



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

Appeal Numbers: UI-2022-003224
EA/51706/2021; IA/06527/2021

THE IMMIGRATION ACTS

**Heard at Field House
On 9 November 2022**

**Decision & Reasons Promulgated
On 13 March 2023**

Before

UPPER TRIBUNAL JUDGE PITT

Between

**LEONID AKOFIO-SOWAH AKOFIO-SOWAH
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Brouchwalla, Counsel instructed by A J Reubens
For the Respondent: Mr Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision issued on 8 June 2022 of First-tier Tribunal Judge Chohan which refused the appellant's appeal under the Immigration (European Economic Area) Regulations 2016 (the EEA Regulations) brought against the respondent's decision dated 19 March 2021 which found that the appellant was not an extended family member (EFM) of an EEA national exercising treaty rights.

Background

2. The appellant is a national of Ghana and was born on 13 August 1985. He entered the UK on 19 September 2018 on a visitor's visa which expired on 26 January 2019. On 21 December 2020 the appellant applied for a residence card confirming his status as an EFM of his paternal uncle, Mr Ish Sam Sowah. That application was refused on 19 March 2021.
3. The appellant appealed to the First-tier Tribunal. As above, in a decision dated 8 June 2022, the First-tier Tribunal refused the appeal. First-tier Tribunal Judge Chohan did not accept that the appellant was dependent on his paternal uncle or a member of the uncle's household either before coming to the UK or thereafter.
4. In paragraphs 7 to 12 the First-tier Tribunal considered the information provided by the appellant in support of his visa application form (VAF) in 2018 and explained why this showed that his claim to be an EFM was not made out. Firstly, Judge Chohan did not find it credible that if the appellant was dependent on Mr Sowah for his essential needs or a member of his household in Ghana that Mr Sowah would not be listed as a family member living in the UK in the VAF from 2018. In paragraph 9 of the decision the First-tier Tribunal considered the appellant's explanation for the absence of any reference to his paternal uncle in the VAF. He did not find the explanation that it was a maternal relative, Mr Ampah, who completed the visa application form in haste was a sufficient explanation for the failure to include any details of the paternal uncle. In addition to this not being consistent with Mr Sowah paying for the appellant's essential needs or the appellant living in his household, Mr Ampah's witness statement did not state that he failed to include details of Mr Sowah in the application form because he was a paternal relative or because of completing the VAF in haste. He made no reference to any difficulties when the VAF was completed.
5. Secondly, in paragraph 10, Judge Chohan found that discrepancies in the appellant's evidence on his income in Ghana also undermined his claim to have been dependent on his paternal uncle for his essential needs. In the VAF the appellant stated that he earned £1,000 per month after tax from 2012 onwards. The appellant then set out in a witness statement dated 7 July 2018 that this was not correct and that his income in Ghana was £293 per month after tax. In a further witness statement dated 2 December 2021, the appellant stated that his income in Ghana was £171 per month. The First-tier Tribunal concluded that these differences showed that the appellant was not a credible witness and that:

"It is important to note that the appellant has given no explanation as to how the error happened. This is fundamentally damages the appellant's credibility and I do find the appellant has not told the truth."
6. Thirdly, in paragraph 11 the First-tier Tribunal Judge noted that the appellant stated in the VAF that he did not have "any other income or

savings” apart from his own income and made no reference to funds from his paternal uncle. Further, the VAF also stated that the appellant would be paying up to £500 for the cost of his visit to the UK and that only he would be paying for the visit. In his witness statement dated 2 December 2021 the appellant stated that a maternal uncle had contributed to the cost of the visit in 2018. This evidence was found to further undermine the appellant’s credibility and his claim to be financially dependent on his paternal uncle. Judge Chohan concluded that the appellant was financially independent when he was in Ghana and not dependent on the UK sponsor.

7. In paragraph 12 the First-tier Tribunal Judge noted that the appellant stated in his VAF in 2018 that he was married and had a child but in the application for a residence card made in 2020 he stated that was single and no reference was made to a child. Further, the witness statement prepared for the appeal referred to the appellant having a wife but made no reference to having a child. These discrepancies were found to be “serious issues which go to the core of his claim and undermine the appellant’s credibility.”
8. In paragraph 13 of the decision, Judge Chohan concluded:

“13. Hence, I find that when the appellant was in Ghana, he may have been living with his brother, but in view of the adverse credibility findings made above, I am not satisfied that he formed part of the sponsor’s household or that he was financially dependent on the sponsor. I note that there are money transfers made by the sponsor but again, in view of my adverse credibility findings, I must conclude that any money sent by the sponsor was not for the essential needs of the appellant. Having come to the United Kingdom, it does seem on the evidence before me that the appellant has been residing with the sponsor. In such circumstances, the sponsor no doubt pays for all household bills as he did, no doubt, when the appellant was in Ghana. So, there is no change in that respect. It may well be the case that the sponsor also provides food to the appellant. However, that does not mean the appellant is financially dependent on the sponsor or that he forms part of his household. In view of what I have stated above, I find that the appellant has not disclosed the entire truth about his personal and financial circumstances. In my view, the appellant was financially independent in view of the income he received. Any money he did receive from the sponsor was simply additional money and not for his essential needs.”

Discussion

9. Paragraphs 4 to 5 of the grounds maintain that the First-tier Tribunal erred in paragraphs 8 and 9 of the decision when finding that the failure to mention the sponsor in the VAF undermined the claim to be an EFM. This ground merely restates the appellant’s explanation for absence of details about the sponsor in the VAF, however. Having taken the appellant’s explanation into account in paragraph 8 of the decision, it was fully open to the First-tier Tribunal to find that it was not sufficient to explain the absence of any information about Mr Sowah if he was truly the relative

responsible for the appellant's essential needs at the time that the VAF was completed. The First-tier Tribunal was also entitled to find the evidence of Mr Ampah did not support the appellant's explanation; see paragraph 9 of the decision. This part of the grounds has no merit, therefore.

- 10.** The First-tier Tribunal was equally entitled in paragraph 10 of the decision to place weight on the discrepancies in the appellant's evidence on his income whilst he was in Ghana. Paragraph 7 of the grounds argues that the First-tier Tribunal was in error as the respondent granted entry clearance notwithstanding the difference in the first two figures given by the appellant. This did not oblige the First-tier Tribunal to find that the appellant's overall evidence on this point was consistent or credible, however. He was entitled to take into account a further, third discrepant amount. As before, the judge was entitled to find that it was not credible that these discrepancies occurred because the VAF was completed in haste by a relative in the UK, particularly where the evidence of that relative did not refer to these matters. Paragraph 7 of the grounds does not have merit.
- 11.** Paragraph 9 of the grounds again seeks to argue that the First-tier Tribunal should have accepted that any mistakes or discrepancies in the VAF arose because it was completed by a relative in the UK. As before, that argument does not have merit. Paragraph 9 of the grounds also argues that it was reasonable for the appellant not to realise that he should have included details of the financial support from his uncle when asked about his "income" in the VAF. Firstly, this explanation for the absence of any reference to the sponsor's financial support in the VAF was not put forward by the appellant in his witness statement before the First-tier Tribunal. Secondly, if the sponsor was sending money for the appellant's essential needs, the appellant could be expected to understand this to come within the ordinary meaning of "income". Paragraph 9 of the grounds has no merit.
- 12.** Paragraph 10 of the grounds maintains that the First-tier Tribunal erred in paragraph 11 of the decision when considering the appellant's discrepant evidence as to whether he paid for the visit to the UK or whether an maternal uncle provided finance for the visit. Paragraph 10 of the grounds is misconceived and without merit where it ignores the fact of the discrepant evidence on this point which was something the judge was entitled to take into account and where it only seeks to reargue the appellant's case.
- 13.** Paragraphs 11 and 12 of the grounds maintain that the First-tier Tribunal erred in placing adverse weight on the appellant's evidence on having a wife and child where this was not a matter relied on by the respondent in the decision refusing a residence card. That argument has no merit as the respondent's review set out the discrepancies concerning the appellant's wife and child and put the appellant on notice that they were matters which brought his credibility into question. The appellant had the

opportunity to address this part of the evidence and it was open to the First-tier Tribunal judge to draw an adverse inference where no explanation was provided. The judge was not precluded from doing so merely because the respondent did not cross-examine the appellant.

- 14.** Paragraphs 13 to 17 of the grounds maintain that the First-tier Tribunal erred in paragraph 13 of the decision. The grounds maintain that this paragraph was erroneous in finding both that the sponsor did send money to the appellant in Ghana and gave him money in the UK but also that he was not financially dependent on the sponsor for his essential needs or a member of the sponsor's household either in Ghana or in the UK. The conclusions set out in paragraph 13 might have been clearer but are sufficient and rational when read with the decision as a whole. The First-tier Tribunal found that the matters set out above showed that the appellant was not a credible witness. Even if it was accepted that the sponsor sent money to Ghana the judge gave rational reasons for finding that these funds did not provide for the appellant's essential needs. The evidence of the appellant and sponsor that was before the First-tier Tribunal was that he lived away from the sponsor's house in Accra for almost all of the time that he was in Ghana from 2012 onwards. This and the appellant's lack of credibility on other matters indicated that he was not a member of the sponsor's household in Ghana for the purposes of being an EFM even if he went there for short periods. The same degree of unreliability in the appellant's evidence meant that the First-tier Tribunal did not find that any financial or other support in the UK provided by the sponsor was essential or that the appellant was otherwise dependent on the sponsor or that he could be considered to be a member of the sponsor's household. Those conclusions were open to the First-tier Tribunal on the evidence before him. Paragraphs 13 to 17 of the grounds therefore have no merit.
- 15.** The remaining grounds really only repeat the arguments set out above which have been found to be without merit.
- 16.** For all of these reasons, I did not find that the decision of the First-tier Tribunal disclosed an error on a point of law.

Notice of Decision

- 17.** The decision of the First-tier Tribunal does not disclose an error on a point of law and shall stand.

Signed: S Pitt
Upper Tribunal Judge Pitt

Date: 9 January 2023