



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM**  
**CHAMBER**

Case No: UI-2023-003374

First-tier Tribunal No:  
EA/00857/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On 5 July 2024**

**Before**

**UPPER TRIBUNAL JUDGE MANDALIA**

**Between**

**Maria Okojie  
(NO ANONYMITY DIRECTION MADE)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**REPRESENTATION**

For the Appellant: Mr E Ajala, Legal Matters Firm Ltd

For the Respondent: Ms Harris, Senior Home Office Presenting Officer

**Heard at Birmingham Civil Justice Centre on 13 March 2024**

**DECISION AND REASONS**

**INTRODUCTION**

1. The appellant is a national of Nigeria. On 19 October 2022 she applied for an EUSS Family Permit under Appendix EU (Family Permit) as a 'family member of a relevant EEA citizen'. The appellant is the mother of Ferdna Eseoghene Ibobi ("the sponsor"), a German National, who it is claimed, has been living in the UK since 1 January 2015. The appellant claims to be dependent on the sponsor.

2. The application was refused by the respondent for reasons set out in a decision dated 28 December 2022. The appellant's appeal against that decision was considered on the papers by First-tier Tribunal ("FtT") Judge Holt and dismissed for reasons set out in a decision promulgated on 13 June 2023. Permission to appeal to the Upper Tribunal was granted by Upper Tribunal Judge Owens on 16 October 2023. The decision of the FtT was set aside by me for reasons set out in my error of law decision issued on 25 January 2024. At the request of Mr Ajala, I directed that the decision will be remade in the Upper Tribunal and I made directions to ensure all relevant evidence is before me.

### **THE HEARING OF THE APPEAL BEFORE ME**

3. At the outset of the hearing before me, Mr Ajala confirmed the relevant documents and evidence is set out in the composite bundle comprising of 170 pages. Mr Ajala clarified that the document titled 'Witness statement of the Appellant' that is at page 66 of the composite bundle, is not a witness statement made by the appellant. It is a skeleton argument. The appellant's statement is at page 71 of the composite bundle. Mr Ajala confirmed the appellant's statement is a statement that she herself prepared.
4. The sponsor attended the hearing and was called to give evidence. She adopted her witness statement dated 27 March 2023 that is to be found at page 74 of the bundle. She claims her mother is dependent on her for all her essential living needs, which include food, medical bills, accommodation and utility bills. She claims her mother is unemployed and has no other source of income.
5. In cross-examination, the sponsor said she started sending money to her mother in June 2022. Before that, she supported herself by selling small items like bread, sweets and biscuits. She would buy the items and trade them. She would occasionally send some additional money to the appellant. The appellant stopped trading because of her age and ill-health. She suffers from high blood pressure and she has become weaker. The sponsor said that the amount she sends to her mother varies each month but is generally between £80 and £100. She said that the house in which the appellant lives, is one that she rented for her, and in Nigeria, there are no rental agreements. Property is rented following talks with the landlord and agreement is reached as to the amount to be paid each month. Her mother has been living at her current address since 2022. It is a one bedroom flat with a toilet and kitchen. She pays rent of 20,000 Naira per month, that includes the water and electricity. The rent is paid at the end of each month and her mother is given a receipt. The sponsor said that if she stopped sending money to her mother, she would not be able to survive because there is no one else who would take care of her.
6. In re-examination the sponsor confirmed that since her mother moved into her current accommodation she has never lived with her. She again confirmed that the rent paid by her mother includes water and electricity. She was asked whether her mother tells her what the money she sends is used for. The sponsor said that she just sends her the money and she does not know the specifics of how the money is spent.

7. I heard oral submissions from each of the parties' representatives that are recorded in the record of proceedings. In summary, Ms Arif submits there is insufficient evidence that any money sent by the sponsor to her mother is used to meet the appellant's essential living needs. She submits there is an internal inconsistency in the evidence regarding the payment of utility bills. The appellant relies upon electricity bills that she claims she has to pay, whereas the evidence of the sponsor, who claims that she rented the property for her mother, is that the rent paid includes the water and electricity. Ms Arif submits that although there is evidence of some money transfers, in her application, the appellant claimed she receives £70 each month. The sponsor's evidence is that it varies from £80 to £100, and the bank statements show transfers in excess of £100 on several occasions.
8. Mr Ajala adopted his skeleton argument dated 1 March 2024. He submits the appellant has provided sufficient evidence to demonstrate that she has been dependent on her sponsor to meet all her essential living needs since June 2022. He submits that prior to June 2022, the appellant was a 'petty trader' and she supported herself, but since then, she has been entirely dependent on the sponsor. The evidence of the appellant and sponsor is consistent that the appellant is now unemployed and that she relies upon the money sent to her by the sponsor to meet her essential living needs. The evidence establishes the appellant receives regular remittances from her sponsor and the appellant's bank statement demonstrates she has no other income and receives no other money. Mr Ajala refers to the letter from a Doctor at Life Care Clinic and Maternity Centre dated 29 February 2024 which states the appellant is "not drug compliant on Amlodipine, Atenolol, Digoxin and Lisinopril". She is also said to be managed for 'chronic pyelonephritis of the left kidney and hypertensive nephropathy'. Mr Ajala accepts there is no comprehensive medical evidence before the Tribunal regarding the appellant's health. He submits that her illness as evidenced at pages 36 to 39 of the composite bundle establishes the appellant is unable to work and depends on her sponsor for money to meet all her essential living needs. Mr Ajala submits the sponsor sends money to the appellant and she does not know what the specific bills that are paid by the appellant are. The appellant has provided evidence of how the money she receives is spent and it is clear that she requires the funds sent to meet her day to day living costs.

### **THE LEGAL FRAMEWORK**

9. The burden rests upon the appellant to establish her entitlement to an EEA family Permit on a balance of probabilities.
10. In summary, Appendix EU (Family Permit) requires the appellant to establish that she is a family member of a relevant EEA Citizen as defined in Annex 1. The definition includes, 'a dependent parent of a relevant EEA citizen'. Provided, as here, the relationship is established, the entitlement to an EEA family permit only accrues if the appellant is 'dependent' on the union citizen. The word 'dependent' means:
  - “(a) having regard to their financial and social conditions, or health, the applicant cannot 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 their spouse or civil partner; and

(b) such support is being provided to the applicant by the relevant EEA citizen (or, as the case may be, by the qualifying British citizen) 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”

11. In *Reyes v Migrationsverket* (C-423/12), albeit in the context of a ‘Family member’, the CJEU confirmed that dependency is a question of fact and the dependency must be genuine, but if it is found that the family members essential needs are met by the material support of an EEA national, there is no need to enquire as to the reasons for the dependency and there is no reason to show emotional dependency.
12. In *Lim - ECO (Manila)* [2015] EWCA Civ 1383 Lord Justice Elias, with whom McCombe LJ, and Ryder LJ agreed, said, at [25], it is not enough simply to show that financial support is in fact provided by the EU citizen to a family member. The family member must need the support from his or her relatives in order to meet his or her basic needs. The correct test was set out at paragraph [32] of the decision. The critical question is whether the appellant is in fact in a position to support herself. That is a simple matter of fact. If she can support herself, there is no dependency, even if she is given financial support by the sponsor. Those additional resources are not necessary to enable her to meet her basic needs. Whether the appellant is dependent on the sponsor is therefore a factual question for me to assess on the evidence before the Tribunal.

## **DECISION**

13. In reaching my decision I have been careful not to find any part of the account relied upon by the appellant, to be inherently incredible, because of my own views on what is or is not plausible. I have considered the claims made by the appellant and her story as a whole, against other familiar factors, such as consistency with what has been said before, and the documents relied upon. In reaching my decision I have had regard to all the evidence that is set out in the composite bundle whether it is specifically referred to or not.
14. I acknowledge that there is no need to determine the reasons for the dependence or for the recourse to the support, and that dependence can arise from choice. The dependency must however be genuine and the question is simply whether the appellant needs the support from her sponsor in order to meet her basic needs.
15. The appellant claims she has been dependent on the sponsor for her essential living needs since June 2022. In her witness statement the appellant claims she has no other income apart from the remittances she receives from the sponsor that are paid into her bank account. She claims at paragraph [7] of her statement that she does not pay any utility bills. It is said that the utility bills are privately sourced and the only utility bill relates to electricity and she has provided evidence of that. The privately

resourced utilities are paid for in cash. Cash is also used to pay for expenditure such as mobile phone airtime, internet data, gas, clothing, and day-to-day shopping for food in local shops. The appellant states that between June 2022 and March 2023, she received about 758,000 Naira from the sponsor and that her expenses as set out on the bank statements amount to about 750,000 Naira. She has provided receipts and invoices to account for about 590,000 Naira of expenditure. The appellant maintains that without the support of her sponsor, she would be unable to meet her essential living needs. The appellant's claim is supported by the written and oral evidence of the sponsor.

16. Neither the appellant nor the sponsor provide any evidence in their statements regarding the appellant's circumstances in Nigeria prior to June 2022. In her oral evidence before me, the sponsor claimed the appellant stopped trading because of her age and ill-health. As Mr Ajala accepts, there is no comprehensive medical report before me regarding the appellant's health and medical history. The appellant relies upon the letter from the Life Care Clinic and Maternity Centre dated 29 February 2024. The evidence is vague but I am prepared to accept the appellant, who is now 59 years old, has required treatment and medication in Nigeria. The report refers to the appellant being a 'known hypertensive' and being managed for 'chronic pyelonephritis of the left kidney and hypertensive nephropathy', but there is nothing in that letter to establish when the appellant was diagnosed, the treatment she has received apart from medication that she has had, and the impact upon her day to day life. The letter does not suggest that the appellant's health deteriorated considerably in or about June 2022 such that she was unable to continue working, as she had been previously.
17. I do not accept, on balance, that I have been provided with a full and accurate account of the appellant's circumstances and I reject the appellant's claim that she is dependent on the sponsor for her essential living needs.
18. There is nothing in the evidence before me to support the claim that the appellant was able to meet her essential living needs until June 2022 but has been unable to thereafter, so that the dependence now claimed is genuine. There is nothing in the medical evidence or the evidence of the appellant and sponsor of any particular event or explanation for the appellant's change in circumstances.
19. In accordance with directions set out in my 'error of law' decision, I have been provided with a schedule setting out the remittances sent by the sponsor to the appellant that are relied upon by the appellant. The schedule contains a cross reference to the evidence showing the sum sent by the sponsor to her mother and received into the appellant's bank account. There is also a cross reference to receipts, which it is said, is evidence of how the money was spent by the appellant. The simple fact that money has been sent to the appellant is not on its own enough. As is now clear from the authorities, it is not enough simply to show that some financial support is in fact provided by the EU citizen. The family member

must need the support in order to meet their basic needs, or put another way, their essential living costs.

20. The bank statements relied upon by the appellant cover the period 21 June 2022 to 27 February 2024 (*pages 15 to 22 and 108 to 115 of the bundle*). The account type is said to be a 'Savings A/C - Personal'. The first bank statement in time that is in the evidence before me (*page 108 of the bundle*) shows an opening balance of 0.00 and a payment into the account by the appellant of 10,000 Naira. The source of that 10,000 Naira credited to the account is not explained. It is a modest sum, but there is no evidence before me regarding the operation of that or any other bank account prior to 21 June 2022. The evidence of the sponsor is that she provided some money to the appellant even before June 2022 but the appellant was able to support herself. There is no evidence before me regarding the amounts previously sent to the appellant or the frequency.
21. I accept that the bank statements and the corresponding evidence of money remittances establishes that the sponsor has, at no fixed interval, sent money to the appellant since June 2022. There is no fixed amount sent and the amounts sent range from 1,000 Naira (*10 February 2023*) to 152,280 Naira (*4 October 2022*). I accept the only deposits shown on the bank statements relied upon, relate to transfers of funds from the sponsor to the appellant and small amounts of interest credited to the account at the end of each month. Analysis of the entries on the bank statements when considered alongside other documents relied upon reveals unexplained anomalies.
22. First, there are transfers into another account that has not been disclosed by the appellant. For example, on 15 July 2022, the appellant received 26,040 Naira from the sponsor (*Page 15*). The bank statement then shows a withdrawal from the account of 26,000 Naira on 20 July 2022. The 'transaction details' state; "FIP:USSD:ACC/...". That appears to be a transfer of that sum into a different account. That is a pattern that is often repeated after the appellant receives money from the sponsor. Withdrawals relating to payment of other services and cash withdrawals via ATM machines are described differently in the statements.
23. Second, I have before me a copy of a 'House Rent Receipt' dated 12 October 2022 that states the sum of 200,000 Naira was received from the appellant (*Page 150*). It is said to be the rent due for the period September 2022 to September 2023, and also states "(Bal Due - 50,000 [Naira])". If one turns to the appellant's bank statements, it appears that on 4 October 2022 the appellant received 152,280 Naira from the sponsor (*pages 16 and 121*). The deposit of 152,280 Naira is followed by several withdrawals on the 4<sup>th</sup> and 5<sup>th</sup> October that all again refer to the 'USSD:ACC'. A further deposit of 119,515 Naira is received from the sponsor 11 October 2022 (*pages 16 and 120*). That deposit is followed by a withdrawal of 30,000 Naira on 12 October 2022 and the transaction description refers to a 'USSD:ACC/..' with the name of the appellant and another person. There are further withdrawals on the same day relating to the 'USSD:ACC/..' in the appellant's name. Those entries are difficult to reconcile with the payment of the rent. This is not evidence of an audit

trail that establishes the sponsor transferring money required by the appellant to pay for the rent to her, with onward payment to the landlord.

24. There is also the inconsistency in the evidence of the sponsor regarding the utilities that are included in the rent paid by the appellant. Her evidence before me was that she had been responsible for renting the property that the appellant now resides at, for her. Her evidence in cross-examination was that the rent includes 'water and electricity'. When asked in re-examination whether she knows specifically what bills are paid by the appellant, she repeated that she knows the rent includes the water and electricity. Her evidence is at odds with the evidence of the appellant, who has provided a receipt (*page 146*) for a payment of 3,000 Naira for 'energy bills', for the appellant's address albeit the name of the customer is not the appellant.
25. I acknowledge the appellant has provided a number of invoices and receipts for items purchased for her day to day living, including food. I have also been provided with some receipts for the payment of rent. I also accept that in a cash-economy, it is not unusual that many day-to-day expenses are paid in cash and will not necessarily be supported by receipts and invoices. I find however that the evidence has been prepared and put together to give the appearance that the appellant relies upon the sponsor for her essential living needs.
26. Standing back and looking at all the evidence before me in the round, I find that I have not been provided with an honest and accurate account of the appellant's circumstances in Nigeria and the support required or provided. I was left in no doubt that the sponsor wishes to assist the appellant and I accept the appellant derives some benefit from the money sent by the sponsor to her. It is not unusual for members of a family to send money to their family abroad, sometimes at regular intervals. That can be for a variety of reasons, including, as the appellant claims here, to meet their essential living needs. Monies can however also be sent to make the lives of other family members abroad a little more comfortable, or in some cases to give the impression of dependency.
27. I accept the appellant does not need to be solely financially dependent on the sponsor and even if the appellant were paying for some of her living costs from other sources, that does not mean the appellant is not receiving financial support for her essential needs. However, even taking a holistic view of the evidence before me, there` is a lack of credible evidence to establish that it is the EEA Sponsor who is responsible for the essential living expenses of the appellant.
28. On the evidence before me, the appellant has failed to establish that the money sent is in fact used by her for her basic needs. There is very little evidence of the emotional needs of the appellant or as to her circumstances in Nigeria. The focus of the evidence before me is squarely upon the money sent to the appellant by the sponsor, and not upon any other support that the appellant requires or is provided with, in the wider sense. Considering the evidence as a whole I find that the appellant has not established, on the balance of probabilities, that she is dependent on the EEA Sponsor as defined in Appendix EU (Family Permit).

29. It follows that I dismiss the appeal.

**NOTICE OF DECISION**

30. The appeal by Maria Okoji against the decision to refuse her application for an EU Settlement Scheme Family Permit is dismissed.

**V. Mandalia**  
**Upper Tribunal Judge Mandalia**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**28 June 2024**