



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/04791/2019 (V)

THE IMMIGRATION ACTS

Heard at Cardiff Civil Justice Centre
Working Remotely by Skype
On 6 May 2021

Decision & Reasons Promulgated
On 26 May 2021

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

THE ENTRY CLEARANCE OFFICER, SHEFFIELD

Appellant

and

OSASUMWEN FREDA ARUEVBOSE

Respondent

Representation:

For the Appellant: Ms R Pettersen, Senior Home Office Presenting Officer

For the Respondent: Ms B Hashmi of Mamoon Solicitors

DECISION AND REASONS

1. Although this is an appeal by the Entry Clearance Officer (“ECO”), for convenience I will refer to the parties as they appeared before the First-tier Tribunal.

Background

2. The appellant is a citizen of Nigeria who was born on 19 March 1984.

3. The appellant made an application for a family permit as a “family member” of an EEA national, namely her mother, Esther Osemwengi, a Spanish national exercising treaty rights in the UK. On 20 August 2019, the ECO refused that application under reg 12 (read with reg 7) of the Immigration (EEA) Regulations 2016 (SI 2016/1052). The ECO was not satisfied that the appellant had established that she was ‘dependent’ upon the EEA sponsor in the UK.

The Appeal to the First-tier Tribunal

4. The appellant appealed to the First-tier Tribunal. In that appeal, her nephew (a grandchild of the sponsor) who had also been refused a family permit was treated as a dependent of the appellant and his claim to be decided in line with that of the appellant.
5. The sole issue before the First-tier Tribunal was whether the appellant, as a direct descendent of the sponsor but aged over 21, was dependent upon the sponsor (reg 7(1)(b)(ii)). DJ McClure allowed the appellant’s appeal. He found that the appellant was dependent upon the sponsor and hence had established that she was a ‘family member’ of her EEA sponsor under reg 7(1)(b)(ii) and entitled to a family permit under reg 12(1).

The Appeal to the Upper Tribunal

6. The ECO sought permission to appeal to the Upper Tribunal challenging the judge’s finding that the appellant was dependent upon the sponsor, essentially on the basis that the judge had made inconsistent findings and had given inadequate reasons for reaching his conclusion.
7. On 12 January 2021, the First-tier Tribunal (RJ Zucker) granted the ECO permission to appeal.
8. Following directions issued by the Upper Tribunal on 26 January 2021, the appeal was listed for a remote hearing at the Cardiff Civil Justice Centre on 6 May 2021. The appellant was represented by Ms Hashmi and the ECO was represented by Ms Pettersen, both of whom joined the hearing by Skype.

The Judge’s Reasons

9. The judge recognised that the sole issue to be decided was whether the appellant had established that she was “dependent” upon the sponsor in the UK. Having set out the relevant law and some of the evidence, at paras 24–34 the judge dealt with the evidence concerning the financial support provided to the appellant, as it was claimed, by the sponsor as follows:

“24. In giving evidence the sponsor stated that the appellant was not working; that the appellant had no other source of income; that she had no savings; and that she was wholly dependent upon the money sent from the UK to Nigeria by her, the sponsor.

25. It would have been helpful to see the rent, the household bills and the other costs, e.g. education costs if appropriate. None of the bills have been provided nor any account of how the monies are used to meet the outgoings for this family. No explanation is given why specifically large amounts are sent sometimes and modest amounts other times.
26. The sponsor has asserted the appellant did not have any other source of income. However there are significant gaps in the records. It would have been an advantage to know what some of the outgoings of the appellant were and how the payments relate to the household expenses of the appellant and her child.
27. There are no receipts during the period of 2018. In 2017 in July a sum equivalent to about £350 was sent but then there are no receipts until December 2017 when 2 lots of money are sent, one shortly after the other. No explanation was given as to why 2 lots of money were sent. The first was over £300 and the second just 5 days later was for over £400. How did those monies relate to the outgoings of the appellant. Was the appellant paying for rent on a yearly basis or what other household expense was involved?
28. As stated there are no receipts for the period of December 2017 to April 2019. What was the appellant doing during that period of time. How was the appellant supporting herself and her child.
29. Similarly in 2019 payments start again on 18 April but then on 30 April there is a payment of £200 followed by a payment the next day on 1 May 2019 of over £400. No explanation was given as to why 2 large sums of money were paid so close together. Again was the appellant paying for the yearly rent?
30. Also looking at the earnings of the sponsor at that time, it indicates that she was earning £223.90 per week. Yet the sponsor was giving the appellant the equivalent of 3 weeks' income. Where did that money come from?
31. After the payment in May 2019 there are payments, each of £200 plus in June and July but then no payment in August. There is a payment in September of £100 and then in October of £100 but no payment in November. At that stage the appellant, her child and her nephew would be living on £25.00 per week or over two months at the lowest £12.50 per week. Without explanation of the outgoings of the appellant and her family I do not accept that the appellant, her child and nephew would be able to live on £12.50 per week without evidence of what their outgoings were.
32. I find it significant that there is not a consistent and regular amount of money being sent. The cost of living, food, clothing and the like would be regular outgoings which would have to be met. Accommodation may be paid for on a yearly basis such that a single large payment may be made but otherwise I do not accept that the appellant, her child and nephew could have lived on £12.50 per week.
33. There were many issues unanswered in the evidence. That having been said I do not accept that the monies sent by the sponsor were the only source of money for the appellant and her family. It was suggested it was

not possible for the appellant to earn monies because she had to look after her child. Many women with children work. The appellant and her family I find must have had other sources of income. That would not stop the family needing to supplement their income to meet the basics of life by monies from the sponsor. Given the income of the sponsor, I find that the sponsor is sending money on a regular basis to enable the appellant to meet her and her child's basic needs.

34. Having considered all the circumstances I find that the appellant and her family may have a limited income from other sources but that they need the money from the sponsor to enable them to meet their basic needs. I find to that extent that it has been proved that the appellant and her family were dependent on the sponsor. I find they are sufficiently dependent to fall for consideration under Regulation 7 as family members that are dependent upon the monies from the EEA sponsor in the UK. On that basis I allow the appeal of the appellant."

The Submissions

10. On behalf of the ECO, Ms Pettersen relied upon the grounds which she briefly developed in her oral submissions. She submitted that the judge's finding that the appellant was financially dependent upon the sponsor to meet the appellant's "essential needs" was inadequately reasoned.
11. First, the judge had identified a number of gaps in the evidence and the circumstances of the appellant, including inconsistent and irregular remittances sent by the sponsor. Secondly, the judge had rejected the sponsor's evidence that the appellant had no income or savings and was wholly dependent upon the sponsor. He also rejected the evidence that the appellant and her family were able to survive on funds sent by the sponsor. He found that the money sent by the sponsor was not the only source of money for the appellant and her family. Thirdly, nevertheless, he went on to find that the appellant needed the money from the sponsor to enable her to meet her "basic needs" and so was dependent upon the sponsor. Ms Pettersen submitted that it was wholly unclear how, given the judge's other findings, he had reached that ultimate conclusion in the appellant's favour.
12. On behalf of the appellant, Ms Hashmi submitted that the judge had clearly dealt with all the issues. He had applied the correct case law and, even if there were gaps in the evidence, he had sustainably found that the sponsor was sending money and that this money was needed by the appellant to meet her "basic needs".

Discussion

13. The judge correctly identified that proof of dependency requires the appellant to establish, on a balance of probabilities, that financial support from the sponsor was required in order to meet the appellant's "essential needs" (see paras 16 and 17 with particular reference to ECO, Manila v Lim [2015] EWCA Civ 1383).
14. However, as will be clear from the judge's reasons, he found the evidence to not be consistent, that there were significant gaps in the evidence and "many issues

unanswered” in that evidence. He did not accept that the appellant was wholly reliant upon money received from the sponsor. Indeed, when he analysed a period of payments made, the judge found that relying on money from the sponsor, she received only £12.50 per week which was not enough for the appellant and her family to live on. The judge accepted that the appellant must have other sources of income although he did not identify what they were.

15. Further, in the evidence the judge could not identify what the appellant’s living costs were or that she was receiving money to provide for her living costs solely from the sponsor. Indeed, to the extent the evidence covered a period of time in 2019, the judge found that the sponsor was providing about £12.50 per week. The remainder of any living costs were, on the judge’s findings, derived from other sources. Of course, the judge made no findings on what those sources were.
16. Nevertheless, in order to determine that the sponsor’s money was providing for the appellant’s “basic” or “essential needs”, the judge had to assess whether the income solely derived from the sponsor provided for those needs, such as accommodation, food and clothing. In para 32, the judge, in effect, found that, when considering the relevant period, £12.50 per week was not enough to do that and, indeed, the implication is that the remaining (bulk) of support came from other sources than the sponsor. Having identified periods of time when no money was evidenced as being sent to the appellant and, when it was, that the money was supplemented by other money necessary, at least, to meet the “cost of living, food, clothing and the like”, I accept Ms Pettersen’s submission that it is wholly unclear how the judge came to the finding that the money sent by the sponsor enabled the appellant “to meet her and her child’s basic needs”. Without a careful assessment of the evidence leading to findings identifying what were the costs necessary to meet the appellant’s “basic” or “essential needs” and then marrying that up with findings as to monies which were sent by the sponsor being used to provide for those needs, the judge failed to give adequate reasons for his finding that, under the EEA Regulations, the appellant was “dependent” upon the sponsor in the UK.
17. For those reasons, the judge erred in law in reaching his finding in relation to dependency and that the appellant had established that she is a “family member” of her EEA sponsor in the UK. For those reasons, the judge’s decision to allow the appeal cannot stand and is set aside.
18. Both representatives, accepted that if the error of law was established the proper disposal of the appeal was to remit it to the First-tier Tribunal for a fresh hearing.

Decision

19. For the above reasons, the decision of the First-tier Tribunal to allow the appellant’s appeal involved the making of an error of law. That decision cannot stand and is set aside.

20. Having regard to the nature and extent of fact-finding required, and to para 7.2 of the Senior President's Practice Statement, the proper disposal of this appeal is to remit it to the First-tier Tribunal for a *de novo* rehearing before a judge other than Judge McClure.

Signed

Andrew Grubb

Judge of the Upper Tribunal
12 May 2021