



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/06684/2019

THE IMMIGRATION ACTS

Heard at Field House
On 12th March 2021

Decision & Reasons Promulgated
On 28th June 2021

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

IBRAHIM KEIFALA SHERIFF
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Briddock, Counsel instructed by Lighthouse Solicitors

For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by a citizen of Sierra Leone against a decision of the First-tier Tribunal dismissing his appeal against the decision of the respondent by an Entry Clearance Officer, refusing him an EEA family permit to join his sister-in-law, an Austrian national in the United Kingdom, as a family member of an EEA national.
2. In outline, it is the appellant's case that he is the dependent brother-in-law of the EEA national and is entitled to join her and her husband, the appellant's brother, in the United Kingdom.
3. I begin not by considering the First-tier Tribunal's decision but the Reasons for Refusal of an EEA family permit.

4. The Entry Clearance Officer begins, appropriately, by referring to Regulation 8 of the Immigration (European Economic Area) Regulations 2016. The Entry Clearance Officer noted that it was the appellant's case that his sister-in-law was his sponsor and the Entry Clearance Officer was satisfied that she is indeed an Austrian and therefore EEA national. The Entry Clearance Officer said:

"I note that on your application you state that you are financially supported by your sponsor. As evidence of this you have provided money transfer remittance receipts covering the period 28 September 2014 to 23 October 2019. However, I am not satisfied that this sufficiently demonstrates that you are dependent on your sponsor to meet your essential needs. Unfortunately, this limited amount of evidence in isolation does not prove that you are financially dependent on your sponsor. I note that for the transactions completed in 2018, you have provided handwritten collection receipts. These are of poor quality and cannot be verified because of this. You have produced no evidence that you have received these funds in the form of transfers into your bank account, for example. As a result, I cannot be satisfied that you have received these funds and they contribute to your essential needs during this period."

5. The Entry Clearance Officer continued:

"I note that you have also provided two lists of money transfers, one from Ria Financial Services and the other from Money Remittance Worldwide, purportedly from your brother to you. Whilst you have provided a list of transactions, this office would also expect to see money transaction remittance sender and collection receipts to corroborate the details listed on the document and to further confirm that you have been in receipt of the funds from your sponsor. Without further evidence I cannot be satisfied that these funds contribute to your essential needs, as claimed. Further, you have provided no evidence to demonstrate yours and your family's circumstances including your income, expenditure and evidence of your financial position which would prove that without the financial support of your sponsor your essential living needs could not be met."

6. In short, the Entry Clearance Officer was not satisfied that dependency had been established. Broadly two reasons are given. First, the evidence that any money was transferred was weak and, second, the evidence was insufficient to show that even if the money was transferred it established a relationship of dependency rather than being a welcome gift. Although the Entry Clearance Officer was clearly aware that the evidence showed money being transferred from the appellant's brother to the appellant the Entry Clearance Officer expressed no concern about this route.
7. The judge summarised the appellant's case.
8. The appellant said that his father died in 2012 and his mother was not able to support him financially. He was studying for a bachelor's degree in social work and the sponsor and the appellant's brother paid for his education, rent, medical bills, food and clothing.
9. The sponsor explained that she had been in the United Kingdom since 2007. She married the appellant's brother in May 2014 and had been exercising treaty rights since her marriage.
10. It is not entirely clear from the judge's summary but it is entirely clear from the sponsor's witness statement that she said that she and her husband (the appellant's brother) "provide him with the money for all his basic needs". It was then, as

recognised by the judge, explained that it was more convenient for the appellant's brother to physically make the money transfers, which is why the receipts were in his name. Occasionally money would be sent by cash.

11. At paragraph 28 of the Decision and Reasons the judge found "an abundance of evidence" from the period September 2014 to July 2020 about money transfer receipts but was concerned that every transfer came from the appellant's brother rather than the EEA national.
12. The judge was satisfied that the appellant's brother had made financial contributions to the appellant but was not satisfied that the EEA national had contributed to any of the financial remittances that had been transferred. The judge says somewhat enigmatically:

"I have taken into account the explanation the EEA sponsor has given in her statement as to why her husband has paid the remittances."
13. After considering all of the evidence, the judge remained not satisfied that the sponsor had contributed anything and dismissed the appeal on the evidence before her. The judge also dismissed it on Article 8 grounds.
14. As far as I can see, the judge has not determined the issue that concerns the Entry Clearance Officer, which was whether there was dependency. Rather, without resolving that issue, the judge has dismissed the appeal for a different reason, namely that the money did not come from the EEA national.
15. Permission was given by a First-tier Tribunal Judge noting that the grounds asserted that the judge had erred by failing to consider that "material support" can be provided by the community national or the community national's spouse. Reference is then made to the decision in **Jia v Migrationsverket C-1/05 [2007] QB 545**. However, the judge granting permission also said that it was arguable that the judge had failed to consider whether the appellant was dependent on the EEA national spouse and if so whether the dependency was sufficient to satisfy the Regulations.
16. Before me both parties were critical of the alleged relevance of the decision in **Jia**. Mr Lindsay said it should not have been relied upon because it was not talking about extended family members. Mr Briddock accepted this.
17. I have to say I found **Jia** a difficult case. Clearly, the grounds had in mind paragraph 35 in **Jia** where the court said:

"According to the case-law of the Court, the status of 'dependent' family member is the result of a factual situation characterised by the fact that material support for that family member is provided by the Community national who has exercised his right of free movement or by his spouse (see, in relation to Article 10 of Regulation No 1612/68 and Article 1 of Council Directive 90/364/EEC of 28 June 1990 on the right of residence (OJ 1990 L 180, p. 26), *Lebon*, paragraph 22, and Case C-200/02 *Zhu and Chen* [2004] ECR I-9925, paragraph 43, respectively).
18. However, although I have read that decision, and the decisions in **Lebon** and **Zhu**, I find it hard to discern anything that unequivocally extends the required support from the EEA national to that EEA national spouse. As I read the decision in **Jia**,

support from a spouse appears to be an additional route introduced by Swedish legislation.

19. That aside, I have no hesitation in concluding that the First-tier Tribunal erred in law. There are no clear findings on whether there is dependency but there was perfectly clear evidence, which of course does not have to be accepted, that the money transferred by the appellant's brother came from the EEA national, that is the brother's wife. These points have not been resolved.
20. It is really unhelpful when judges take points that have not concerned the parties and made them the main reason for determining an appeal but do not deal with the points that have been taken by the parties. The First-tier Tribunal erred and I set aside this decision.
21. However, the appellant asked for a paper appeal and there has been no application to adduce new evidence. There is every reason why I should proceed immediately to determine the appeal myself. This I do, having reminded myself that the burden of proof is on the appellant who must prove his case on the balance of probability.
22. For reasons that I will explain later, I am not satisfied that the dependency has been established. Therefore I have not had to determine if support from the non-EEA national brother would suffice. I find the position is rather more subtle than "who paid the money". Dependency is a matter of fact and the source of that dependency must also be a matter of fact. It is common for married people to intermingle their finances. I incline to the view that I certainly would not dismiss an appeal just because money said to come from the EEA national was physically transferred through the accounts of a non-EEA national.
23. However if, for example, the EEA national was earning barely sufficient to support herself and her husband, but the husband happened to be a very wealthy man, subject to argument, I would decline to the view that that was not support from the EEA national, although I do not regard the matter as clear. There is evidence that the appellant's brother is in regular work with an annual salary of £22,052. He works in the health service as a housekeeping assistant. It is not clear to me that any dependency that the appellant might establish is dependency on the EEA national rather than the EEA national's partner but as I am not satisfied the dependency is established I have not had to resolve the point.
24. I also make it plain that I am far from saying that the appellant has been untruthful in any way. My concern is not with the honesty of the evidence, about which I do not actually make any findings, but with its breadth.
25. The appellant himself provided a witness statement and a Statutory Declaration. In his witness statement he said that his brother had always supported him financially following the death of his father in 2012 and that he started university in 2016 with his brother and sister-in-law supporting him and that his brother and sister-in-law continued to support him and pay for his education, that is rent, medical bills, food, clothing and all life expenses. He described himself as "wholly dependent on them" as he finds it hard to obtain work in Sierra Leone. He then explained that when they sent him money either his sister-in-law or his brother called him or texted him and

told him how much was due and to pass on a code that he would use to access the funds. He also said that initially there were handwritten statements from the agent in Sierra Leone who later changed to give electronic receipts. He asserted that without the support of his brother and sister-in-law he would be destitute.

26. This was supported with an "affidavit of support" sworn before the Justice of the Peace on official notepaper. Crucially he says there that:

"**MR ARUNA KEMOH SOWA AND MISS. HUMU KOROMA** are my guardian who are always sending support to me immediately after the death of my father since 2012. These include feeding, schooling, clothing and medical etc etc and up-to-date."
27. His sponsor made a statement in which he explained that she is an Austrian national living in the United Kingdom since 2007 and that she met her husband (the appellant's brother) in 2013 and married him in 2014 and that since her marriage she had been exercising treaty rights and supporting the appellant. She said that, with her husband, she provided the appellant with money for all his basic needs and particularly his university education, medical bills when they arise, accommodation, food, clothing and all his expenses. She asserted that the appellant was wholly dependent "on us".
28. She explained she worked as a children's nursery nurse and so her husband was better placed to go to the money transfer agency to send the money. Accordingly, all the transfer receipts were in her husband's name.
29. The appellant's brother made a statement saying that he supported the statement made by the appellant and agreed with what was said in his wife's statement. He then confirmed that he started supporting his brother financially since 2012 when the appellant's father, that is the witness's stepfather, died and that the witness continued to support the appellant as he is "wholly dependent on us for all his basic needs".
30. I remind myself that the Entry Clearance Officer was careful not to find the appellant dishonest but found the evidence unsatisfactory and, knowing that was the reason the application was refused, the appellant had prepared the detailed statements and a skeleton argument but had opted for an appeals process which meant they could not be cross-examined.
31. Like the First-tier Tribunal, I have no hesitation in accepting the evidence that considerable sums of money had been paid over to the appellant over many years. He is clearly being assisted financially by his brother but that is not the same as saying he is dependent on his brother.
32. When refusing the EEA family permit the Entry Clearance Officer said:

"Furthermore, you have provided no evidence to demonstrate that yours and your family's circumstances including your income, expenditure and evidence of your financial situation which would prove that without the financial support of your sponsor your essential living needs could not be met."
33. This is important because it could give context to the appellant's clear claims that he depends on his brother's income and has depended on it for some time.

34. I am very aware that there are clear assertions that the dependency is considerable and that the appellant is wholly dependent on his brother and sister-in-law for his basic needs. However, I have no details, for example, of how the appellant lives in Sierra Leone, what sort of accommodation he has and how he or, if as appears to be the case, he lives with his mother, they, pay for it. Nor am I given any breakdown of his expenditure to indicate what he can purchase with the money sent from the United Kingdom.
35. I am aware of the letter from the Njala University speaking well of the appellant and saying how he is sponsored by his elder brother in the United Kingdom. This supports the contention that money is used for his education but not that he depends on the money. The transferred funds are useful but it is not enough to establish dependency.
36. Like the Entry Clearance Officer, I make it plain that I am not making any adverse findings here. The appellant has NOT been shown to be dishonest but there are gaps in the evidence which have not been addressed, even though they were flagged up by the Entry Clearance Officer.
37. I am not satisfied on the evidence before me, having reminded myself of the standard of proof, that dependency rather than mere financial transfer has been established here and I dismiss the appeal.

Notice of Decision

38. The First-tier Tribunal erred in law. I set aside its decision but I have redetermined the appeal and, like the First-tier Tribunal, I dismiss the appeal.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 24 June 2021