Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: UI-2022-000242
EA/03064/2020

THE IMMIGRATION ACTS

Heard at Field House
on 06 April 2022

Decision & Reasons Promulgated
on 29 July 2022

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

HILDA GYAN ADDO

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:
For the appellant: Mr J. Waithe, instructed by Adukus Solicitors
For the respondent: Ms J. Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appealed the respondent's decision dated 05 March 2020 to refuse to issue an EEA family permit as an extended family member of an EEA national. The appellant is the sister of an Italian citizen who is resident in the UK.

2. First-tier Tribunal Judge S. Taylor ('the judge') dismissed the appeal in a decision promulgated on 15 November 2021. The judge noted that the appeal was brought under The Immigration (European Economic Area) Regulations 2016 ('the EEA Regulations 2016') on the grounds that 'the

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decision was not in accordance with the Regulations, and that the decision was unlawful under S6 Human Rights Act 1998' [2].

3. The only ground of appeal available under the EEA Regulations 2016 is that 'the decision appealed against breaches the appellant's rights under the EU Treaties in respect of entry into or residence in the United Kingdom' (Schedule 2). Human rights grounds can only be raised in EEA appeals in limited circumstances: see *Munday (EEA decision: grounds of appeal)* [2019] UKUT 00091 (IAC).

4. The judge went on to summarise the respondent's reasons for refusing the application [3]. The respondent was not satisfied that sufficient evidence was produced to show that the appellant was dependent on the EEA sponsor. The judge summarised the evidence given by the EEA sponsor at the hearing [8]-[10] and the submissions made by the parties [11]-[12].

5. The judge began his findings with a self-direction as to what he considered was the relevant law. At [14] he referred to the Grand Chamber decision in 'Metlock'. In the absence of the full citation in the decision I infer that this is the case of *Metock and Others (Area of Freedom, Security and Justice)* [2008] EUECJ C-127/08 (25 July 2008). He also directed himself to the Court of Appeal decision in *Bigia v SSHD* [2009] EWCA Civ 79; [2009] Imm AR 515. It is clear from the judge's findings at [15]-[16] that he applied the 'Bigia test' to this case on the understanding that the appellant needed to show that she was dependent upon the sponsor while the sponsor was living in Italy, that being 'the country from which she came to the UK'.

6. The judge concluded that the appellant failed to produce any evidence to show that she was dependent upon the EEA sponsor while she was living in Italy [15]. He went on to make an alternative finding that, 'even if the appellant had met the Bigia test', she did not produce sufficient evidence to show that she was dependent on the EEA sponsor since she lost her job at the beginning of 2018 [16]. The only evidence of dependency was 11 money transfer receipts for a limited period from May to December 2019. The judge noted that there was no evidence from 2018 nor any after December 2019. On the evidence given by the sponsor this was the period when their father was unwell. The sponsor sent funds to the appellant to cover the cost of his medical treatment. There was no breakdown to show what funds were for medical treatment or for the appellant. The judge noted that the sponsor said that she paid the appellant's rent and had produced a copy of the tenancy agreement but noted that there was no evidence to show that the landlord received money 'direct from the sponsor'. He noted that the sponsor's evidence was that the appellant paid the rent from the monies sent to her but there were no receipts for rent paid.

7. In addition to the limited evidence of remittances the judge noted that the appellant appeared to be able to afford a two-bedroom flat even though her mother and sister only visited very occasionally. The respondent had noted that there was no evidence from publicly available sources of the

existence of the company that the appellant claimed to work for until 2018 [17]. In addition to these concerns the judge noted that the EEA sponsor was in receipt of Universal Credit, which cast doubt on whether she could afford to maintain the appellant through remittances as claimed [18]. The judge was not satisfied that the appellant was dependent on the sponsor at the date when the application was made or since [19].

8. The appellant applied for permission to appeal to the Upper Tribunal. The grounds were not clearly particularised, but the following points can be discerned from the general submissions:

   (i) The judge erred in applying the 'Bigia test' which had since been overtaken but other cases relating to dependency under EU law.

   (ii) The grounds expressed disagreements with the judge's conclusions. The appellant produced a letter to show that she was made redundant. The sponsor was entitled to Universal Credit. The appellant would not become an unreasonable burden on the social assistance system in the UK.

<u>Decision and reasons</u>

9. Ms Isherwood accepted that the decision disclosed an error of law in so far as the judge applied the test in *Bigia* i.e. that the extended family member needed to show that they were dependent on the sponsor in the country from which the sponsor had most recently come from prior to exercising rights of free movement in the UK.

10. The principle outlined in *Bigia*, and subsequently applied in cases such as *Dauhoo (EEA Regulations – reg 8(2))* [2012] UKUT 79 (IAC) and *Moneke (EEA – OFMs) Nigeria* [2011] UKUT 00341 (IAC) has long since been overtaken by the binding decision of the Court of Justice of the European Union (CJEU) in *SSHD v Rahman & Others* [2012] EUECJ C-83/11 (05 September 2012); [2013] QB 249. The CJEU made clear that the family member only needs to show that a situation of dependence exists in the country from which the <u>family member</u> comes from, at the very least at the time when they apply to join the Union Citizen on whom they are dependent.

11. To the extent that the judge applied the principle first outlined in *Bigia*, that approach amounts to an error of law. The judge's understanding of the relevant legal framework was 10 years out of date.

12. For the purpose of this appeal, the question is whether that error made any material difference to the outcome in circumstances where the judge nevertheless went on to consider the correct test relating to prior dependency i.e. whether there was evidence to show that the appellant was dependent on the EEA sponsor for her essential needs.

13. The judge went on to make alternative findings as to whether there was sufficient evidence to show that the appellant was dependent upon the

EEA sponsor for her essential needs in Ghana [16]-[18]. In doing so he considered the limited number of remittance receipts and the tenancy agreement produced by the appellant. Although he did not specifically mention the letter from her previous employer it is clear that the judge considered the appellant's claim that she had been dependent on her sister since she was made redundant at the beginning of 2018. The document was submitted with the original application and was a matter that formed part of the respondent's reasons for refusal, which the judge considered at [17].

14. The grounds of appeal made general submissions expressing disagreements with the findings made by the First-tier Tribunal. At the hearing Mr Waithe argued that the findings were 'wrong'. It is understandable that the appellant disagrees with the outcome of the appeal, but it is not arguable that the judge's findings were outside a range of reasonable responses to the evidence or that he failed to consider relevant matters.

15. At highest the appellant's evidence was that her sister sent her relatively small remittances of around £50 a month. However, it was open to the judge to observe that the remittance receipts were quite limited in number. It was also open to the judge to take into account the evidence given by the sponsor that she had sent money for their father's medical treatment during 2019, when most of the remittance receipts were dated.

16. It was also open to the judge to find that the copies of the tenancy agreements, in themselves, was insufficient evidence to show that the sponsor also paid the appellant's rent. The first tenancy agreement was dated March 2017, before the appellant says that she was made redundant. The second tenancy agreement, for the same address was dated March 2020. The preamble to the tenancy agreement purported to be between the landlord and the EEA sponsor (named as 'the tenant's sister') but the agreement was signed by the appellant. The monthly rent was 500 Cedis (circa £50). There was no other evidence to show direct payment of the rent from the EEA sponsor to the landlord either by the appellant or her sister.

17. The EEA sponsor's bank statements showed that she was on a relatively low income from employment, which was supplemented by Universal Credit. The sponsor did not state how much her average earnings were in her witness statement, but a copy of her bank statement covering the period from July 2019 to October 2020 suggested that she received an average of around £900 a month in Universal Credit. She also received between £100-£180 a week in income from employment with a company called Carbon 60 Ltd although there was evidence of a couple of payments higher than that. She also appeared to receive monthly payments of varying amounts, but mostly between £500-£600, from a company called Interserve FM Ltd. The bank statements indicated an estimated net monthly income of around £2,000 a month.

18. There was some evidence to show that the sponsor sent occasional financial remittances to the appellant of relatively small amounts and had on at least one occasion apparently paid for medical treatment. However, there was a dearth of evidence as to the appellant's financial requirements to meet her essential living needs. There was an absence of evidence to show on the balance of probabilities that the EEA sponsor paid for the appellant's accommodation in Ghana. Although there was some evidence of limited financial support, it was open to the judge to conclude that the evidence was insufficient to show that the appellant was dependent on the EEA sponsor for her essential living needs. For these reasons, I conclude that the findings of the First-tier Tribunal relating to dependency in Ghana did not involve the making of an error of law.

19. Although the First-tier Tribunal decision involved the making of an error of law relating to the incorrect application of an out of date legal test, it did not make any material difference to the outcome of the decision. The judge went on to consider the evidence relating to dependency in Ghana in the alternative. Those findings did not involve the making of an error of law and shall stand.

DECISION

The First-tier Tribunal decision did not involve the making of a material error of law

Signed M. Canavan Date 13 June 2022
Upper Tribunal Judge Canavan

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email