IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003741

First-tier Tribunal No:
EA/53218/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

13th December 2023

Before

UPPER TRIBUNAL JUDGE GLEESON
DEPUTY UPPER TRIBUNAL JUDGE O'RYAN

Between

KELVIN DZATA
(NO ANONYMITY ORDER)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Michael Brooks of Counsel, instructed by Bedfords Solicitors
For the Respondent: Mr Edward Terrell, a Senior Home Office Presenting Officer

Heard at Field House on 4 December 2023

DECISION AND REASONS

Introduction

1. The appellant challenges the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision on 23 May 2022 to refuse him settlement status as the dependent child of an EEA citizen pursuant to the EU Settlement Scheme (EUSS), with reference to paragraphs EU11 and

EU11A (settled status) or paragraphs EU14 or EU14A (pre-settled status) in Appendix EU of the Immigration Rules HC 395 (as amended).

2. He is a citizen of Ghana, born in 1999 and at the date of decision he was 22 years old.

3. The hearing today took place face to face.

4. For the reasons set out in this decision, we have come to the conclusion that the appellant's appeal must be dismissed.

Background

5. The appellant grew up in Ghana with his maternal grandmother and aunt, his mother having come to the UK in May 2016, when he was 17 years old. He was in boarding school, but his grandmother cared for him during the holidays, and after her death, his aunt did the same. Relations between the appellant and his aunt were not good and after he left school, she refused to look after him. Short term arrangements were made for a good friend of his mother to keep an eye on him. He is an adult now, and has been so for almost 5 years.

6. It is the appellant's case that while in Ghana, he was dependent on his mother's partner (a German citizen), who became his stepfather in November 2020, when they married.

7. The appellant came to the UK on a visit visa on 14 October 2021, sponsored by his maternal aunt here, but two weeks after arriving, he moved in with his mother and stepfather and overstayed. His application for EUSS dependant leave is based on dependency on his stepfather.

Refusal letter

8. In his refusal letter of 23 May 2022, the respondent stated that the appellant had not provided any evidence to demonstrate that he was dependent on the relevant EEA citizen, their spouse or civil partner. The appellant appealed to the First-tier Tribunal.

First-tier Tribunal

9. It was agreed at the First-tier Tribunal hearing that prior financial dependency while in Ghana was the sole issue and would be determinative of the appeal.

10. The First-tier Judge dismissed the appeal principally because he considered that the evidence of financial support when in Ghana was insufficient. His decision states that there was no evidence of money transfer to Ghana at all, the only evidence produced consisting of two receipts for payment of school fees (the appellant was in boarding school) which did not state who had paid.

11. The First-tier Judge's decision concluded that:

> "12. Even if one were to ignore the above, I must agree with Ms Tasnim [the Home Office Presenting Officer] that no evidence has been submitted of prior dependency in Ghana. Indeed, the college receipts referred to above do not indicate that the fees had been paid by the stepfather or that the money had been received from him by the college. *In fact, there is no evidence of money actually being transferred to Ghana for the benefit of the appellant. This is the sticking point for the appellant.*
>
> 13. Mr Khushi [for the appellant] submitted that the witnesses had been consistent and that I should find that the appellant was dependent financially on the sponsor. With respect, for the reasons set out above, I cannot find as such. The fact that the appellant currently resides with his parents may well mean that he is supported financially presently, *but there is no evidence that he had been supported financially when he was in Ghana.* Again, I must agree with Ms Tasnim that this is an attempt to circumvent the immigration rules.
>
> 14. Hence, I find that *the appellant has failed to establish by way of evidence that he had ever received financial support in Ghana. If he had, he has failed to establish that it was for his basic and essential needs. In short, I find that the appellant has failed to establish that there existed a situation of real dependency in Ghana.* Accordingly, the appellant does not meet the requirements of the EU Settlement Scheme." [*Emphasis added*]

12. The appellant appealed to the Upper Tribunal.

Permission to appeal

13. Permission to appeal to the Upper Tribunal was granted in the following terms:

> "1. ...The grounds argue that the judge failed to take into account oral evidence in corroborating documentary evidence and that the judge made a mistake as to the material and unfairness resulting from that mistake.
>
> 2. At paragraph 9 the judge found that according to the witness statement and oral evidence of the Applicant he had been supported financially by his stepfather when he was in Ghana. The judge went on to state that that was corroborated by the evidence of the Applicant's stepfather and mother. The judge goes on to state that evidence of the witnesses is that money was sent to Ghana for all the Applicant's expenses including his education. The judge stated that he notes that there are two college receipts acknowledging payment of fees. The findings at paragraphs 10 to 14 are contradictory to the initial findings made by the judge at paragraph 9 and this is unresolved. At paragraph 13 the judge found that the fact that the Applicant currently resides with his parents may well mean that he is supported financially presently but there is no evidence that he had been supported financially when he was in Ghana. The latter finding goes against the initial findings of the judge at paragraph 9.

> 3. Due to the contradictions in the findings of fact of the judge I find that there is an arguable error of law. The Grounds of Appeal are arguable."

14. There was no Rule 24 Reply on behalf of the respondent.

15. That is the basis on which this appeal came before the Upper Tribunal.

Upper Tribunal hearing

16. The oral and written submissions at the hearing are a matter of record and need not be set out in full here. We had access to all of the documents before the First-tier Tribunal.

17. Mr Brooks relied on the skeleton argument prepared by Bedfords Solicitors and argued that it was not open to the Judge to find that there was 'no evidence' of dependency, as the witnesses had all stated that the appellant was dependent on the sponsor in their evidence. Oral evidence was still evidence.

18. In addition, although not pleaded, Mr Brooks suggested that the Judge had not set out the burden and standard of proof. That is incorrect: the Judge gave himself a proper self-direction on the burden and standard of proof at [7] of the decision.

Discussion

19. The definition in Appendix EU of 'dependent' has three limbs:

> "'dependent' means here that:
>
> (a) having regard to their financial and social conditions, or health, the applicant cannot, or (as the case may be) for the relevant period could not, meet their essential living needs (in whole or in part) without the financial or other material support of the relevant EEA citizen (or, as the case may be, of the qualifying British citizen or of the relevant sponsor) or of their spouse or civil partner; and
>
> (b) such support is, or (as the case may be) was, being provided to the applicant by the relevant EEA citizen (or, as the case may be, by the qualifying British citizen or by the relevant sponsor) or by their spouse or civil partner; and
>
> (c) there is no need to determine the reasons for that dependence or for the recourse to that support."

20. The evidence of dependency in this appeal consisted of the oral and written evidence of the appellant, his mother and his sponsor stepfather, together with the two receipts for school fees paid by an unnamed person. At [9], the Judge noted that the evidence of the sponsor and of his mother 'corroborated' the appellant's oral and witness statement that the sponsor supported him while he was in Ghana.

21. It is right that the Judge erred in saying that there was 'no evidence' of financial support or of dependency in Ghana. There was the oral evidence, but he was unable to place much weight on that evidence. In particular, there were difficulties in the sponsor's evidence.

22. The sponsor said that he had not met the appellant or his siblings before the appellant came to the UK. He did not sponsor the appellant's visit visa: that had been done by his aunt who 'wanted to surprise the appellant's parents' and only told him that the appellant was in the UK when he had already been staying with her for two weeks. As the judge noted at [10], the sponsor's evidence was internally contradictory: either he gave money to the appellant's mother, who sent it to Ghana for the support of the appellant and his siblings, or he did not support the siblings because he had never met or spoken to them (or the appellant) but did support the appellant.

23. We remind ourselves that a decision should not be read as though it were a statute. We should not interfere with a finding of fact by a Judge who has seen and heard the evidence at a hearing unless such finding is 'rationally insupportable': see *Volpi & Anor v Volpi* [2022] EWCA Civ 464 (05 April 2022) at [2] in the judgment of Lord Justice Lewison (Lord Justices Males and Snowden concurring):

> "2. ...(v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.
>
> (vi) Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract. "

24. Put another way, in *R (Iran) & Ors v Secretary of State for the Home Department* [2005] EWCA Civ 982 at [90.2] and [90.3] Lord Justice Brooke (giving the judgment of the Court) held that

> "90.3. A decision should not be set aside for inadequacy of reasons unless the adjudicator failed to identify and record the matters that were critical to his decision on material issues, in such a way that the [reviewing Tribunal] was unable to understand why he reached that decision."

25. We have no difficulty in understanding why the First-tier Judge concluded that the appellant, on whom lies the burden of proof, had produced no concrete evidence of money actually being transferred to Ghana for his benefit.

26. The Judge's assessment that the stepfather's evidence was 'somewhat vague' and that overall the family's account 'simply does not make sense' is a clear negative credibility finding. There was no evidence at all on which the Judge could have found that the money sent (if any) was

necessary for the appellant's basic and essential needs, as the judge noted in his unchallenged finding at [14].

27. The First-tier Judge was unarguably entitled to conclude that the conditions for settled or pre-settled status under the EUSS were not met and to place no determinative weight on the oral evidence, for the reasons he gave in his decision.

28. We uphold the decision of the First-tier Tribunal and dismiss the Secretary of State's appeal.

Notice of Decision

29. For the foregoing reasons, our decision is as follows:

The making of the previous decision involved the making of no error on a point of law. We do not set aside the decision but order that it shall stand.

Judith A J C Gleeson
Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 6 December 2023