [24] of the Decision. At [25] of the Decision, the Judge set out her self-direction on the relevant issues and law as follows:

"The fact that the Appellants receive sums of money from the Sponsor is not in itself sufficient to establish dependency. Applying **Reyes**, it is not enough to show that financial support is provided by an EU citizen to a family member; the family member must need that

support in order to meet his basic needs; there needed to exist a situation of real dependence. It is necessary to determine that the family member is dependent in the sense of being in need of assistance. If the family member can support himself, there is no dependency even though he is given financial support from the EU citizen.”

8. Mr Akindele confirmed that he did not suggest there to be any error in that self-direction. The Appellants’ complaint was the way in which the Judge applied that self-direction to the evidence in this case. He submitted that having made that self-direction the Judge ought to have concluded that the Appellants had shown there to be financial dependency. As Ms Cunha pointed out, that submission is simply a disagreement with the outcome which does not amount to a submission that there is any error of law.
9. I move on to consider though whether the Judge did indeed err in her application of the legal test to the evidence in this case. In order to do so, it is necessary to summarise what the evidence shows. That is set out at [10] to [15] of the Decision. That section shows that there is no merit to Mr Akindele’s submission that the Judge failed to consider the position of each Appellant separately. The evidence in relation to each is dealt with in separate paragraphs.
10. The evidence shows that both Appellants claim to have essential living needs amounting to 21,000 Naira. Those needs are set out in their witness statements (see [10] and [12] of the Decision setting out that evidence). Both claimed that the Sponsor sends them £100 per month.
11. In relation to the First Appellant, his bank statements show deposits from the Sponsor of about 20,000 Naira in October, November and December 2019 and January, February, July, September, October and November 2020. As the Judge observed at [11] of the Decision the amounts are “irregular”. The statements also show that there are deposits from other sources. It was put to the Sponsor that in one particular month (April 2021), there were deposits of over 79,000 Naira from other sources. She was asked what those were and was unable to say. She suggested it might be from the First Appellant’s “Aunty”, suggesting that she had asked her to give the Appellant money as she could not send any.
12. Mr Akindele complained that the Judge had taken evidence of one month only in order to support her reasoning that the First Appellant had income from other sources. However, the Judge is there only recording the evidence she heard. The First Appellant’s bank statements are at [AB/46-64]. There are plenty of examples of deposits from other sources throughout the period shown by those statements (October 2019 to May 2021). None of those are explained in the First Appellant’s witness statement.
13. In relation to the Second Appellant, the bank statements at [AB/72-83] show deposits on 1 February, 11 September, 15 October and 16 November 2020 of between 10,000 and 20,000 Naira. Again, those statements also show deposits from other sources which are unexplained in the Second Appellant’s witness statement.

14. The other issue of note regarding the Second Appellant's bank statements is the opening balance shown on those statements in February 2020 of 469,080.51 Naira. That is significantly more than the balance at any other time in the year or so covered by the statements. Although the Judge did not mention it, I also observe that the money disappears from the account between 9 and 26 February 2020 which I assume is a page of the statement left out of the bundle. The Sponsor's evidence in this regard is recorded as being that this high opening balance was due to a payment by her of the rent for the property in which the Appellants live which is due to be paid yearly in the sum of 65,000 Naira. That is of course considerably lower than a balance of over 469,000 Naira. In any event, as the Judge recorded at [15] of the Decision, the Second Appellant's evidence is that she has outgoings for rent in the sum of 5000 Naira per month. The Sponsor was asked about this. She replied that the Second Appellant might be "paying for somewhere else in the area". She went on to say that "[a]s far as she knew, the money she sent to both Appellants was for their upkeep". Importantly, though, none of these discrepancies are covered by the Appellants' witness statements.
15. The other evidence of money sent by the Sponsor is negligible. There are money transfers at [AB/65-71]. Not all of those are entirely legible and some appear to be duplicates of others. They show transfers in late 2020 of amounts equating to between £22.33 and £31.96. They are all paid in cash so that none are reflected in the Sponsor's bank statements. There is some limited correlation between one or two of these payments with the Appellants' bank statements but by no means all. In any event none show a payment of the Nigerian equivalent of £100 per month as was the Appellants' and Sponsor's evidence. The Sponsor says that she initially sent money in cash via friends travelling to Nigeria and that she has lost other receipts. However, as was observed by the Respondent in submissions, there was no evidence from other people who are said to have taken money to the Appellants (and no details of who these people were is given in the Sponsor's witness statement or those of the Appellants – the Second Appellant does not mention such payments at all).
16. I turn then to the Judge's reasoning for rejecting the claim of financial dependency based on that evidence at [26] to [31] of the Decision as follows:
  - "26. There has been a great deal of inconsistent evidence in this case. The Appellants evidence in their statements is that the Sponsor sends them £100 each a month. That is not maintained in their statements or the evidence of the Sponsor; the figure is 21,000 Naira, which is about £36 at present exchange rates.
  27. The Sponsor says that both Appellants live in premises that she rents. She pays the rent of 65,000 Naira yearly. Mr Akindele's submission that this sum is too low to rent a property in Lagos is at odds with the evidence of the Sponsor. The second Appellant claims to pay rent; that is totally inconsistent with the Sponsor's evidence. If the second Appellant pays for rent at a property elsewhere, then she does not need the Sponsor to provide her with a roof over her head.
  28. It is highly significant that the addresses for the Appellants in their bank statements is not the same as that given in their written evidence or applications. I conclude from this that they have not been truthful about where they live.

29. It is claimed that neither Appellant works. There are various sums of money going into and out of both Appellant's accounts. No explanation has been given for these. The sums exceed the amounts sent by the Sponsor. It is reasonable to conclude that both these Appellants have additional sources of income, either from employment or from third parties. Even if I accept that the Sponsor sends them about 21,000 Naira each month, she is not the only person who provides them with money. The amounts demonstrate that the Appellants do not rely on sums sent by the Sponsor to meet their essential needs. They have money from other sources that would cover the 21,000 Naira they claim to need every month.

30. I conclude that both these Appellants have sums of money available to them from unknown sources. They are likely to be employed or are receiving regular sums of money from third parties. The amount the Sponsor sends them is small compared to the transactions going into and coming out of their accounts. The Appellant clearly sends them some money, and she may be sending this in the belief that they need this for their essential needs, but the evidence does not support that the money from the Sponsor is to meet their needs.

31. I do not find that the Appellants have established they are dependents of the Sponsor. They are not extended family members as defined in the Regulations. Therefore the requirements of the Regulation 8 for entry clearance as dependents of the Sponsor have not been met."

17. I turn then to the criticisms made of that reasoning in the grounds and skeleton argument.
18. First, it is suggested that the Judge did not find the Sponsor's evidence about sending payments in cash via friends not to be credible and, I assume, that it should therefore have been accepted. It is said that the Judge fell into error by dealing only with the documentary evidence. As the Judge remarked at [26] of the Decision, the evidence that the Sponsor sends £100 per month was inconsistent with her sending 21,000 Naira per month said to equate to the Appellants' living needs which is a much lower sum. Even that lower sum was not corroborated by the evidence produced but, as the Judge remarked at [29] of the Decision, even if that were so the documentary evidence of the Appellants' means belied a claim to be dependent on the Sponsor for payment of all or even part of that amount. They had income from other sources. In other words, as she said at [29] of the Decision, the Judge did not accept as credible that the Appellants relied on the Sponsor's money for their upkeep.
19. In any event, the Judge did begin her reasoning with the comment that the evidence contained a great deal of inconsistency, and the Decision must be read as a whole including the submission by the Respondent that there was no supporting evidence in relation to payments sent via friends. Ultimately, though, the Judge's reasoning does not depend on whether the Sponsor has in the past sent money by that means as the Judge's conclusion is that the Appellants do not depend on such payments because they have income from other sources. I also observe as mentioned above that the Second Appellant does not mention payments in this way at all and the First Appellant says only that the Sponsor used to send money this way but no longer does, the inference being that the payments shown in the bank statements as transferred by the Sponsor now reflect the sum total of the payments made.

20. The second criticism contained in the grounds is that the Judge “placed disproportionate weight on other sums coming into the account of the appellants”. This is said to be contrary to case law. First, of course, the question of what weight should be given to evidence is a matter for a Judge and cannot be criticised as being in error unless it is perverse. Second, and in any event, the submission made misunderstands the Judge’s finding. I accept of course that the Appellants do not have to show that they rely on the Sponsor to pay for all their essential needs. They could establish dependency if they relied on payments for only part. However, the Judge’s finding at [29] of the Decision is that the Appellants have money from other sources which is sufficient to cover the essential needs that they claim to have. That is made out on the evidence in their bank statements.
21. The burden of showing dependency is on the Appellants. Their witness statements do not deal with the other income as shown in their bank statements. There was no evidential basis for the submission that the other income shown in their statements was not their money. The Judge was therefore entitled to find that, since that income in the case of both Appellants, covered the amounts they claimed to need to live, the evidence did not make out the case that they depended on income from the Sponsor.
22. The skeleton argument develops the Appellants’ case by reference to Home Office guidance on extended family members which is annexed to the skeleton argument. I do not need to refer to that. Mr Akindele did not take me to it and there is nothing to show that it was before Judge Kaler. In any event, it is relied upon only for the submission that it is sufficient for the Appellants to show that they depend on the Sponsor for part only of their essential needs which is uncontroversial and is not the basis for the Judge’s finding as I have explained.
23. It is suggested that the Appellants did not have to “explain every entry into their account to qualify for financial dependency”. That may be so in some cases but in a case such as these where there is a great deal of evidence of other income, the Appellants had to explain why they required money from the Sponsor in order to meet their essential needs. They had income from other sources to meet their needs. As the Judge observed, whether the test of dependency is met is a matter of fact in each case. It depends on the evidence. The burden is on the Appellants to explain that evidence insofar as it was relevant to that test.
24. Mr Akindele also suggested that the Judge was wrong at [11] of the Decision to refer only to one month of the First Appellant’s bank statements which showed income of 79,000 Naira. However, all that the Judge was doing at [11] of the Decision was recording the evidence given by the Sponsor in relation to one specific example of other income.
25. The Appellants have failed to demonstrate that the Judge erred in law in relation to the first ground.

**Ground two: Misconception of Evidence/ Misdirection in Factual Matters**

26. The criticism made in the original ground two overlaps to a large extent with the first ground. The Appellants assert that the Judge did not make any finding on the Sponsor's evidence that she also sent money via friends. I have already dealt with this in relation to the first ground.
27. The Appellants criticise the Judge for making reference at [27] of the Decision to what is said to have been a submission rather than evidence in relation to the rent payable on the Sponsor's property in Nigeria. First, I observe that although the point about the level of rent for a property in Lagos is correctly recorded as being made by Mr Akindele and not the Sponsor it nonetheless amounts to evidence. That Mr Akindele should not be making such submissions as an advocate because they are evidence is nothing to the point. In any event, it is clear that the Judge rejected what he said because it was inconsistent with the Sponsor's evidence. Mr Akindele may have made that submission in an attempt to deal with the issue regarding the opening balance of the Second Appellant's bank statements. Whatever his reason for contradicting the evidence given by his own witness, it is clear that the Judge placed no reliance on what he said.
28. Nor can it be suggested that the Judge made any finding in that paragraph to suggest that the Appellants claimed to be members of the Sponsor's household. The point made by the Judge is that if the Second Appellant was paying rent for another property, she was not reliant in that regard on payments made by the Sponsor who also claimed to be paying rent for the property in which the Appellants lived. There was also inconsistency about whether the Appellants lived in the property owned by the Sponsor and a lack of evidence about her ownership of the property and payment of rent for it but the Judge's findings in this regard were all based on a claim that the Appellants depended on the Sponsor for payment of their rent and did not entail any suggestion that they were claiming to be members of the Sponsor's household.
29. As to the evidence regarding the addresses at which the Appellants live, the Judge was entitled to note the discrepancies in this regard as she did at [28] of the Decision. It was not for the Sponsor to provide evidence about the Appellants' accommodation. The discrepancy is evident from the documents. The Appellants are legally represented. They did not give oral evidence. It was for those representing them to deal with such evident discrepancies when drafting their witness statements. It is said in the skeleton argument that if this had been raised at the time "a simple explanation would probably have been provided". There is however no further statement from either the Sponsor or the Appellants providing that "simple explanation".
30. A further complaint is made in the skeleton argument based on what the Judge said at [26] of the Decision. I struggled to understand the point being made by Mr Akindele. I asked him whether the error said to be made there was in the Judge comparing £100 with 21,000 Naira or the Judge's conversion of Naira into sterling. He confirmed it was the latter. I asked him whether that was a factual misdirection because the Judge had carried out a wrong conversion. Ms Cunha was helpfully able to make a quick search of the internet and confirmed that at the date of the hearing before me the conversion

would be just over £37 and was just over £36 at the date of the hearing before Judge Kaler. Mr Akindele did not dispute that. There was therefore no error of fact.

31. Instead, Mr Akindele sought to suggest that it was not open to the Judge to carry out her own research as to the conversion. However, in circumstances where the evidence was being presented as monthly payments of a sterling amount and living needs presented in Nigerian Naira, it is very difficult to see how the Judge could have done otherwise in order to understand the Appellants' case. I come back to the issue which the Judge had to decide (and rightly recognised that she had to decide) whether the Appellants were dependent on the Sponsor for their essential needs. In circumstances where the evidence about payments was put forward in a different currency to the evidence about needs, it is very difficult to understand how else the Judge could have resolved that issue. The Appellants should of course have put forward the evidence in a way which would enable ready comparison but did not do so. The Judge cannot be criticised in those circumstances for carrying out her own research in order to make the comparison.
32. Finally, the criticism is again made that the Judge failed to consider the position of each of the Appellants separately. I have largely dealt with this in relation to the first ground. It is evident from [10] to [15] of the Decision that the Judge did deal with the evidence of each of the Appellants separately. The Judge found that this evidence suffered from common defects and did not err by reaching her conclusions therefore based on the same reasoning in each appeal.
33. The Appellants have failed to establish any error by their second ground.

### CONCLUSION

34. For the foregoing reasons, I am satisfied that there is no error of law in the Decision. I therefore uphold the Decision with the result that the Appellants' appeals remain dismissed.

### DECISION

**The Decision of First-tier Tribunal Judge Kaler promulgated on 4 June 2021 does not involve the making of an error on a point of law. I therefore uphold the Decision with the consequence that the Appellants' appeals remain dismissed.**

Signed: *L K Smith*

**Upper Tribunal Judge Smith**

Dated: 10 November 2021