



**Upper Tribunal
(Immigration and Asylum Chamber)
EA/05158/2020**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On the 04 February 2022**

**Decision & Reasons
Promulgated
On the 30 March 2022**

Before

**UPPER TRIBUNAL JUDGE RIMINGTON
DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN**

Between

**MR MYKHAILO KHROBAK
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Seehra, counsel instructed by Sterling & Law
Associates LLP

For the Respondent: Ms Isherwood, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Ukraine, born on 19 July 1991. On 12 June 2020 he applied for an EEA Family Permit to join his sister and brother in law, Petar Petrov, a national of Bulgaria born on 8 June

1985. The application was refused on 22 July 2020 on the basis that firstly, the ECO was not satisfied that the Appellant was related to the Sponsor as claimed and secondly, that the Appellant was financially dependent on the Sponsor.

2. The Appellant appealed against this decision and his appeal came before First tier Tribunal Judge G Richardson for hearing on 11 June 2021. In a decision and reasons promulgated on 23 June 2021, the Judge dismissed the appeal. At [9] the Judge set out his reasons for accepting that the Appellant and Sponsor were related as claimed and at [11]-[14] he set out his reasons for finding that the Appellant had failed to show to the requisite standard that he requires the Sponsor's financial support to meet his essential needs.
3. An application for permission to appeal to the Upper Tribunal was made in time on 5 July 2021. In a decision dated 3 August 2021, permission to appeal was granted by First tier Tribunal Judge Grant, with reference to the evidence of transfers in the Appellant's bundle at pages 23-27 exceeding the Judge's calculation of £476 of funds having been evidenced, which was said to accord with the Sponsor's evidence that he sends on average £110 a month and thus it was argued that the Judge made a material error of fact as to the money remitted.
4. The Respondent lodged a rule 24 response on 7 December 2021 opposing the appeal. Whilst the Sponsor did give evidence that he remitted £110 a month on average it was accepted by the Sponsor at 8(c) that not all transactions could be evidenced as some were made in cash and it was because of this evidence that the Judge at [11] rejected the assertion that £110 a month was remitted. The Sponsor's evidence was not supported by witness statements, money transfers, the Appellant's bank account or evidence of money transfers, income or outgoings [13]. The Respondent asserted that there was a lack of detail concerning the Appellant's economic situation and the Sponsor was unable to assist as to whether or not the Appellant had a partner and his true situation [14]. The Judge was entitled to find that the Appellant was not financially dependent on the Sponsor.

Hearing

5. Ms Seehra submitted that, what appears to have happened at [8](c) is that the Judge focussed on the period between the date of application and the hearing date but in fact the evidence was consistent with what was provided: see [8](b). The Sponsor said that the amounts remitted varied and depended on periods of time when he had more money. Consequently, the Judge misdirected himself. Ms Seehra acknowledged that at [11] the Judge mentioned 15 money transfer receipts from 27.11.19 to 22.3.21 but failed to note

that the average was consistent with what the Sponsor said. At [6] of grounds of appeal in his statement the Appellant addressed the fact he lives in a cash economy. Whilst no documentary evidence was submitted on this point there was an explanation why this was the case.

6. The Upper Tribunal pointed out that the Judge was not ignoring the explanations provided: see [12] of determination, but the point was that there was insufficient explanation. The Upper Tribunal also asked whether there was a breakdown of expenses, which Ms Seehra confirmed that there was not, but drew attention to [5] of Appellant's statement and the Sponsor's statement on the same issue. With regard to the Upper Tribunal's question as to whether bank statements had been submitted, Ms Seehra accepted that they had not; that they would not show any expenses that the Appellant paid and that she could only point to the Sponsor and Appellant's clear evidence that all the expenses were being paid by cash and in those circumstances she would submit these would be of limited or no value. Ms Seehra stated that whilst the issue of accommodation had not been canvassed at the time she now had instructions.
7. On behalf of the Respondent, Ms Isherwood submitted that the grounds were a mere disagreement with the Judge's findings and that the Appellant was seeking to re-argue the case. She reminded the Upper Tribunal that the burden of proof was on the Appellant. She submitted that the Judge did not fail to acknowledge the Appellant came from a small village and what the Judge is doing is assessing the evidence as a whole. The Judge on balance accepted the Appellant and Sponsor were related as claimed at [9]. The Sponsor's evidence was from [8] of the determination; his evidence is at 8(c) and it was his evidence at the hearing that he paid money to the Appellant in cash via friends.
8. Ms Isherwood referred to [10] and [11] where the Judge was looking at the period covering November 2019 to March 2021. The table in the grounds of appeal sets out the evidence of the transfers but the Judge looked at a wider period. What the judge did, taking into account the shortfall in the sponsorship of the Appellant, was to reach a decision on the evidence provided and was entitled to make the findings he did. At [12] the Judge raised the issue of income and outgoings. It cannot simply be said that it is a cash economy and she queried whether the Appellant could have got receipts. This was not addressed in the evidence nor provided. At [12] one would have expected a fuller account yet the Appellant has not even written down what he spent. At [13] the Appellant's bank statements were not provided. At [14] there was clear uncertainty about the Appellant's domestic circumstances in the Ukraine and whether he

had a partner. Ms Isherwood submitted that the Judge was entitled to dismiss this appeal.

9. In reply, Ms Seehra submitted that, in the absence of any income on the Appellant's part, it was clear that any money he would receive would be needed to meet his essential needs. In terms of receipts, she submitted that it would be bordering on manufacturing evidence for the purposes of the appeal hearing to produce these given that the Appellant's evidence has always been clear that he does not have receipts.
10. We reserved our decision, which we now give with our reasons.

Decision and reasons

11. The appeal before the Upper Tribunal was concerned with a single issue, which is whether the First tier Tribunal Judge erred in fact in his assessment of the amount of money transferred from the Sponsor to the Appellant in terms of the evidence before him, due to his failure to consider the Sponsor's evidence that the Appellant lives in a cash economy. Underlying this ground of appeal is therefore a challenge to the Judge's finding at [15] that the Appellant had failed to show that he needs the Sponsor's financial support to meet his essential needs.
12. We have concluded that the First tier Tribunal Judge's decision and reasons does not contain any errors of law. Our reasons are as follows:
 - 12.1. We do not find that the Judge erred materially in his assessment of the monies remitted to the Appellant by the Sponsor. It is clear from [11] that the Judge took into account the 15 money transfer receipts dated between 27 November 2019 and 22 March 2021 however the Sponsor's evidence, recorded at [8(a)] was that he had been sending the Appellant £110 a month for 2 years. Whilst in light of the chart of receipts and the rolling total set out in the grounds of appeal we accept that this equates to £111.11 a month on average over the 15 month time period and that this corroborates the Sponsor's evidence, nothing has been provided to address the Judge's concerns at [11] as to the Sponsor's claim to have remitted further funds in the two year period because there was no documentary evidence such as witness statements from friends who had taken money in cash to the Appellant in Ukraine nor why money was transferred in this way.
 - 12.2. The Judge also set out his concerns at [12] as to the absence of any independent evidence of the Appellant's income and outgoings in Ukraine, other than the Appellant's witness statement. We find that the Judge was correct to identify a lack of detail as to this key issue in the appeal and that in the absence of any receipts and an

itemised breakdown of the Appellant's expenditure, it was not possible for him to assess how any remittances from the Sponsor might go towards meeting the Appellant's essential needs.

- 12.3. The test for dependency as set out in Moneke (EEA-OFMs) Nigeria [2011] UKUT 00341 (IAC) is whether "*the person needs financial support from the EEA national or his/her spouse/civil partner in order to meet his/her essential needs.*" This is, in effect, the test applied by the Judge at [10] when he directed himself to consider whether the appellant receives financial support from the sponsor in order to meet his essential needs. Moneke further provided at [42]: "*We note further that Article 10(2)(e) of the Citizens Directive contemplates documentary evidence. Whether dependency can ever be proved by oral testimony alone is not something that we have to decide in this case, but Article 10(2)(e) does suggest that the responsibility is on the applicant to satisfy the Secretary of State by cogent evidence that is in part documented and can be tested as to whether the level of material support, its duration and its impact upon the applicant combined together meet the material definition of dependency.*" See also Reyes [2014] EUECJ C-423/12 [24], where the CJEU held

"The fact that, in circumstances such as those in question in the main proceedings, a Union citizen regularly, for a significant period, pays sum of money to that descendant, necessary in order for him to support himself in the State of origin, is such as to show that the descendant is in a real situation of dependence vis-à-vis that citizen."

- 12.4. At [13] the Judge recorded the Sponsor's evidence that the Appellant has a bank account in Ukraine and that this is where the funds are remitted. We find that the Judge was entitled to find that it was telling that the Appellant had failed to provide any bank statements or other evidence to show funds going into his bank account and expenses being paid from it, in light of [42] of Moneke. There was clearly an absence of cogent evidence before him.
- 12.5. The Judge further took into consideration the fact that there was also clear uncertainty as to the Appellant's domestic circumstances in Ukraine, in that in his application for an EEA Family Permit he named a partner with whom he was living. This was not addressed by the Appellant in his witness statement and the Sponsor maintained that the Appellant was single but no explanation other than the suggestion that this was a mistake or that she was an ex-partner was provided by the Sponsor. We find that the Judge was entitled to rely upon this discrepancy as undermining the Sponsor's

evidence as to the Appellant's circumstances in Ukraine and cast doubt on his credibility.

13. For the reasons set out at [12] above we find that the Judge provided clear and sustainable reasons for his conclusion that the Appellant had failed to discharge the burden of proving that he was reliant upon the Sponsor's financial support to meet his essential needs. In Lim v Entry Clearance Officer [2015] EWCA Civ 1383, [29] Elias LJ did not accept that dependency was determined by the '*mere fact that the EU national makes resources available to the dependent relative*'. Whilst it is the case that the Appellant was able to evidence money transfer receipts over a period of 15 months, which is not an insignificant period of time, in the absence of any other documentary evidence showing that the Appellant required and utilised these funds for his essential needs eg to pay bills and accommodation, the Judge was entitled to find that the test of dependency had not been met. The Judge was entitled to attach weight to the fact that the Appellant has a bank account but had inexplicably failed to provide his bank statements, which could have substantiated his dependency upon the Sponsor and therefore the Judge was justified in finding that he could not be satisfied that the Appellant's circumstances were as claimed.

DECISION

14. We find no error of law in the decision of First tier Tribunal Judge Richardson, whose decision is upheld.

Rebecca Chapman

Deputy Upper Tribunal Judge Chapman

17 February 2022