



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

Case No.: UI-2023-004468

First-tier Tribunal No: EA/10780/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

4<sup>th</sup> January 2024

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MONSON**

**Between**

**RICHARD BONSU**  
**(ANONYMITY ORDER NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Christian Simo, Legal Representative, Simo Law

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

**Heard at Field House on 12 December 2023**

**DECISION AND REASONS**

1. The appellant has been granted permission to appeal against the decision of First-tier Tribunal Judge Maurice Cohen promulgated on 11 August 2023 ("the Decision"). By the Decision, Judge Cohen dismissed the appellant's appeal against the decision of an Entry Clearance Officer to refuse to issue him with a family permit under the EU Settlement Scheme in the capacity of a family member of a relevant EEA citizen.

## **Relevant Background**

2. The appellant is a national of Ghana, whose date of birth is 1 October 1997. On 15 July 2022 the appellant applied for a family permit under the EU Settlement Scheme as the dependent child over the age of 21 of his EEA citizen sponsor.
3. In the refusal decision, the respondent did not dispute that the appellant was related to the sponsor as claimed. It is not disputed that the sponsor was his biological father. The sole issue raised was that of dependency. He had provided money transfer receipts, but he had not provided any evidence of his own domestic circumstances in Ghana. He had provided a table showing his outgoings, but no actual evidence of his outgoings. Without such evidence, the respondent declared that it was not possible to sufficiently determine that he could not meet essential living needs without the financial or other material support from his relevant EEA citizen sponsor.

## **The Decision of the First-tier Tribunal**

4. The appellant elected for his appeal to be decided on the papers. In support of his appeal, he filed a bundle of documents running to 535 pages. He indicated in the Index at the front of the bundle that the categories of documents that he had provided in support of his appeal included: (a) documentary evidence of his studies in Ghana, including a “fees” report from the University of Ghana; (b) a tenancy agreement; (c) at pages 233-258, documents evidencing his financial expenditure; (d) at pages 259-440, his “Uber and Bolts payment receipts”; and (e) at pages 534-535, a schedule detailing his father’s UK income and expenditure.
5. In the Decision, at para [7], the Judge purported to rehearse the contents of the witness statements that had been filed. He said that they indicated that the appellant did not live his parents, but was brought up by his uncle who was his *de facto* father. The appellant had not managed to obtain employment in Senegal, and had produced evidence to show this fact. The appellant’s parents had left Senegal to travel abroad for unknown reasons. The appellant had no relationship with his parents. The sponsor lived in the UK with his wife and children. He had resided in the UK for 5 years. The sponsor earned £32,000 per annum. His rent was £14,000. His living costs were £12,000. He supported the appellant to the tune of £2,500 per annum. The sponsor worked in a care home as a Support Worker.
6. The Judge’s findings of fact began at para [9]. At para [10], he said that the appellant and the sponsor had given evidence that the appellant’s parents simply ‘upped and left’ Senegal and went to an unknown European country, and had had no contact with the appellant or the sponsor since. He did not find his claim to be credible in the slightest. It was not likely that the appellant’s parents left the country in such an abrupt manner

without any good reason and had failed to provide details of their whereabouts to their own child, siblings or parents:

“I do not find the appellant and the sponsor have given a truthful or accurate account. I find the appellant’s parents remain in Senegal and that the appellant has an ongoing relationship with them.”

7. At para [11], the Judge said that it was claimed that the appellant had never worked in Senegal. There was no explanation as to why this was the case. The sponsor had left Senegal many years ago. There was no evidence of him having supported the appellant prior to him coming to the UK. He found that the appellant had worked to support himself in Senegal over an extended period of time.
8. At para [12], the Judge said that the appellant claimed that the sponsor was a *de facto* father to him. There was no evidence before him to show emotional support provided by the sponsor to the appellant. There was no evidence of the sponsor visiting the appellant in Senegal. He found that the sponsor had not provided emotional support to the appellant as claimed.
9. At para [13], the Judge said that the sponsor claimed to earn £32,000 per annum. He had provided payslips which showed monthly earnings varying significantly. His monthly earnings did not support his claimed income. Furthermore, the sponsor’s bank statements frequently showed very low balances. He found that the sponsor’s financial position was not such that he could support the appellant to the level claimed.
10. At para [14], he noted that the money transfer slips did not show the appellant actually receiving the money which was claimed to have been sent. He found that he did not receive the money. He noted that the appellant had not provided any bank statements showing these monies being deposited. He found that this was because he was working, and his bank statements showed that he received an income from work. The appellant had failed to put forward a full picture of his income and expenditure, and he found this to be further indicative of the fact that the appellant did not rely on the sponsor for his essential living needs.
11. At para [15], he noted that the appellant had provided a Certificate of Non-working in support of his appeal, but he applied *Tanveer Ahmed* in light of the adverse credibility findings that he had made. He therefore attached no weight to the certificate.
12. At the beginning of the Decision at para [1], the Judge said that the application was refused with reference to the EEA Regulations 2006. The Judge went on to dismiss the appeal under the Regulations.

### **The Reasons for the Grant of Permission to Appeal**

13. Permission to appeal was granted on the ground that there were factual errors in the Decision that were arguably material.

### **The Rule 24 Response**

14. On 24 October 2023, Christopher Bates\_of the Specialist Appeals Team settled a Rule 24 response posing the appellant's appeal. In summary, the respondent submitted that the Judge of the First-tier Tribunal had directed himself appropriately.
15. The reference to the Regulations rather than the Immigration Rules was misconceived. However, given that the central issue was whether or not the appellant had demonstrated "essential needs" to the civil standard, the mistake was immaterial.
16. As to the adverse credibility finding made in para [10], the issue would turn on what the witness statement evidence actually said about the relationship between the appellant and the sponsor.
17. Mr Bates further observed that materiality of any mistake of fact might turn on whether the findings at paras [13]-[14] as to the actual reliability of the dependency evidence was contaminated by them. *Prima facie*, whether the appellant was Ghanaian or Senegalese, or whether the sponsor was the biological father or a *de facto* father, it seemed to be immaterial to the point being made in paras [13]-[14] that the appellant had failed to discharge the burden of proving "essential needs."

### **The Hearing in the Upper Tribunal**

18. At the hearing before me to determine whether an error of law was made out, Mr Wain said he stood by the Rule 24 response, despite being in the same position as his colleague, Mr Bates, in not having had sight of the appellant's evidence. I was satisfied that this was not the fault of the appellant's representatives, and Mr Wain did not suggest that it was. Mr Wain also did not request a short adjournment so that he could read the witness statement evidence.
19. While he had not seen the witness statement evidence so as to be able to verify whether the Judge had been correct in what he had said about it, Mr Wain maintained that there was no material error on the ground that the appellant had not specifically complained in the Grounds of Appeal to the Upper Tribunal about the analysis conducted by the Judge at paras [13] and [14] of the Decision.
20. Mr Simo submitted that Mr Wain's position was untenable. He drew my attention to the breakdown of the sponsor's income and expenditure at the end of the appellant's bundle. He submitted that the figures given in this breakdown did not correspond to the figures given by the Judge.

Another factual error was the sponsor's length of residence. He had arrived in the UK in 2014 - not 5 years ago.

21. Mr Wain submitted that the specific figures given for the sponsor's income and expenditure had not been challenged in the Grounds of Appeal. It was also not shown that the Judge was wrong to hold that the amounts shown in the sponsor's bank statements did not marry up with his claimed level of income.
22. After briefly hearing from Mr Simo in reply, I reserved my decision.

### **Discussion and Conclusions**

23. While Mr Wain made a valiant effort to salvage the decision of Judge Cohen, I am in no doubt that the Decision is unsalvageable. It is completely unsafe and it therefore cannot stand.
24. The reason for this is that the Judge has clearly muddled the appellant's case with another case where the facts are materially different. It is not just that in the other case the appellant and the sponsor come from a different country in Africa. It is also that the surrounding circumstances are completely different. The witness statement evidence that was filed for the appellant's appeal was entirely in line with the contents of the application form. The appellant and the sponsor were in agreement that the sponsor was the appellant's real father, and there was no mention whatsoever of the sponsor being the appellant's uncle, or of the appellant's parents having disappeared.
25. The Judge's gross factual error in this regard is clearly material, as the Judge makes an adverse credibility finding against the appellant on the strength of a false narrative which he wrongly attributes to the appellant and the sponsor.
26. Although Mr Wain is correct that the Grounds of Appeal to the Upper Tribunal do not specifically challenge the figures given for the sponsor's income and expenditure, other factual errors are identified in the grounds, such as the appellant relying on a non-working certificate, which is not in fact the case. More pertinently, as Mr Wain seeks to defend paras [13] and [14] of the Decision as being sound, it is entirely legitimate for Mr Simo to take the point on behalf of the appellant that the figures given by the Judge as to the sponsor's claimed income and expenditure do not correspond to the figures given in the schedule at the end of the appellant's bundle.
27. Moreover, in addition to impugning the Decision on the basis that it contains multiple factual errors which are material, the Grounds of Appeal also disclose a case that the Judge has materially erred in law in failing to give proper consideration to the evidence which was actually before him.

28. I consider that this error of law challenge is fully made out. It is impossible to reconcile the Judge's reasoning with the actual contents of the appellant's bundle. I accept that there are a few instances where the finding of fact made by the Judge appears to be a finding that was reasonably open to him on the evidence, such as the observation that the sponsor's bank statements frequently show very low balances. But I consider that it is likely that this has come about by accident, rather than by design. For the most part, the Judge's findings bear no relation to the evidence in the appellant's bundle.
29. For the above reasons, the appellant has made out a case that he has been deprived of a fair hearing in the First-tier Tribunal. As a consequence of this, the Decision of the First-tier Tribunal must be set aside in its entirety, with none of the findings of fact being preserved.

### **Notice of Decision**

The decision of the First-tier Tribunal was vitiated by a material error of law, such that it must be set aside in its entirety, with none of the findings of fact being preserved.

### **Directions**

The appeal shall be remitted to the First-tier Tribunal for a fresh decision on the papers, by any Judge apart from Judge Maurice Cohen.

### **Anonymity**

The First-tier Tribunal did not make an anonymity direction, and I do not consider that such a direction is required for these proceedings in the Upper Tribunal.

Andrew Monson  
Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber  
December 2023

