Upper Tribunal
(Immigration and Asylum Chamber)

Appeal numbers:
UI-2022-003070; EA/15465/2021
UI-2022-003071; EA/15466/2021
UI-2022-003072; EA/15468/2021
UI-2022-003073; EA/15470/2021

THE IMMIGRATION ACTS

Heard at Field House
On the 25 October 2022

Decision & Reasons Promulgated
On the 16 November 2022

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

PRINCE AGYAPONG MANU
JASTINA ADDAI MANU
ALVIN DAVID APPIAH
JAMES OPOKU KWAKYE

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr A Rehman, instructed by Jein Solicitors
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are nationals of Ghana. The first, second and fourth appellants are the children over the age of 21 years of Akosua Serwaah, a Ghanaian national married to Mark Kwasi Oppong, an EEA (German) national exercising treaty rights in the UK. The third appellant is the son of the second appellant, born on 12 April 2014. They appeal, with permission, against the decision of First-tier Tribunal Judge Housego, dismissing their appeals against the respondent's decision to refuse to issue them with an EU Settlement Scheme Family Permit under Appendix EU (Family Permit) of the Immigration Rules following their applications made on the basis of being family members of a relevant EEA citizen.

2. The first and fourth appellants applied for EUSS family permits on 18 May 2021, and the second appellant on 12 June 2021, as the dependent adult step-children of the sponsoring EEA national and the third appellant applied on 12 June 2021 as the step-grandchild of the sponsor. The first, second and fourth appellants' applications were refused by the respondent on 4 November 2021 on the basis that it was not accepted that they were the family members of the relevant EEA national sponsor and that it was not accepted that they were financially dependent upon the sponsor. The third appellant's application was refused on 4 November 2021 on the basis that it was not accepted that he was the family member of the relevant EEA national sponsor.

3. The appellants appealed against those decisions and their appeals came before First-tier Tribunal Judge Housego on 13 April 2022. The appeals were heard remotely by CVP. On the basis of DNA test results produced at the hearing, the judge accepted that the appellants were related to Akosua Serwaah. The only live issue was therefore that of dependency. Judge Housego heard from the sponsor and his wife, the first, second and fourth appellants' mother and the third appellant's grandmother. He recorded the evidence that the first appellant worked from time to time on a casual basis, that the second appellant was not able to work because she cared for her child the third appellant and that the fourth appellant had never worked; that the sponsor's wife tended to send the money to the appellants most of the time because the sponsor worked nights; that she earned about £35,000 a year and the sponsor earned about £27,000 a year and they rented out a room in their house for £1,250 a month; and that the sponsor and his wife sent money to each of the appellants including money for the third appellant's school fees. They had not provided documentary evidence of household expenses for the application or the appeal, but they had printed them off and showed them remotely at the hearing.

4. The judge found it clear that money was sent by the sponsor and his wife on a regular basis but noted a lack of analysis of the extent of support provided by each of the payees to each appellant and considered that it was not possible to find that that money was necessary for them to live. There was no breakdown of family income and expenditure for the appellants and for the sponsor and his wife. The judge considered that it was simply not enough to produce some payment vouchers showing money going to Ghana and assert that the recipient was dependent upon the person paying and neither was it sufficient evidence in a remote hearing for the sponsor to wave a sheaf of papers printed

out that morning which was said to be evidence of the cost of running the appellants' lives in Ghana. The judge concluded that the respondent's concerns had not been adequately addressed and he found that the appellants had not shown that they were dependent upon the sponsor.

5. The appellants sought permission to appeal that decision to the Upper Tribunal on four grounds: firstly, that the judge had failed to apply the correct test when assessing dependency for the first, second and fourth appellants; secondly, that the judge had erred by requiring the third appellant to demonstrate dependency when he was a child under the age of 21; thirdly, that the judge had erred in law by failing to give adequate reasons; and fourthly, that the judge had erred by failing to carry out a proportionality assessment pursuant to Article 18® of the Withdrawal Agreement.

6. Permission was granted on the first three grounds, although the fourth ground was not excluded.

7. The matter came before me and both parties made submissions.

8. Mr Rehman relied on the first three grounds and reserved his position in the fourth ground, recognising that it had been addressed in Celik (EU exit, marriage, human rights) [2022] UKUT 220 and Batool & Ors (other family members: EU exit) [2022] UKUT 219. With regard to the first ground he submitted that, in finding at [35.4] of his decision that there was no reason why the fourth appellant could not work, the judge had applied the wrong test and had failed to apply the test in Reyes (Judgment of the Court) [2014] EUECJ C-423/12 , as referred to in Lim v Entry Clearance Officer Manila [2015] EWCA Civ 1383. The judge had failed to have regard to the first appellant's evidence in his witness statement about how he had tried to find a job. As for the second ground, the judge had erred by considering dependency in relation to the third appellant who was under the age of 21 and ought to have allowed his appeal when he found the relationship to be established. With regard to the third ground, the judge had failed to provide adequate reasons for finding dependency not to have been established. He had found the sponsor credible but had then failed to have regard to the evidence in the sponsor's statement, as well as his wife's statements and the first appellant's statement, as to the dependency. The appellants had given evidence that they were reliant upon their parents in the UK but the judge had failed to make findings on that. The fact that the judge was requiring the money to come from the sponsor's wife rather than the sponsor was a glaring error of law. Mr Rehman asked that the matter be remitted to the First-tier Tribunal.

9. Mr Tufan submitted that there was no evidence to suggest that the judge had not considered the witness statements. The judge had applied the relevant test in Reyes and Lim and was entitled to focus on a lack of evidence as to the appellants' circumstances in Ghana. The fact that the judge erred by requiring the money to come from the sponsor's wife rather than the sponsor was not material to the outcome of the appeal. The judge was wrong with regard to the requirement for dependency for the third appellant but did not err in his findings on the other appellants.

Discussion

10. It is accepted that the judge erred in law in two respects: firstly, by requiring the financial assistance to come from the sponsor's wife rather than the sponsor for the purposes of Appendix EU (Family Permit) when that was clearly contrary to the requirements in Annex 1 of Appendix EU (Family Permit) as set out at [10] to [12] of the grounds of appeal; and secondly by requiring there to be dependency in relation to the third appellant when that was not a requirement for a grandchild below the age of 21 years. In granting permission, Judge Handler in the First-tier Tribunal considered at [4] that the challenge to the adequacy of Judge Housego's reasoning was arguably bound up with that first matter. I have to agree with that. Whilst not the main reason for Judge Housego finding the question of dependency not to be made out, it is of note that the first matter played some part in his reasoning at [35].

11. I also agree with Mr Rehman's submission that, having stated at [33] that he had no reason to doubt the evidence of the sponsor and his wife, and having found it clear that both had been making regular payments to the appellants, the judge then erred by failing to go on to make findings either accepting or rejecting their evidence in their witness statements whereby they stated that the appellants relied upon them for their support. As the grounds assert at [13], [16] and [31] to [32], the judge did not go on to undertake a full and proper assessment of the evidence or to consider the extent of the financial assistance provided in the remittance receipts in line with the approach set out in Reyes.

12. In the circumstances I am persuaded that the judge's decision fails to include a full and proper analysis of the evidence and that it is inadequately reasoned and must be set aside and re-made.

13. Both parties were in agreement that if an error of law was made out the appropriate course would be for the matter to be remitted to the First-tier Tribunal in order for the decision to be re-made by a different judge. I therefore set aside the decision of Judge Housego and remit the matter to the First-tier Tribunal for a fresh hearing.

DECISION

14. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal to be dealt with afresh, pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(a), before any judge aside from Judge Housego.

Signed:S Kebede
Upper Tribunal Judge Kebede Dated: 25 October 2022