



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: EA/06151/2019
CE-FILE: UI-2022-001330

THE IMMIGRATION ACTS

**Heard at Field House
On: 31 October 2022**

**Decision & Reasons Promulgated
On: 8 December 2022**

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

ISHMAEL KELLIE
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K Kellie, sponsor

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge JM Dixon, promulgated on 17 November 2021. Permission to appeal was granted by Upper Tribunal Judge Blundell on 6 July 2022.

Anonymity

2. No direction has been made previously, and there is no reason for one now.

Background

3. The appellant is a national of Sierra Leone, now aged twenty. He made an application for an EEA Family Permit on 8 October 2019, as the extended family member of Mr Komba Kellie, who is his paternal uncle. That application was refused on 23 October 2019. The Entry Clearance Officer doubted the credibility of the birth certificates provided as evidence of the claimed relationship. In addition, the appellant's claim to be dependent upon the sponsor or part of his household was rejected.

The decision of the First-tier Tribunal

4. This matter was initially considered by the First-tier Tribunal and dismissed in a decision promulgated on 14 September 2020. That decision was set aside, and the matter was remitted to the First-tier Tribunal for a de novo hearing.
5. The remitted hearing before the First-tier Tribunal was conducted over CVP on 6 October 2021. Hitherto, a previous judge had adjourned the appeal hearing to enable the appellant to obtain evidence that the government of Sierra Leone did not object to him giving live evidence from within that jurisdiction. There was no compliance with subsequent directions made by a Tribunal Caseworker. At the hearing on 6 October 2021, the judge did not permit the appellant and his cousin, Mr Gborie, to give evidence over video from Sierra Leone. In terms of findings, the judge accepted that the parties were related as claimed. The judge rejected the claim that the appellant was part of the sponsor's household or that he was dependent upon the sponsor for his essential needs, on credibility grounds.

The grounds of appeal

6. The grounds of appeal argue, in the main, that there was a procedural irregularity because a witness in London was not permitted to give evidence, there was also criticism of the manner in which the judge dealt with the sponsor's written evidence and the appellant and a witness were not permitted to give evidence from Sierra Leone.
7. In granting permission, the Upper Tribunal considered the sponsor's complaints about documentation to be irrelevant and the ground relating to giving evidence from Sierra Leone to be unarguable. Permission was granted on the following basis;

Of greater concern is what is said at [11] of the grounds, wherein it is asserted that the judge refused to allow the sponsor's son to give evidence via CVP from within the UK. It is said in the grounds that this was procedurally unfair and indicative of bias on the part of the judge. In this respect, there is a flat contradiction between the assertion in the grounds

and what was said by the judge at [11] and [35] of the decision under challenge. The point can be resolved by viewing the CVP recording of the hearing, and I note that the sponsor has already taken some (unsuccessful) steps to secure the same

8. The respondent filed a Rule 24 response dated 9 August 2022, in which the appeal was opposed.
9. In advance of the hearing, the sponsor sent correspondence from the government of Sierra Leone, dated 19 October 2022, which stated that there was no objection to live evidence being given from within the jurisdiction to the Upper Tribunal.

The hearing

10. The sponsor, Mr Kellie, attended in person. It transpired that neither the sponsor nor myself had seen the Rule 24 response. The sponsor was given time to consider it. There was a reference in the Rule 24 response to a presenting officer's witness statement as well as a letter from the appellant however Mr Melvin had seen neither document. Nor was the presenting officer's minute of the hearing of 6 October 2021 available.
11. Neither Mr Melvin nor the sponsor had been sent the CVP recording of the hearing. I read out the notes I made of the parts of the recording which related to the sponsor's son and asked the parties if they wished to hear the recording for themselves. Neither requested this. I also stated that Judge Dixon had prepared a short statement which was consistent with what he said about the matter in the decision and reasons as well as the recording. Neither party requested sight of that document.
12. I then invited the sponsor to address his grounds of appeal, assisting him with questions to enable him to make his points. On the issue of the son giving evidence, the sponsor maintained that the judge had prevented this from taking place. The sponsor said that his son was around in the morning, but he had to go out, albeit he later rejoined the CVP platform. I asked the sponsor if he could recall the time when his son reappeared on CVP and he said this was after the sponsor was cross-examined by the presenting officer, Mr Swaby. When asked what his son would have said had he given evidence, the sponsor said that the judge did not believe his son lived with the appellant. He also told me that his son had written a letter, but the judge did not look at it or a letter from a cousin in Sierra Leone.
13. I asked the sponsor to explain his complaint about the sponsor's own witness statement. He stated that the judge did not look at all the documents, the respondent had not acknowledged receipt of his documents and the presenting officer had no documents on the day until the sponsor sent an email. Lastly, the sponsor complained about the time and effort it had taken the appellant to obtain the letter of no objection in Sierra Leone.

14. Mr Melvin relied on the respondent's Rule 24 response and added the following. There was no procedural unfairness at the hearing. The judge looked at all the evidence including the witness statement and perhaps the sponsor's argument was with the weight to be attached to the witness statement. At the time of hearing the authorities had not given permission for live evidence to be taken. The grounds of appeal did not reveal any material error of law and were no more than an argument with the findings made.
15. In reply, the sponsor reaffirmed that there was procedural unfairness in the way he, the appellant and witnesses were treated as the judge ignored his evidence and did not want to hear from the witnesses.
16. At the end of the hearing, I announced that I had found no material error of law in the decision of the First-tier Tribunal and that decision was upheld.

Decision on error of law

17. I will firstly dispose of the third ground, which concerns the sponsor's disquiet that the appellant and his cousin in Sierra Leone were not permitted to give evidence from within that jurisdiction. The judge made no error here. The sponsor was well- aware of the need to obtain permission as this had been raised when the appeal was adjourned earlier. Furthermore, as can be seen from [10] of the decision and reasons, the sponsor did not seek an adjournment to obtain the letter of no objection. Given the guidance in the case of *Agbabiaka (evidence from abroad Nare guidance)* [2021] UKUT 286 (IAC), the judge had little option but to proceed without hearing directly from the appellant and his witness in Sierra Leone.
18. The second ground of challenge relates to the judge's treatment of the sponsor's statement which he says was not considered. The sponsor's statement was contained in a letter of 8 October 2019 as well as a document called 'appellant explanation of case.' It is apparent from the CVP recording that there was much discussion of the documents, with the judge taking care to ensure that all the relevant documents were before him and inviting the sponsor to identify any other evidence he wished to rely upon. The sponsor was correct to say that the presenting officer had none of the appellant's documents, as can be seen from [12] of the decision. This led to the hearing having to be put back in the day. At [49], the judge states unequivocally that he considered all the evidence and submission before him and in the following paragraphs [50-63] the judge engages with that evidence in coming to his conclusions, not all of which were unfavourable to the appellant. Ultimately, the judge noted a series of discrepancies between the various documents and accounts put forward regarding the appellant's circumstances. The grounds do not challenge any of those discrete findings but express disagreement with the decision reached. There was no error in the approach by the judge to the evidence.

19. Lastly, I will address the ground on which permission was granted. The sponsor asserts that the judge was biased against him, evidenced by what he claims was the judge's refusal to permit the sponsor's son, Sahr, also referred to as Francis, who is from giving evidence at the hearing. There is simply no evidence to support the sponsor's assertion. The judge deals with this matter at several points of the decision and reasons. At [11], the judge notes that Francis was connected to the CVP platform in the morning however as stated above the appeal could not proceed at that stage as the presenting officer lacked documents. The judge also notes that no adjournment was sought for Francis to give evidence at a later date.
20. At [35], the judge notes a discussion which took place regarding whether Francis would be giving evidence which concluded with the sponsor confirming that Francis was not present on the platform and would not be connecting.
21. The CVP recording supports the account of events at the hearing which are set out in the decision and reasons. At an early stage of the hearing, the judge attempts to speak to Francis directly but the screen froze. The judge then informs the sponsor that Francis needs to be in a place from where he can give evidence. After the examination of the sponsor is complete, the judge twice asks him if his son is available to connect and give evidence. The sponsor replied that he did not think Francis was home and he had tried to call him. The sponsor made the point that the hearing was supposed to be at 0930 to which the judge explained that the notice of hearing stated that a hearing would not necessarily take place at 0930 hours. The sponsor then confirms that Francis was not available at the moment, and makes no objection when the judge states that he is not going to delay the hearing further and moves to hear submissions. There is no suggestion of bias by the judge.
22. The reason that Francis did not give evidence was because he did not make himself available for the whole day of the hearing and the sponsor did not seek an adjournment for him to give evidence on another day. Furthermore, there is no indication that the evidence of this witness would have had any bearing on the outcome of the appeal. The sponsor told me that Francis would have been able to confirm that he was living in the same household as the appellant in Sierra Leone. However, the reason the judge rejected the claim that the appellant was part of the sponsor's household had nothing to do with Francis but was owing to the fact that the house the appellant lived in was owned by the appellant's aunt and the sponsor had been in the United Kingdom since 2016. It is difficult to see that the evidence of Francis would have had any impact on the judge's conclusions.

Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error of on a point of law.

The decision of the First-tier Tribunal is upheld.

No anonymity direction is made.

Signed: T Kamara

Date: 2 November 2022

Upper Tribunal Judge Kamara

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