



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/07572/2021
UI-2022-000124

THE IMMIGRATION ACTS

**Heard at Field House
On 8 April 2022**

**Decision & Reasons Promulgated
On 23 June 2022**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

**NEWMAN NGOZI OGBONNA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms O Ukachi-Lois, instructed by Browan Solicitors
For the Respondent: Ms H Gilmour, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Nigeria. He appealed to the First-tier Tribunal against the Secretary of State's decision of 11 March 2021 refusing his application for a residence card.
2. The application was based on his claim to be an extended family member of his brother, who is married to a Bulgarian national exercising treaty rights in the United Kingdom.

3. The judge did not accept the claimed dependency. The appellant had come to the United Kingdom on 13 October 2019 as a visitor. In the application form for a visitor's visa he said that his main reason for visiting was business. He was said to be married and to be residing in rented accommodation with his wife and son and he indicated that he did not have any family in the United Kingdom. The form detailed his employment as an electrical engineer earning slightly over 200,000 NGN after tax each month and that he had savings in the equivalent of £3,781. He also claimed that his parents, wife and son were financially dependent on him. A call had been made by the respondent to the appellant's employers, who confirmed his employment.
4. In oral evidence, the appellant confirmed that his earned income was as stated within and his monthly expenses were around 150,000 NGN, leaving him a surplus of just over 50,000 NGN per month. When asked why he then required financial support from the sponsor his reply was described by the judge as vague, in that he said he needed financial support to take care of his family. The judge concluded that he had not explained satisfactorily why his income was insufficient despite having a surplus of income each month and being able to amass savings of over £3,000, and as a consequence found that he had failed to establish to the civil standard that he required financial support from the sponsor to meet his essential living needs in Nigeria.
5. The judge accepted that there were money transfer receipts detailing funds sent to the appellant from the sponsor and from the appellant's brother. These showed funds sent by the sponsor on twelve occasions between March 2017 to June 2019 to a total of £415. The appellant's brother had sent funds on six occasions from December 2018 to September 2019 to a total of just under £3,000. The judge observed that the appellant had failed to demonstrate that the funds sent by the sponsor were required to meet his essential living needs and also noted that more funds were sent by the appellant's brother than the sponsor and that the 2016 Regulations required the appellant to establish that he was dependent only upon the sponsor to meet his essential living needs. The judge concluded that the appellant was in employment, he received funds from his brother and a much smaller amount of funds was sent until June 2019. She concluded that he had failed to establish that he was genuinely dependent on the sponsor prior to his arrival in the United Kingdom.
6. As regards dependency after his arrival in the United Kingdom, the appellant purported to demonstrate cohabitation in the form of an NHS letter dated 7 May 2021 and Monzo bank statements dated from 2 July 2021 to 27 October 2021. The judge observed, however, that there was no documentary evidence to corroborate the appellant's claim to reside with the sponsor prior to May 2021 and noted that the tenancy agreement for the property said that the sponsor was not entitled to allow any other person to live in the property without the prior consent of the landlord and no letter from the landlord consenting to the appellant's residence had been produced. The judge also took into account the sponsor's evidence

that he had savings of over £3,000 prior to his arrival in the United Kingdom. The evidence of the appellant, the sponsor and the appellant's brother was that he received funds from the sponsor and the appellant's brother whilst in the United Kingdom but the judge concluded that it could not be said that the appellant was only dependent on the sponsor to meet his essential living needs.

7. The judge further expressed concern that a letter from the appellant's employer stating that his employment was to end on 3 February 2020 due to low productivity output occasioned by the effects of the COVID pandemic did not state that his employment was terminated because he failed to return to Nigeria as claimed, and also, the judge could not see how this was consistent with the timing of the impact of the pandemic. She regarded this as further undermining the appellant's credibility. The appeal was dismissed.
8. The appellant sought and was granted permission to appeal on the basis that the judge had erred in failing to find that the requirements for a residence card were met, that sufficient evidence has been provided to prove his complete dependency on the sponsor, acknowledging proof of dependency on the sponsor from 2017 as well as proof of money transfer from the appellant's sponsor and her partner for his upkeep. The decision was said also to be unlawful under Article 8 of the Human Rights Convention. Permission to appeal was granted by a Judge of the First-tier Tribunal. He purported to limit the grant to the point that it was arguable that the judge had erred by separating the money sent to the appellant by his brother and by his sister-in-law, but the grant of permission in the header is not limited and as a consequence, as I made clear to Ms Ukachi-Lois at the hearing, all grounds could be argued.
9. In her submissions, Ms Ukachi-Lois argued that the judge had erred in law in separating out the receipt of funds from the brother and the sister-in-law. The relevant criteria were made out. There was evidence of money transfers. Reference was also made to Home Office guidance where it was said that an applicant did not need to be dependent on the EEA national to meet most or all of their essential needs. It was, for example, acceptable if a person received a pension covering half of their essential needs and the other half of funding provided by a sponsor. The judge had referred to there being no evidence of funds being sent by the sponsor after June 2019 but the appellant was employed in Nigeria and the last money sent in June 2019 did not need to meet all or some of his essential needs but formed part of his continual dependency until he came to the United Kingdom in October 2019.
10. There was photographic evidence of the circumstances of the appellant living at home, of his brother and sister-in-law, all showing him residing with the sponsor and there was reference also to the NHS letter with the sponsor's name and address. There was further evidence of financial dependency in the form of payments into the appellant's mother's bank account. Support could be derived from what was said by the Upper

Tribunal in Chowdhury [2020] UKUT 00188 (IAC). The phrase “and continues to be dependent” in Regulation 8(2)(c), properly understood, required an appellant as here to show no breach in their dependency on the EEA sponsor. The judge’s decision should be set aside and the matter remitted for a de novo hearing.

11. In her submissions, Ms Gilmour relied upon and developed the points made in the Rule 24 response. It was the case that the necessary relationships were made out, but the judge had to decide whether the appellant was dependent on the sponsor. It was clear that all the evidence had been considered as could be seen from paragraph 8 of the judge’s decision. The Home Office guidance did not bind the judge, so that only took matters so far. It was the case at paragraph 18 that the judge had separated out the receipts from the brother and from the sponsor but that was not material as the judge had simply engaged with the evidence and there was clearly no dependency. Reference was made to and reliance was placed on the decision of the Court of Appeal in Lim [2015] EWCA Civ 1383, in particular paragraphs 25 and 32. It was clear from that that there was a need for a situation of real dependency and financial support had to be necessary. It was clear from the decision and the appellant’s evidence that no details of his outgoings in Nigeria had been provided. He had savings and a job and money left over at the end of the month to live on. All these findings were open to the judge.
12. By way of reply, Ms Ukachi-Lois argued that the Home Office guidance postdated the decision in Lim and said that a person did not have to be dependent on the EEA national to meet most or all of their essential needs. It was a question of fairness as to whether the guidance was to be relied on and whether the Home Office continued to rely on it or on an earlier decision of the Court of Appeal. The judge had a duty to be aware of the Home Office guidance but had not referred to it.
13. I reserved my decision.
14. It is clear from the judge’s findings that before he came to the United Kingdom the appellant was earning enough money to leave him with about a quarter of his income in hand at the end of each month and he had acquired savings of some £3,700. He was unable to say why as a consequence he needed financial support from the sponsor. The judge noted the payments that had been sent and, as I think is by now common ground, erred in distinguishing between the payments from the brother and from the sponsor, his sister-in-law. The judge concluded that the appellant had failed to demonstrate that the funds sent by the sponsor were required to meet his essential living needs. The judge concluded that the appellant was in employment, he received funds from his brother and from the sponsor and had failed to show that he was genuinely dependent upon the sponsor prior to his arrival in the United Kingdom.
15. It is clear from paragraph 25 of Lim that the family member must need the support provided from his or her relatives in order to meet his or her basic

needs. The court quoted from what had been said by the CJEU in Reyes [2014] QB 1140. Reference was made for example to the existence of “a situation of real dependence” and paragraph 22 referred to the need for material support in the state of origin of the person who was not in a position to support himself and there was reference at paragraph 24 to financial support being necessary for the putative dependant to support himself in the state of origin. It was further said at paragraph 32 in Lim that if the claimant in that case could support himself there was no dependency even if he was given financial material support by the EU citizen.

16. The judge’s decision is entirely consistent with this guidance, and the error in separating out the receipt of funds from the brother and the sister-in-law is of no materiality as a consequence, since it was clear that the appellant’s income while in Nigeria comfortably exceeded his outgoings and had enabled him to establish a good level of savings.
17. Ms Ukachi-Lois referred to the Home Office guidance. She did not provide a copy today and it was not in the bundle before the judge. The judge cannot be properly criticised for not referring to guidance that was not before her. In any event, the reference Ms Ukachi-Lois made to the guidance stating that a person did not have to be dependent on the EEA national to meet most or all of their essential needs does not show the judge erred in law. She was clearly satisfied that the appellant had failed to show that he required financial support from the sponsor to meet his essential living needs in Nigeria, in light of her proper findings that his income and savings were such as to mean that those funds were quite irrelevant to him.
18. As a consequence, I find no material error of law in the judge’s decision, and her decision dismissing this appeal is maintained.

Notice of Decision

The appeal is dismissed.

No anonymity direction is made.



Signed

Date 29 April 2022

Upper Tribunal Judge Allen