



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006648

First-tier Tribunal No: EA/50926/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

13th December 2023

Before

UPPER TRIBUNAL JUDGE LINDSLEY
DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

GIFTY ESSILFIE
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Layne of Counsel instructed by BWF Solicitors

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

Heard at Field House on 5 December 2023

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Ghana born on 27th April 1976. She says that she is dependent on her sister, Ms Vida Yeboah and sponsor, who is a citizen of France. She applied for an EEA residence card under Regulation 8 of the Immigration (EEA) Regulations 2016, henceforth the EEA Regulations, on 11th December 2020 and the application was refused on 31st March 2021. Her appeal against the decision was dismissed by First-tier Tribunal Judge Cameron ('the judge') following a hearing on the 29th March 2022.

2. Permission to appeal was granted by Judge of the First-tier Tribunal ID Boyes on 15th September 2022 on the basis that it was arguable that the judge had erred in law in the assessment of dependency.
3. The matter came before us to determine whether the First-tier Tribunal had erred in law, and if so whether any such error was material and thus whether the decision should be set aside.

Submissions – Error of Law

4. In the grounds of appeal and in oral submission by Mr Layne it is argued, in short summary, for the appellant as follows. The only issue before the First-tier Tribunal was that of dependency. Her case is that she was both dependent and/or part of the sponsor's household, whilst abroad in the past and currently.
5. The First-tier Tribunal accepted that the appellant is currently part of the sponsor's household and dependent on her. It was asserted on behalf of the appellant that the error of law is in the assessment of past dependency whilst in Ghana. The appellant set out evidence regarding this in her witness statement dated 14 November 202 with the sponsor, the appellant's sister, stating at paragraph 5 of her witness statement dated 17 November 2023, that she had paid the cost of her sister's accommodation and sent clothes and cash to Ghana.
6. It is argued that the definition of dependency is wrongly stated in the decision, and is not defined, as it should properly have been, as material support for essential living needs. There is no need for complete dependency or economic necessity for that dependency. In this case there is also emotional closeness as well as financial support, and as per Reyes (EEA Regs: dependency) [2023] UKUT 314 there should be a "holistic examination of financial, physical and social conditions, so as to establish whether there is dependence that is genuine".
7. In the Rule 24 response and in oral submissions by Ms Everett (who relied on the Rule 24 response) for the respondent it is argued, in short summary as follows. The grounds are merely a disagreement with the findings of the First-tier Tribunal. It is argued that the First-tier Tribunal properly applied the correct test of looking for material support for basic needs.
8. The First-tier Tribunal considered that the appellant and her sister have been close but that did not assist in a finding that the appellant had been historically dependent upon her. The First-tier Tribunal preferred the evidence of the appellant's own entry clearance application, dated 21 February 2012, which revealed, including at question 78, that she was living with her husband in Ghana who provided essential support to her and their children. Further it is argued there is no evidence of a stable and continuous state of dependency as required following the

decision of the Court of Appeal in Chowdhury [2020] UKUT 188, which in turn was relied upon in Sohrab [2022] UKUT 157.

Conclusions – Error of Law

9. Contrary to the grounds and submissions, the First-tier Tribunal properly directs itself to the decision in Dauhoo (EEA Regulations – reg 8(2)) [2012] UKUT 79 at paragraphs [13] and [14] of the decision with respect to the ways of establishing being an extended family member, and the requirement of dependency, and to the test for dependency as set out in the Court of Appeal decision in Lim [2015] EWCA Civ 1383 as set out at paragraph [16].
10. There is no merit in the argument that the First-tier tribunal misdirected itself at paragraphs [33] – [38] and there is nothing to support the assertion that the judge considered the definition of dependency as ‘whole’. The First-tier Tribunal, having set out the relevant jurisprudence, again noted at [30] that the correct test was one of dependency for ‘essential daily needs.’ Whilst we note that this finding relates to dependency in the UK, a proper reading of the decision does not reveal that anything other than the correct test was also applied by the First-tier Tribunal in its consideration of dependency/membership of the sponsor’s household prior to coming to the UK.
11. The First-tier Tribunal was aware of the appellant’s claim that she and the sponsor have always been very close (paragraph [17]) and there is again nothing to support the assertion, which was not repeated by Mr Layne, that the judge reduced the question of dependency to a ‘bare calculation of financial dependency’. In any event, the grounds do not explain how that emotional support casts any doubt on the First-tier Tribunal’s adequate reasoning.
12. There is full consideration by the First-tier Tribunal of the witness statement evidence of the appellant and sponsor that financial support was sent whilst the appellant was in Ghana, but the appellant’s visa application from 2012 shows that she was at the time she left Ghana living with her husband and two children, and was supported by him.
13. As noted by the judge at paragraph [34] of the decision, in answer to question 78 in her visa application when asked to give details of all money the appellant received from any/all sources, the appellant stated that her husband gave her upkeep money of GH 400 ‘for the upkeep of the home, apart from other food I terms (sic) he brings home in supporting the children’.
14. As the judge sets out at [35], the burden of proof is with the appellant to demonstrate on the balance of probabilities that she meets the relevant requirements of the EEA Regulations. The judge had regard to all the evidence, and it was properly open to the First-tier Tribunal to find as it did, that although the appellant has been in the UK since 2012 and may not have realised the need to keep records in relation to support prior to

coming here, neither the appellant nor her sponsor was able to provide evidence of the claimed support in Ghana.

15. The First-tier Tribunal was entitled to attach significant weight to the appellant's visa application form which confirmed that the appellant was then living with her husband and two children in Ghana and that her husband 'provided the support for them' (paragraph [37]). The judge concluded (paragraph [39]) that the appellant was living with her husband and family and was dependent on her husband. That was a finding open to the First-tier Tribunal on the available evidence.
16. Although Mr Layne argued that whilst it was not denied that the appellant was getting money from her husband, it was the appellant's case that she was receiving money from her sister and was dependent on her sister for her essential needs, that is contrary to the appellant's own evidence in her visa application.
17. Having considered all the available evidence, it was open to the First-tier Tribunal to reach its properly reasoned conclusions at [38] and [39], that the appellant was not a member of the sponsor's household in Ghana or dependent on the sponsor whilst living there. The grounds of appeal are not made out.

Decision:

1. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.
2. We do not set aside the decision.

M M Hutchinson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

6th December 2023

