



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-003021
First-tier Tribunal No:
EA/09077/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 11 April 2023

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

FRED AMISSAH
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms, Enna Emessan, Sponsor

For the Respondent: Mr C Williams, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 16 February 2023

DECISION AND REASONS

1. The appellant is a national of Ghana. On 26 January 2021 he applied for an EEA family permit to join his EEA sponsor, Ms Enna Emessan, in the United Kingdom as an extended family member. The sponsor is the appellant's aunt and an Italian national exercising treaty right in the United Kingdom. The application was refused by the respondent for reasons set out in a decision dated 6 May 2021.
2. In summary, the respondent was not satisfied that the appellant had provided sufficient evidence to demonstrate his circumstances in Ghana and that he is dependent upon his sponsor to meet his essential living needs.

3. The appellant's appeal against that decision was dismissed by First-tier Tribunal Judge Hawden-Beal for reasons set out in a decision promulgated on 26 April 2022. Judge Hawden-Beal set out her findings and conclusions at paragraphs [10] to [25] of her decision. At paragraph [24] she said:

“... although I am satisfied that the appellant was dependent upon the sponsor for his essential needs when he made his application, in the absence of any financial support for 2022, I cannot be satisfied that that support is continuing.”

4. Permission to appeal to the Upper Tribunal was granted by First-tier Tribunal Judge Chowdhury on 24 May 2022. Judge Chowdhury noted:

“1. ... The judge found at paragraph 20 that there was evidence the Appellant had been supported by the Sponsor for a significant period. At paragraph 23 the judge found that the Appellant had been dependent upon the Sponsor from at least 2019 but there was no evidence before the judge to show the Sponsor had sent him any money since December 2021 or that he has kept any rent from the Sponsor's property. The judge had regard to the case of Chowdhury [2021] EWCA Civ 1220.

2. However, the grounds argue that the judge did not ask the Sponsor if there was any up-to-date evidence demonstrating that she had remitted money to the Appellant. The Sponsor states she had in fact brought evidence in the form of money transfer receipts dated 6 January 2022 and 7 February 2022 which would have confirmed continuous support. Due to the fact the judge did not ask for up-to-date evidence the Sponsor felt she was unable to ask the permission of the court to do so.

3. The Grounds of Appeal attach the money transfer receipts I have referred to above. It is arguable that the judge made an error of law in finding there was no up-to-date evidence.”

5. The respondent filed a rule 24 response dated 27 July 2022. The respondent said:

“The respondent does not oppose the appellant's application for permission to appeal and invites the Tribunal to determine the appeal with a fresh oral (continuance) hearing to consider whether the appellant remains dependent upon his EEA sponsor in light of the positive findings of fact that have been made.”

6. The question whether the decision of the First-tier Tribunal Judge is vitiated by a material error of law was therefore considered on the papers by Upper Tribunal Judge Jackson under rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008. The appeal was allowed and the decision of First-tier Tribunal Judge Hawden-Beal was set aside for reasons set out in an 'error of law' decision promulgated on 15 December 2022.

7. At paragraph [8] of her decision, Upper Tribunal Judge Jackson said:

“In the circumstances set out above, I find that the First-tier Tribunal erred as a matter of procedural fairness in making a decision on the basis of an issue which was not put to the Sponsor at the hearing itself. The Respondent’s position is entirely appropriate in this case and directions are given below for a further oral hearing to determine the issue of whether the Appellant continues to be dependent on the Sponsor. The Appellant is to file and serve evidence as to the up-to-date situation for this to be considered at an oral hearing before the Upper Tribunal. The findings of fact in paragraphs 10 to 22 of the decision of Judge Hawden Beal are preserved.”

8. Upper Tribunal Judge Jackson directed that the appellant is to file and serve any further evidence upon which he wishes to rely, no later than 14 days before the appeal is listed for further hearing before the Upper Tribunal.
9. It is against that background that the appeal was listed for hearing before me to remake the decision. In accordance with the directions made, the sponsor filed with the Upper Tribunal evidence of ongoing payments sent to the appellant between 6 January 2022 and 19 December 2022. The sponsor attended the hearing before me and was assisted by an interpreter arranged by the Tribunal. At the outset of the hearing, she provided copies of a further two documents to evidence payments made by her to the appellant on 21 January 2023 and 3 February 2023.
10. Having had the opportunity of considering the decision of Upper Tribunal Judge Jackson, and the preserved findings that are set out in the decision of First-tier Tribunal Judge Hawden-Beal, Mr Williams, quite properly in my judgement acknowledges that there is evidence before me of continued financial support during 2022 and as at the date of the hearing before me. He did not in the circumstances propose to ask the sponsor any further questions or seek to challenge the evidence before the Tribunal.
11. Whether the appellant is dependent on his EEA Sponsor, is a factual question. There is a preserved findings that the sponsor is employed and is thus a qualified person. There is also a preserved findings that the sponsor has been responsible for supporting the appellant financially for a significant period between at least August 2019 and December 2021. Judge Hawden-Beal found that the financial support by way of remittances sent to the appellant is in addition to the income which the sponsor allows the appellant to keep from the rent obtained from her property. Judge Hawden-Beal was satisfied that the appellant was dependent upon the sponsor for his essential needs when he made his application, but dismissed the appeal because in the absence of any financial support for 2022 The judge was not satisfied that the support is continuing. There is now before me, evidence of continued financial support throughout 2022 and during January and February 2023.
12. Considering the evidence as a whole I find that the appellant has established, on the balance of probabilities, that he was, and continues to be dependent upon his sponsor for his essential living needs.

13. It follows that I am satisfied the appellant has discharged the burden on him, to his entitlement to an EEA family permit to join his EEA sponsor as an extended family member and I allow the appeal.

Notice of Decision

14. I allow the appeal under the Immigration (European Economic Area) Regulations 2016

FEE AWARD

As I have allowed the appeal upon the basis of the evidence before me that was not before the respondent previously, I decline to make a Fee Award.

V. Mandalia

Judge of the Upper Tribunal
Immigration and Asylum Chamber

17 February 2023