



Upper Tribunal  
Immigration and Asylum Chamber

Appeal Number: IA/01746/2013

**THE IMMIGRATION ACTS**

Heard at Field House  
On 6 September 2013

Promulgated  
On 10 September 2013

Before

Upper Tribunal Judge Kekić

Between

Elizabeth Williams

**Appellant**

and

Secretary of State for the Home Department

**Respondent**

**Determination and Reasons**

**Representation**

For the Appellant: Ms L Targett-Parker, Counsel  
For the Respondent: Ms Z Kiss, Senior Home Office Presenting Officer

**Details of appellant and basis of claim**

1. This case comes before the Upper Tribunal following the grant of permission to appeal by Designated First-tier Tribunal Judge Bowen on 16 June 2013 against the determination of First-tier Tribunal Judge Elek promulgated on 23 May 2013. The appellant, a Nigerian national, sought to appeal the respondent's decision of 21 December 2012 to refuse to issue her a residence card as the family member of her sister, Jane Ipemeda Morel, an EEA national.

Judge Elek proceeded on the basis that the appellant was currently dependent on her sister with whom she lived. She was not, however, satisfied that dependency prior to arrival in the UK was established. Accordingly, she dismissed the appeal.

2. The appellant was born on 28 August 1985. She arrived here as a student in September 2008 but an application for an extension of that leave in November 2009 was refused as was a further application made on the same basis in October 2011. Reasons for the refusal are not known. In August 2011 she made an application for a residence card but this was refused as well and her appeal against that decision was dismissed by First-tier Tribunal Judge C M A Jones by way of a determination promulgated on 27 February 2012 on the basis that dependency either here or in Nigeria had not been established.

### **The Hearing**

3. The appeal came before me on 5 September 2013. The appellant and the sponsor were in attendance and I heard submissions from the parties as to whether or not the First-tier Tribunal had made errors of law.
4. Ms Targett-Parker relied on the first four of the grounds put forward in the application. The first complaint (linked with the second and third) was that the judge, whilst acknowledging the correct standard of proof at paragraph 4 of her determination, applied a higher standard by requiring documentary evidence over and above what had been adduced and accepted – that the appellant was dependent upon the sponsor in the UK, that the sponsor had paid for her air fare and visa to the UK and that she was the appellant's legal guardian following the death of their parents. The second criticism was that the judge had failed to apply case law on the issue of dependency which did not set out any requirement for dependency to be of any particular duration and did not have to be lengthy. As the judge accepted that the sponsor had paid for the appellant's air fare, that was sufficient to establish dependency. Thirdly, it was argued that the judge had failed to properly apply Dauhoo (EEA Regulations – reg 8(2) (Mauritius) [2012] UKUT 79 (IAC) in that whilst she relied on paragraph 17 of that determination with regard to a lack of documentary evidence, she had failed to take account of the evidence that had been adduced and overlooked the oral evidence regarding the matter of Western Union payments. Finally, it was argued that the judge had misapplied D (Tamil) [2012] UKIAT 00702 (Devaseelan) in that she had relied on the findings of Judge C M A Jones that money had not been sent to the appellant via a friend but had then gone on to find that two such payments had been made. The judge had therefore erred in reconsidering the findings in the first determination.

5. In response Ms Kiss argued that adequate reasons had been given by the judge for rejecting the claim of prior dependency. She was entitled to reject the oral evidence of the witness who had claimed to have regularly taken funds to Nigeria for the appellant. This was because the appellant and sponsor had provided conflicting accounts of how the money had been sent. In that context the judge was entitled to expect documentary evidence to confirm the oral evidence of the witness. The two deposits had been accepted because there had been documentary evidence of those. The sponsor is a solicitor and would have been aware of what evidence was needed to remedy the reasons for refusal; this had not been provided. The judge had considered the other evidence. She found that the letter from the college principal did not clarify how he had known that the sponsor paid the school fees (given that he was new) and she noted that all the receipts simply named the appellant as the payee. She noted that the first judge had accepted that the appellant had lived in the sponsor's flat but pointed out that there were issues over whom she lived with in that she had failed to make any reference to another sister. Ms Kiss accepted that there was no finding on the affidavit of guardianship but submitted that it was just an affidavit and that it had not been produced to the first judge. If the absence of findings in this respect were considered material then further oral evidence would be required. The issue of who the appellant had lived with would also have to be explored as that goes to dependency. Accommodation alone was not a sufficient indication of dependency.
6. Ms Targett-Parker replied. She submitted that there was more than just the accommodation provided by the sponsor; she had paid for the appellant's fare to the UK and her visa. It was not clear whether the affidavit on guardianship had been before Judge Jones but the document had not been challenged by the presenting officer at the most recent hearing. It would be unfair to re-open this issue. The appellant's parents had died and as her older sister it was likely that she was the appellant's guardian. No further evidence was needed and the decision should be re-made and the appeal allowed.
7. That completed the submissions. At the conclusion of the hearing I reserved my determination.

### **Findings and conclusions**

8. The issue before the judge was whether the appellant was dependent upon the sponsor prior to her arrival in the UK. I have considered the submissions made and the evidence and determination with care.
9. The grounds are all intertwined; essentially the appellant's case is that the judge did not properly consider the evidence and erred in requiring more when, it is argued, the evidence she had was sufficient for the appeal to be

allowed. I do not find that the criticisms of the determination are made out for the reasons set out below (in no particular order).

10. Whilst the judge accepted the earlier finding that the appellant had lived in the sponsor's accommodation (presumably in the periods when she was not at boarding school and not living with her friends during holidays as her evidence indicated), this is not sufficient evidence of dependency. In fairness, Ms Targett-Parker did not submit this was enough; her submissions were that the other evidence when taken along with this demonstrated dependency in Nigeria.
11. The judge looked at the other evidence. She was entitled to reject the oral evidence of money transfers on the basis that the appellant and sponsor had provided wholly conflicting accounts of how money was sent to the appellant. The appellant's evidence was that she received a fixed amount every month via Western Union. The sponsor's evidence was that she sent variable amounts at varying times and that she did not use Western Union due to high commission charges. It was in that context that the judge was unwilling to accept the evidence of the witness who maintained she had been the friend ferrying money from the sponsor to the appellant. The judge was entitled to find that, had there been documentary evidence to show the friend's travel to and from Nigeria, it could easily have been adduced, particularly given the fact that the sponsor is a solicitor and that the previous appeal failed due to a lack of evidence on dependency.
12. There is no conflict in her findings with regard to the evidence of the witness and the money sent for the air fare. The judge was not prepared to accept undocumented evidence as to money transfers due to the inconsistent oral evidence. In this she relied upon the finding of the first judge and the absence of any documentary evidence to challenge that. She was nevertheless entitled to consider the documentary evidence that had been produced in respect of the remittance for the air fare and visa. Despite her adverse findings as to the other remittances, this was evidenced by documents and hence was accepted. I see no conflict in those findings and no misapplication of the Devaseelan principles.
13. I now come to the other two complaints made. The payment of the airfare and visa fee does not establish financial dependency. At best it shows a one off payment. It cannot be relied upon as evidence of the appellant's dependency on her sister when there was such conflicting evidence as to how she was supported for all her other basic necessities. As it was not accepted by either judge that the sponsor was meeting the costs of the appellant's maintenance in Nigeria, it follows that she must have been supported by some other means. That was not explored but it did not need to be. It was enough that the claim of dependency was rejected for the reasons given. As Ms Kiss pointed

out, there was also conflicting evidence about whom the appellant lived with. For reasons which are unexplained, no mention was made of the other sister, with whom it transpired the appellant had been living, until late in the proceedings. This raises questions of why the appellant sought to conceal this fact and whether that sister might have had some responsibility for the appellant or might have supported her. Whilst I fully accept that dependency need not be lengthy and that the required duration is unspecified, I do not agree that the judge erred in finding that on the evidence before her, that had not been established.

14. It has been argued that the judge disregarded evidence such as the affidavit of guardianship or 'guadianship' as it incorrectly states. It is difficult to see the relevance of this given that the only undertaking made by the sponsor in this document was that she would be responsible for the appellant until she came of age. The appellant turned 18 in 2003 some five years prior to her entry to the UK. There was no reliable evidence before the judge as to how she had supported herself during that time. For all we know, she may have been employed as it seems she was here, despite her claim that she did not where the 'salary' deposits in her bank account had come from. Even if the judge had taken account of it, it would have done nothing to resolve the discrepant evidence about money transfers which are crucial to the issue of how the appellant was supported in Nigeria.
15. The judge considered the evidence from the appellant's school, which she left in 2003, but for valid reasons found that it did not show that the sponsor had been paying the appellant's fees. The letter from the new principal, who had not been there when the appellant had been a student, did not clarify the basis on which he claimed that the sponsor was responsible for the fees and, as the judge noted, all the receipts are in the appellant's name with no reference to her sponsor. There are no corresponding debits to her bank account or credits to the appellant's.
16. There is nothing in the determination which points to a high standard of proof being applied. It is acknowledged that the judge cited the correct standard and I see nothing to suggest that any other standard was applied. The approach to the documentary evidence shows a proper application of the Tanveer Ahmed principles. The judge gave compelling reasons for not being able to place weight on the oral evidence alone and was entitled to find that the absence of documentary evidence which could have easily been provided, was indicative of the fact it did not exist.
17. Read as a whole, I therefore find that the judge's findings are sound. She was entitled to find as she did. The determination does not show any error of law.

**Decision**

18. The Tribunal made no error of law. The decision to dismiss the appeal is upheld.

**Dr R Kekić**  
**Judge of the Upper Tribunal**

9 September 2013