



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: EA/04435/2018

**THE IMMIGRATION ACTS**

Heard at Field House  
On 1<sup>st</sup> August 2019

Decision & Reasons Promulgated  
On 9<sup>th</sup> August 2019

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

OURIDA ATMANI  
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr S Muquit of Counsel instructed by Barar & Associates

For the Respondent: Ms C Cunha, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Ross promulgated on 2 April 2019, in which the Appellant's appeal against the decision to refuse her application for an EEA Residence Card as an extended family member under Regulation 8(2) of the Immigration (European Economic Area) Regulations 2016 dated 27 March 2018 was dismissed.
2. The Appellant is a national of Algeria, born on 20 February 1967, who claims to have arrived in the United Kingdom in 2002 and to have been living here with Cherif

Atmani (the Sponsor), her nephew who is a French national, ever since. She first made an application for an EEA Residence Card as the extended family member of the Sponsor on 23 February 2016.

3. The Respondent refused the application the basis that although the family relationship between the Appellant and the Sponsor was accepted, there was insufficient evidence to establish financial dependency on the Sponsor prior to the Appellant entering the United Kingdom and similarly insufficient evidence that she has continued to be dependent on the Sponsor or residing with him in the same household since entering the United Kingdom. The Respondent noted in particular the lack of documentary evidence supporting any of the Appellant's application and that written statements on their own were not sufficient.
4. Judge Ross dismissed the appeal in a decision promulgated on 2 April 2019 on the basis that the Appellant had not established that she was dependent on, nor a member of the Sponsor's household in Algeria or in the United Kingdom. The findings were as follows:

*“19. I have considered the appeal under Regulation 8(2) of the Immigration (European Economic Area) Regulations 2016. The appellant would be an “extended family member” of her EEA national only if she can show that she was dependent upon her nephew in Algeria before she came to the UK and continues to be dependent upon him in the UK or is a member of his household.*

*20. I am not satisfied the before she came to the UK, the appellant was financially dependent upon her nephew his date of birth is 29 August 1970 and therefore would have been aged 23 when he left Algeria. The household in Algeria was never the appellant's nephew's household, given that his father was alive until January 2019. I do not accept the evidence that all transactions in Algeria have to be done in cash because it is impossible to open a bank account.*

*21. I find the evidence of cash being taken to Algeria by the nephew's friends was vague and non-specific. No documentary evidence has been produced of any trips undertaken with the purpose of transferring cash to the appellant from her nephew. The appellant's nephew could have referenced cash withdrawals from his account to specific times and dates when his friends were visiting Algeria and taking his cash with them. He has not done so.*

*22. Further, I find the evidence that the appellant is totally financially dependent upon her nephew in the UK is also vague and non-specific. Mr Atmani was unable to be clear as to how much the cases and every month [sic] and the appellant's evidence on that point was that the amount varies. I am not satisfied that the appellant has no other sources of income other than the cash handouts from her nephew. There is no documentary evidence of the appellant living in her nephew's house, notwithstanding that she has been in the UK since 2002.*

*23. I do not accept the evidence of the appellant's nephew that he was unaware of how to regularise his aunt's immigration status until 2016 when he consulted a solicitor. No credible explanation has been provided as to why the appellant came to the UK illegally and remained here for 14 years before making any attempts to regularise her status. The appellant's own evidence was that she said she was not*

*alone and was living with her nephew who could have helped at any time and did not until 2016.*

*24. I find if the appellant was genuinely a dependent of a nephew who came to the UK for that reason, an application would have been made soon after her arrival and not 16 years later. I bear in mind of course that lack of immigration status has limited relevance in an EEA residence permit application. However, given the lack of documentary evidence and other reliable evidence as to dependency, the appellant's credibility and the credibility of her nephew are relevant factors.*

*25. Given the lack of reliable and credible evidence as to dependency I find that the appellant is not an extended family member under Regulation eight 8 of the EEA Regulations 2016. Since this is an EEA appeal I cannot consider any human rights issues raised, such as the appellant's private life with her nephew or her nephew's children. It is open to the appellant to make human rights application should she wish to do so."*

### **The appeal**

5. The Appellant appeals on the ground that the First-tier Tribunal erred in law in failing to consider the evidence in support of her appeal as a whole. Specifically, that the First-tier Tribunal fails to make findings as to the credibility of the numerous witnesses who provided written statements and attended the oral hearing and simply dismissed the evidence as vague and non-specific. Further, the Appellant challenged the First-tier Tribunal's decision on the basis that the wrong legal test had been applied by the reference to being totally financially dependent in the decision.
6. At the oral hearing, I gave a preliminary indication to the parties that I considered that the First-tier Tribunal had erred in law in failing to assess in particular the credibility of the witness evidence in support of the appeal and failing to give adequate reasons for the findings made. On behalf of the Respondent, Ms Chuna accepted these errors in the decision. However as indicated in the grant of permission to appeal, the primary issue is whether those errors were material to the outcome of the appeal.
7. As set out by the First-tier Tribunal in paragraph 19 of the decision under appeal, Regulation 8(2) of the Immigration (European Economic Area) Regulations 2016 provides that a person is an extended family member of an EEA national only if they can show either prior dependents or membership of the same household in, in this case Algeria, and continuing dependence or membership of the household in the United Kingdom.
8. At the outset of the oral hearing, I identified to the parties my concern that even if all of the witness evidence before the First-tier Tribunal was accepted as credible (upon which I make no finding), the Appellant would still not be able to establish that she met the requirements of Regulation 8(2), specifically because she could not show prior dependence or membership of the same household in Algeria. It was accepted on behalf of the Appellant that there was no error in the First-tier Tribunal's finding that the Appellant was not a member of the Sponsor's household in Algeria, given

that he was at that time only a junior member of a large extended family living together and it was not his household. That leaves only the possibility of prior financial dependence.

9. Mr Muquit submitted that the Appellant's case before the First-tier Tribunal was a straightforward one, her appeal was based on the fact that she was divorced, had never worked in Algeria and had no other source of income in Algeria, such that she was totally financially dependent on the Sponsor then and now. He was however unable to identify any evidence before the First-tier Tribunal beyond a brief statement from the Appellant and the Sponsor asserting financial dependency. There was for example no evidence of whether, even if accepted, the cash transfers were for the sole benefit of the Appellant rather than the family household within which she was living in Algeria, nor in any event as to what the money was used for and whether it was to meet the Appellant's essential needs.
10. On behalf of the Respondent, Ms Chuna submitted that the accepted error by the First-tier Tribunal in the assessment of the witness evidence was not material because in any event the evidence before the First-tier Tribunal, even taking at its highest, did not establish prior financial dependency on the Sponsor in Algeria because there was no evidence of whether the money was for the sole benefit of the Appellant or for her and/or her wider family and no evidence of what it was actually being used for. Further, it was maintained that in assessing the credibility of the witness evidence, it would be reasonable to expect that there would be some documentary evidence in support of the statements made as to the money transferred.
11. On behalf of the Appellant, Mr Muquit submitted that it would, in essence, be unfair on the Appellant if her appeal were to fail at this stage on the basis of insufficient evidence of prior financial dependency in Algeria when the focus of the Respondent's reasons for refusal and evidence before the First-tier Tribunal was specifically as to the lack of documentary evidence of the transfers of cash from the Sponsor to the Appellant in Algeria. It would not be procedurally fair on the Appellant if her appeal was then refused for a different aspect of her case which she was not put on notice about. The appeal was previously on a much more narrow issue and what the money was spent on was not asked of the Appellant.

### **Findings and reasons**

12. As indicated above and to the parties at the outset of the hearing, I find that the First-tier Tribunal erred in law in its assessment of the evidence before it on behalf of the Appellant, with conclusions being given without sufficient reasons and with no specific assessment of the credibility of numerous witnesses whose evidence was largely unchallenged before it. It was not sufficient to simply say in paragraphs 20 and 21 that the evidence is not accepted and that the witness evidence was vague and non-specific. Further, the suggestion that the Sponsor could have referenced cash withdrawals from his bank account at specific times and dates from the period 1996 to 2002 was unrealistic. The First-tier Tribunal simply failed to engage with the evidence that was before it and if it was the case that it was simply not accepted

because of the lack of documentary evidence in support, that should have been expressly stated and reasoned. It was not.

13. However, even if all of the evidence before the First-tier Tribunal, including the witness evidence, was accepted to be credible and taken at its highest, I find for the reasons set out below, that the Appellant could not in any event satisfy the requirements of Regulation 8 of the Immigration (European Economic Area) Regulations 2016 such that the error cannot be material to the outcome of the appeal.
14. In order to establish dependency, the Court of Appeal confirmed in the case of Lim v Entry Clearance Officer Manila [2015] EWCA Civ 1383, that it is not enough simply to show that financial support is in fact provided by the EU citizen to the family member, but also that the family member must need the support from his or her relatives in order to meet his or her basic needs. If the person can support himself, there is no dependency, even if he is given financial support by the EU citizen as the additional resources would not be necessary to enable him to meet his basic needs. If a person is unable to support themselves from their own resources, the court will not need to ask why that is the case, save perhaps where there is an abuse of rights. If for example a person chooses not to seek employment and become self-supporting, that is irrelevant.
15. In the present appeal, the witness evidence in relation in particular to the transfer of cash from the Sponsor to the Appellant in Algeria, even if wholly accepted, is not on its own sufficient in accordance with Lim to establish dependency. The provision of financial support alone is not enough, it must also be established that the person needs the support to meet his or her basic needs. As to whether she did or could have done so in the present appeal, it is necessary to look more closely at the evidence that was before the First-tier Tribunal on this point.
16. With her original application for an EEA residence card made on 23 February 2016, a letter of support was provided by the Sponsor and a statement from the Appellant herself. The letter from the Sponsor states that the Appellant is living with him as a family member and that he has supported her financially since her entry to the United Kingdom and also before her arrival by sending money with trusted family members and friends whenever somebody visited. Details are also provided of the Sponsor's brother, a French citizen who also helps the Appellant financially. The Appellant's statement includes the following:

*"1- Since Cherif and Moussa Atmani moved to France in 1993 they always managed to send me (us) money through friends and family whenever they find an opportunity.*

*2-3- My brother Mohamed Abdelaziz Atmani (Cherif's and Moussa's Dad) was the person in charge of the house as we were living under his wings with his wife and children as Nordine Atmani was only a child of 10 years old, Mohamed Abdelaziz Atmani was the person supporting all the family until he moved to France after his wife and children Haroun, Nordine and Naziha Atmani left Algeria to go to France to live in the meantime Moussa always managed to send money to Algeria to support us.*

*4- The address in Algeria is ...*

*My brother Mohamed Abdelaziz Atmani was responsible for the rent and all other bills, nothing to do with me. My mother retired at the age of 60 and now she's 85 years old, her income was 200 a month Algerian money about £20 a month in the UK.*

*5- My sister Keltoum Atmani (disable), my other sister Fatiha Atmani, my brother Mohamed Abdelaziz Atmani with his wife Malicat Atmani and their children Haroun, Nordine and Naziha Atmani, Cherif and Moussa Atmani left to France 1993 and 1992 respectively.*

*6- I don't know how much my brother Mohamed Abdelaziz Atmani was paying all the bills as he was the man in charge and as he knows a woman it is not my business to stick my nose in.*

...

*9- Cherif pays my phone bill it is a pay as you go and it is only £10 a month. He makes sure I eat and drink properly when I'm in his house and Nordine does the same. They all support me my brother Mohamed Atmani and his four sons Cherif, Moussa, Haroune and Nordine all contribute to my financial support, Cherif is the person in charge if I need something Cherif will make sure I will get it from France or the UK that means from my brother Mohamed Abdelaziz or his sons Moussa and Haroun who lives in France or Cherif and Nordine in the UK.*

...

*I always lived with Cherif as we are brother and sister as I'm three years older than him we live together in Algeria all our life I come to the UK in 2002 I was in ... and 2007 September 15 we moved to ... The landlord passed away his daughter wanted the flat and Cherif could not get a house to rent as he had three children he end up in temporary accommodation where I had to stay with Nordine since but I still go to stay a couple of days a week with Cherif's family as they are my family and I consider the children as my own children."*

17. It is clear from this initial statement, supported also by the Appellant's oral evidence, that in Algeria she lived in an extended household family group with her mother, siblings and their families and that the household was financially sustained by the Appellant's brother (at least until he went to France in 1992/93) and her mother's income. Further, that financial support was provided not only to the Appellant but also to other members of her family living in Algeria. Although it is not entirely clear whether the Appellant is referring to support in Algeria or the United Kingdom, the statement also contains evidence that the Appellant was financially supported by several members of her family, including her brother and three of his children as well as the Sponsor.
18. In the Appellant's written statement prepared for this appeal, she states the following in relation to her situation in Algeria:

*"3. Before coming to the United Kingdom in September 2002, I lived with Cherif and our family at ... Algeria.*

...

6. *Furthermore, I have been financially dependent on Cherif in Algeria and in the United Kingdom ...*

8. *Back when I was living in Algeria, Cherif frequently sent the cash with the help of her family and friends. Cherif would meet them in London are given a certain amount of money (cash). Then, the family or friend would travel to Algeria while they were visiting family or going on holiday and give me the money (cash) personally on behalf of Cherif.*

9. *The reason we use cash instead of bank transfer in Algeria is because cash is a traditional way of dealing with financial transactions. Indeed, banks are not as developed like in the United Kingdom. Cash is more practicable, and we do not provide any cash receipts as this is deal within the family and with friends."*

19. The Sponsor's written statement prepared for this appeal is in similar terms and contains the following in relation to the Appellant's situation in Algeria:

*"2. I confirm that Ourida has been living with me and our family at ... Algeria.*

*...*

6. *I can confirm that Ourida and I have been living together in Algeria and in the United Kingdom. ...*

7. *Additionally, I have been financially supporting Ourida in Algeria and in the United Kingdom.*

8. *Before Ourida joined me in the United Kingdom, I regularly sent her cash money through family and friends. Whenever family and friends would travel to Algeria for different reasons, such as holiday visiting family, they would give my cash money to Ourida on my behalf.*

9. *In Algeria, we do not use bank accounts as we do in the United Kingdom. Cash is the normal way of transferring money making payments. Therefore, cash receipts and bank statements are not easily accessible, and we have the tendency to just deal with cash as this is part of our culture more convenient for us. It is very common to give money (cash) to family and friends for them to then give it to someone else on our behalf."*

20. In neither of the written statements set out above is there any express reference to the Appellant not having any other income in Algeria (save for support also being given from family members other than the Sponsor), whether the cash transfers relied upon through family and friends visiting Algeria were for the Appellant's sole benefit, as opposed to the family household including the Appellant's mother and siblings; nor does it contain even a bare assertion that the money was needed to support the Appellant's basic needs. The additional eight written statements from different individuals who gave evidence of transferring cash from the Sponsor to the Appellant do not contain any details as to who the ultimate beneficiary the cash was, nor what it was used for.

21. The oral evidence of the witnesses before the First-tier Tribunal is recorded in paragraphs 6 to 16 of the decision under appeal. This included that the Appellant

did not work in Algeria and lived there with her mother, siblings and their families. In paragraph 9 it is stated that the Sponsor would transfer cash through friends and family to the Appellant in Algeria, sometimes £200, sometimes £300 depending on the year. There is nothing to suggest that there was any regular or set amount of financial support, nor that it was in response to a particular request or required sum of money, nor that it was for essential needs.

22. In paragraph 15, it is recorded that the Sponsor's brother confirmed the Appellant's living arrangements in Algeria and stated that he continues to send money to the Appellant's mother and sister. He also said "*The cash which was sent to Algeria while the appellant was still there, was in order to support the elderly grandmother and disabled sister*", although it is not entirely clear whether the reference to cash is financial support given by this witness will by the Sponsor. However, it does indicate that cash was given collectively by family members outside of Algeria to the family household in Algeria.
23. I have further had regard to the record of proceedings to check whether any further evidence was given by any of the witnesses about financial dependency in Algeria which has not been recorded in the decision of the First-tier Tribunal. There was nothing material to the issue under consideration not already set out in the decision.
24. Taking into account all of the above, I find that the Appellant has not established that she was provided with financial support (even as above on the assumption that the cash transfers were made as detailed in the witness evidence) by the Sponsor which she needed to meet her essential needs. There is not even a bare statement to that effect from either the Appellant or the Sponsor and no detail whatsoever as to the Appellant's financial circumstances or that of a household in Algeria after her brother moved to France in 1992/93. What I do find from the evidence is that there has been financial support from family members outside of Algeria to the family members within the same household in Algeria. I take into account that an individual need not be mainly or wholly financially dependent on the EEA sponsor, but on the lack of detailed evidence before the First-tier Tribunal, the evidence is simply not sufficient to establish that the Appellant personally received financial support that she needed to meet her basic needs, such that she could establish that she was financially dependent on the Sponsor to satisfy the requirements of Regulation 8(2) of the Immigration (European Economic Area) Regulations 2016. On that basis, the error of law in the assessment of the witness evidence in particular, by the First-tier Tribunal was not material to the outcome of appeal, which in any event would have been dismissed.
25. I do not accept the submissions by Mr Muquit that in so finding there is any procedural unfairness to the Appellant on the basis that the issue of financial dependency was outside of the narrow point being considered by the First-tier Tribunal in the appeal. The original reasons for refusal were, in part, on the basis that the Appellant has not established prior financial dependency on the Sponsor whilst still in Algeria, with reference to the lack of documentary evidence of financial support. That is sufficiently broad to put prior financial dependency in issue as a



reason for refusal and not any narrower basis in relation only to documentary evidence. The burden is of course on the Appellant to establish that she meets the requirements of the Regulations for the issue of an EEA Residence Card, including financial dependency, not just transfer of money to her from the Sponsor and there was insufficient evidence before the First-tier Tribunal which would have enabled such a finding in her favour.

**Notice of Decision**

The making of the decision of the First-tier Tribunal did not involve the making of a material error of law. As such it is not necessary to set aside the decision.

The decision to dismiss the appeal is therefore confirmed.

No anonymity direction is made.

Signed



Date

2<sup>nd</sup> August 2019

Upper Tribunal Judge Jackson