



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

**Appeal Numbers:
UI-2022-001662 (EA/06563/2020)
UI-2022-001663 (EA/06570/2020)**

THE IMMIGRATION ACTS

**Heard at Field House
On the 22 August 2022**

**Decision & Reasons Promulgated
On the 10 October 2022**

Before

UPPER TRIBUNAL JUDGE PITT

Between

**MR GIDEON APPIAH BONSU
MR PATRICK OKYERE
(NO ANONYMITY DIRECTION MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms M Malhotra, Counsel, instructed by Adukus Solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an extempore decision which was provided to the parties at the hearing.
2. This is an appeal against the decision dated 6 January 2022 of First-tier Tribunal Judge Henderson which refused the appeals of the appellants brought on EEA grounds. The appellant's maintained that they were extended family members (EFMs) of their Italian national sponsor. Judge

Henderson did not find that the appellant's were EFMs as they had not shown that they were dependent on the EEA sponsor.

3. There was agreement at the hearing before me that the test that the judge had to apply was that set out in the case law of the European Court of Justice, in particular Lim EWCA Civ 1383 [2015] and Reyes [2014] EUECJ C-423/12. Both cases provide that the correct test is whether the non-EEA national is dependent for their essential needs on the European national. That is a factual assessment to be made in each case.
4. The respondent's guidance on the proper application of those principles, referred to by Ms Malhotra, confirms that the assessment has to be one of essential needs and that it is not necessary for the sponsor to be funding all of the essential needs. It can be a partial degree of support.
5. In the decision under challenge there is no reference to this case law or to these principles. That is not in itself a bar to there being a lawful assessment but there were two aspects of the decision which indicated to me that it could not be said that the correct test had been applied.
6. The first issue is that notwithstanding the entirely justifiable findings on credibility set out in the decision at paragraph 27 the judge clearly accepted that the sponsor is sending financial help to the appellants and the evidence indicated that she had been doing so since 2019. The judge states in paragraph 27, referring to the sponsor, "She may well provide financial help as a family member, but that is not the same test." Where the tests from Lim and Reyes are not referred to at all elsewhere in the decision it is not clear what "test" the judge is referring to in paragraph 27.
7. Further, in paragraphs 23, 26 and 27 the judge refers to the question of "emotional dependence". That is not the correct test as provided for in Lim and Reyes. The repeated reference to "emotional dependence" suggests that the judge was looking for that element to be present as well as the accepted financial dependency. Further, if some financial dependency was accepted, following the case law and the respondent's guidance, there had to be a decision on whether that formed a material part of the appellant's essential needs.
8. Therefore, where I could not be satisfied that the correct test had been applied and there it was accepted that there was some evidence of finance being sent but no assessment of whether that provided for the appellant's essential needs, I could not conclude that the outcome of the decision would have been the same had the correct test been clearly applied.
9. I therefore find that there is a material error on a point of law such that the decision must be set aside to be remade and that where the key assessments have not been conducted this should take place in the First-tier Tribunal.

Decision

The decision of the First-tier Tribunal discloses an error on a point of law and is set aside to be remade *de novo* in the First-tier Tribunal.

Signed: S Pitt
Upper Tribunal Judge Pitt

Date: 2 September 2022