



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2021-000917
UI-2021-000922

First-tier Tribunal No:
EA/06114/2020
EA/06118/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:

7th November 2023

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN
DEPUTY UPPER TRIBUNAL JUDGE JARVIS

Between

ESOHE GIFT IDADA
VICTOR CHIJOKE NWABUEZE
(NO ANONYMITY ORDERS MADE)

Appellants

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr P. Georget, Counsel instructed by Springfield Solicitors

For the Respondent: Mr N. Wain, Senior Home Office Presenting Officer

Heard at Field House on 11 October 2023

DECISION AND REASONS

Introduction

1. The Appellants appeal against the decision of First-tier Tribunal Judge Cary (hereafter "the Judge"), dated 22 September 2021, in which he dismissed their appeals under the Immigration (European Economic Area) Regulations 2016 against refusals of entry clearance made on 27 October 2020. Both

Appellants are over 18 years old and applied as extended family members of their Sponsor under reg. 8 of the 2016 Regulations.

2. When granting permission to appeal on 5 December 2021, First-tier Tribunal Judge Mills considered arguable that the Judge had erred in overlooking evidence provided in the Appellants' bundle and by also requiring other evidence going beyond what is strictly necessary to make out a case of dependency under the 2016 Regulations.

Relevant background

3. The Appellants are nationals of Nigeria, born on 24 December 2002 and 7 December 2002 respectively. On 4 June 2020 both applied for entry clearance to enter the UK under the 2016 Regulations as extended family members of their Sponsor, Ms Cynthia Omosede Agbontaen (an Italian citizen).
4. In the refusals (dated 27 October 2020), the Respondent did not accept that the Appellants were dependent upon the Sponsor as claimed. The Appellants subsequently exercised their right to appeal to the First-tier Tribunal.
5. During the First-tier Tribunal hearing, the Sponsor gave oral evidence in which she confirmed the truth and accuracy of her two witness statements and confirmed that she sends money to a third-party (Mr Rex Osabuogbe Okundia) which is then transferred to the Appellants' carer, Nosakhare.
6. The Judge summarised the Presenting Officer's submissions at para. 16 of his decision:
 - a. There was no real evidence to show that the Appellants benefited from any money sent by the Sponsor to their carer in Nigeria.
 - b. It was said that the transfers of money from the Sponsor to the Appellants began in 2015 but there was no clear evidence as to who pays the rent.
 - c. It was difficult to see how the Sponsor could pay £10,000 in 2019 towards the upkeep of the Appellants when there was no evidence of her claimed savings.
7. The Judge assessed the evidence in respect of the relationships between the Appellants and the Sponsor but observed that this was not a matter before the First-tier Tribunal as it had not been raised as a refusal point by the Respondent, para. 27.
8. The Judge focused on whether the Appellants were financially dependent upon the Sponsor in a way compliant with the Regulations.
9. The Judge made reference to several authorities addressing the meaning of *dependency* within EU law and the 2016 Regulations. Having reviewed the relevant jurisprudence, the Judge concluded that it was unclear from the

financial information provided how the Sponsor was able to support and maintain the Appellants financially from the time of their mother's death (the Sponsor's sister) in January 2018 until 31 December 2020. The Judge found that he had not been given a clear picture of her income during that period, nor of her expenses.

10. Crucially, at para. 49, the Judge made the following findings:
 - a. At the time of the death of the Sponsor's sister, the Sponsor was studying for a qualification for which she received a student grant.
 - b. The Sponsor was employed part-time by London Care Partnership Ltd earning £13,956.44 gross.
 - c. The Judge criticised the Appellants for not providing further financial evidence from HMRC and reflected on the fact that this was the period upon which the Appellants were relying for the purposes of showing dependency.
11. The Judge went on to remark that he did not have very many payslips from the Sponsor (para. 15) and that the Sponsor had taken on a staff nurse position on a salary ranging between £29,888-£36,738, (para. 51).
12. At para. 52, the Judge noted bank statements from Barclays Bank covering a period in 2020 which showed the Sponsor to be frequently overdrawn.
13. The Judge further noted at para. 54, that the Sponsor gave oral evidence that she relied on savings to help her send funds to Nigeria. The Judge found that the Sponsor produced no documentary evidence of the existence of such savings and that he did not have a complete picture of the amount she was receiving by way of a student grant.
14. The Judge also referred to a student finance letter dated 7 November 2019 confirming the Sponsor was eligible for a childcare grant of about £8443 for the academic year and that, in addition to a tuition fee loan, she was also due to receive a payable maintenance loan of £15,535 and parents' learning allowance of £1716.
15. At para. 56, the Judge criticised the Appellant's evidence for only showing student finance information for the academic year 2019 - 2020.
16. Overall, at para. 57, the Judge concluded that he did not have a clear picture supported by evidence of the Sponsor's income whether from student finance or employment from January 2028 onwards (we proceed on the basis that the Judge meant January 2018).
17. Furthermore, the Judge expressed confusion as to why the Sponsor paid the remittances via a third-party (Mr Okundia) rather than the money being sent direct to their carer, para. 58.
18. At para. 60, the Judge also concluded that the statement evidence of Mr Okundia was lacking in detail despite both statements clarifying that he

visits the Appellants and their carer to check on them and report back to the Sponsor, as well as handing over money to the carer for the upkeep of the Appellants including rental payments.

19. The Judge concluded at para. 61, that the Appellants had failed to establish that they were dependent upon the Sponsor and dismissed the appeals.

Findings and reasons

20. We commence by confirming that having reviewed the documents in the Appellants' bundle before the Judge, we have some sympathy for his observation that the evidence was less than clear when looking at the overall dependency issues. There are notable concerns as to the collation and presentation of relevant evidence. Additionally, it is not clear to us as to the level of assistance the Judge received from counsel for the Appellants at the hearing. We take this opportunity to confirm that Mr Georget did not attend before the First-tier Tribunal.

21. We find that the Judge materially erred in respect of the assessment of the evidence of dependency.

22. Mr Wain properly accepted that during the course of the hearing it had become clearer to all present that the student finance evidence covering the academic year 2020 - 2021 (at pages 88 - 93 of the Appellants' bundle and therefore page 166 onwards of the Upper Tribunal stitched bundle) had been overlooked by the Judge.

23. These documents establish that the Sponsor received a tuition fee loan of £9250 as well as a maintenance loan of £15,069; with a special support element of £3893 and grants of £1766.

24. We therefore find that the Judge erred in both fact and law when placing reliance only upon the student finance documentation from the 2019 - 2020 academic year at para. 56 of his decision, in the absence of proper consideration of the relevant student finance for the 2020-2021 academic year.

25. We also find force in the Appellants' further submission that the Judge did not give adequate reasons as to why he considered the evidence of the Sponsor to be immaterial in respect of the understanding of her finances and the assertion that she had been sending remittances for a significant period of time. Firstly, we accept the Appellants' assertion that the Sponsor had provided bank statements in order to reflect the nature of her general expenditure. Secondly, the Judge was required to explain in clear terms whether he accepted as credible the Sponsor's explanation for some of the financial matters which he felt troubled by. We conclude there is no proper reasoning as to why the Sponsor's evidence that she had first begun providing financial support to the Appellants and her sister via a third party from 2015 (but mainly when her sister needed and asked for it), recorded at

para. 10 of the decision, was not a sufficient explanation, as the Judge found at para. 60.

26. We conclude that the Judge did not properly engage with the written and/or oral evidence of the Sponsor and so materially erred in law.

27. The Judge's decision is to be set aside in its entirety for material error of law. We are therefore not required to address the Appellant's criticism of the Judge's reasoning in respect of the relevant time period when looking at dependency, though we observe there is no requirement for long term financial support under reg. 8 of the 2016 Regulations.

Remittal

28. Mr Georget indicated that a new Appellants' bundle will be collated and filed before the next hearing. Observing the guidance in *Begum (Remaking or remittal)* [2023] UKUT 00046 (IAC) and given the extent of fact finding we consider necessary we conclude that it is appropriate for the appeal to be remitted to the First-tier Tribunal.

Notice of Decision

29. The decision of the First-tier Tribunal is subject to material error of law and is set aside in its entirety.

30. The matter is remitted to be heard in the First-tier Tribunal at Hatton Cross by any judge other than Judge Cary.

I P Jarvis

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

30 October 2023