



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

Case No: UI-2024-000255

First-tier Tribunal No: EA/00877/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On the 04 November 2024**

**Before**

**UPPER TRIBUNAL JUDGE OWENS**

**Between**

**Akwasi Amoako Boateng  
(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**Entry Clearance Officer**

Respondent

**Representation:**

For the Appellant: None

For the Respondent: Mr Diwnycz, Senior Presenting Officer

**Heard at Cardiff Civil Justice Centre on 18 September 2024**

**DECISION AND REASONS**

1. The appellant seeks to challenge a decision of First-tier Tribunal Judge Havard promulgated on 3 January 2024 dismissing his appeal against the decision dated 23 December 2022 refusing his application for a Family Permit under Appendix EU (Family Permit) of the Immigration Rules.
2. The appellant is a national of Ghana who claims to be dependent on his EEA sponsor, his mother who is an Italian national. The respondent was not satisfied that the evidence accompanying the application was sufficient to demonstrate that the appellant was dependent on his mother.

**The decision**

3. The judge heard evidence from the sponsor who was unrepresented. She lives in the UK with her husband and the appellant's two sons and works as a cleaner.

4. The judge found that the sponsor paid money to the appellant but found that the pattern of the payments did not support the claim that the appellant was dependent on the payments. The judge also found that the evidence relating to the appellant's unemployment was inconsistent in some respects.
5. At [41] the judge found that the sponsor has an interest in the property in which the appellant is living. The judge found that the appellant was not paying rent to the sponsor for his accommodation at this property.
6. The judge concluded by finding that there was a lack of credible evidence to establish that it is the sponsor how is responsible for the essential living needs of the appellant.

### **Grounds of appeal**

7. The grounds assert that the judge misdirected himself in law following Jia v Migrationsverket [2007] CJEU Case C-1/05, Reyes v Migrationsverket C-423/12 and SM (India) [2009] EWCA Civ 1426. Having found that the appellant was being provided with accommodation by the sponsor in Ghana, the judge should have found that this was material support and allowed the appeal.

### **Permission to appeal**

8. Permission was granted by Designated Judge Shaerf on 19 January 2024 on the basis that all of the grounds are arguable.

### **Rule 24 response**

9. The respondent did not provide a rule 24 response.

### **Discussion and analysis**

10. At the outset of the appeal Mr Diwnycz indicated that although he had not been formally instructed to concede the appeal, he could see strong force in the submissions that the free accommodation provided by the sponsor to the appellant constituted material support.
11. I indicated that I was in agreement with him. On that basis I indicated that I was satisfied the judge had misdirected himself in law in line with the above authorities and I set aside the decision dismissing the appeal and preserved the factual finding at [41] in respect of the accommodation and at [50] in relation to the balance in the appellant's bank account as well as the other findings in relation to remittances. I set aside the finding that the appellant is not dependent on the sponsor.

### **Disposal**

12. Mr Diwnycz submitted that given the preserved finding that it was appropriate to re-make the decision immediately.
13. I was in agreement with this course of action which is the normal course. I also noted that sufficient evidence had already been submitted to determine the appeal and that it was not in the interests of justice for there to be any further delay.

### **Re-making**

14. I find that the provision of free accommodation by the sponsor to the appellant involves the provision of material support for the appellant's essential living needs. I find that having regard to the appellant's 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 given the provision of this accommodation and the very low balance in the bank account. I find that there existed dependency in fact both at the specified date, the date of the application and the date of the appeal hearing. It is manifest from the evidence that electricity bills for the accommodation were submitted from August 2019 to August 2021, that the property was allocated to the sponsor in 2015. I therefore find that the appellant meets the definition of a the direct dependent aged 21 years or over of a relevant EEA citizen who is dependent on the relevant EEA citizen.

### **Notice of Decision**

1. The making of the decision of the First-tier Tribunal involved the making of an error of law.
2. The decision dismissing the appeal is set aside with the findings at [41] and [50] preserved.
3. I re-make the decision allowing the appeal because the decision is not in accordance with Appendix EU(Family Permit of the immigration rules.

**R J Owens**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

1 November 2024