



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: UI-2021-001475

EA/04099/2020

THE IMMIGRATION ACTS

**Heard at Field House
On 10 October 2022**

**Decision & Reasons Promulgated
On 20 November 2022**

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

**PATRICK AGYEN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the appellant: Mr S Karim, Counsel, instructed by Adukus Solicitors

For the respondent: Mr S Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

- 1.** This is the re-making of the decision in the appellant's case following the decision of Upper Tribunal Judge Plimmer, promulgated on 19 August 2022, that the earlier decision of the First-tier Tribunal contained errors of law and should be set aside.
- 2.** The appellant is a citizen of Ghana who, by an application made in November 2019, applied for a family permit to join his sister (a German

citizen, hereafter “the sponsor”) in the United Kingdom as her extended family member, pursuant to the Immigration (European Economic Area) Regulations 2016 (“the Regulations”). That application was refused by the respondent on 30 December 2019. The respondent was not satisfied as to the claimed relationship between the appellant and the sponsor, nor was it accepted that, in any event, the appellant was dependent on the sponsor for his essential living needs.

3. On appeal to the First-tier Tribunal, the judge noted the absence of relevant evidence concerning the appellant’s circumstances in Ghana and raised concerns regarding the remittances sent by the sponsor. The appeal was dismissed, with reference to regulation 8 of the Regulations.
4. In the Upper Tribunal, Judge Plimmer acknowledged the absence of certain evidence from the appellant’s side, but took into account the fact that the appellant had not been legally represented before the First-tier Tribunal and that the appeal had been decided without a hearing. Having considered the evidence before the First-tier Tribunal in some detail, Judge Plimmer concluded that the First-tier Tribunal had overlooked or failed to properly engage with relevant evidence which had been provided in relation to the use of remitted funds. It was clear that the sponsor had indeed been sending significant sums of money over a considerable period of time. Whilst the evidential picture was certainly not clear, Judge Plimmer concluded that the First-tier Tribunal’s error was material. In directing a resumed hearing, the sole issue was whether or not the appellant was dependent on the sponsor. The claimed relationship had been accepted and was no longer in dispute.
5. Judge Plimmer issued directions for a consolidated bundle to be filed and served by the appellant within 28 days of the error of law hearing (which was held on 21 July 2022).

The evidence at the resumed hearing

6. The appellant’s solicitors failed to comply with Judge Plimmer’s direction on the provision of a consolidated bundle. In fact, the relevant bundle was only provided to the Upper Tribunal on the morning of 7 October 2022. The accompanying email simply stated that the Tribunal was invited to “... accept our sincerest apologies for the late submission of the bundle.” That is not good enough.
7. Not only was there significant non-compliance with Judge Plimmer’s clear direction, but when the bundle belatedly arrived, there was no explanation whatsoever. Procedural rigour is an important aspect of the fair administration of justice. I have issued a direction at the end of this re-making decision for the solicitors to provide a written explanation for the late service of the consolidated bundle. I expect my direction to be complied with.

- 8.** The consolidated bundle was indexed and paginated 1-93 (the pagination has not been carefully inserted and it seems as though the numbering jumps from 80 to 61 at one point). Mr Whitwell confirmed that he had received it (albeit, very late in the day) and did not oppose it being admitted in evidence.
- 9.** I considered all the circumstances. There was, at least as far as I could see, no indication that the late service was down to the appellant or his sponsor. The bundle did contain relevant evidence. Further, and importantly, Mr Whitwell was in a position to proceed. I therefore admitted the bundle.
- 10.** The sponsor gave oral evidence. She adopted her witness statement, dated 16 August 2022 and was then cross-examined by Mr Whitwell. In summary, the sponsor said the following. She confirmed that although the most up-to-date accounts for her business included in the bundle were for the year-end 2019, she had recent accounts with her. There was no application to adduce this evidence and, in any event, I would not have acceded to any such request, given the timing). She gave somewhat vague evidence as to her earnings over the course of time. She confirmed that she paid herself a wage from her business profits and that she currently had about five employees. She had relatively low mortgage payments going out. She explained her use of an Internet-based money transfer company called Sendwave for remittances to the appellant and how she used their application to transfer funds. He would then collect the cash from a bank in Ghana. She had two mobile telephones, and used the one with the number ending 754 for the money transfers. She explained that the appellant had had an apprenticeship as a car mechanic between 2016 and 2021, but had not been paid a wage. He left that apprenticeship and had been unable to find work thereafter.
- 11.** The sponsor revealed that the appellant had four children with an ex-wife. When asked for further details, she explained that the divorce had occurred because of the appellant's inability to support the family. She did not know why the appellant had kept money transfer receipts from the previous money transfer companies used.

The parties' submissions

- 12.** Mr Whitwell that the evidence was "sparse and limited". The oral evidence was unimpressive. It seemed strange that the appellant was let go from his apprenticeship without been able to work at that garage. The sponsor had been vague in respect of the appellant's claimed divorce from his ex-wife. The sponsor's own financial circumstances appeared to show that she did not have very much disposable income. Mr Whitwell queried where all of the money sent to the appellant came from. Was she in fact able to send money at all? It was submitted that the appellant had failed to discharge the burden of showing dependency.

- 13.** Mr Karim emphasised that there had been no cross-examination on whether the sponsor had actually sent her own money to the appellant. There was a large amount of documentary evidence to show that she had and that this had occurred over a long period of time. There was also evidence, documentary and oral, to show that the money was being used by the appellant to meet his essential living needs, including accommodation. Apart from the rental agreement, there were schedules of expenditure costs covering a number of years. The reasons for the appellant's divorce were consistent with his impecuniousness and it was plausible that he would not have been paid a wage during his apprenticeship.
- 14.** Mr Karim acknowledged that the sponsor's evidence had not been altogether clear, but she had been truthful and that the evidence as a whole demonstrated the relevant dependency.
- 15.** At the end of the hearing I reserved my decision.

Findings and conclusions

- 16.** I have considered all of the evidence before me in light of Judge Plimmer's error of law decision and bearing in mind that it is for the appellant to show, on a balance of probabilities, that he has been, and is, dependent on the sponsor in order to meet his essential living needs. It need not be shown that the sponsor's financial support has gone to meet all of those needs, but only that without that support he would be unable to cover them.
- 17.** I agree with both representatives to the extent that the sponsor's oral evidence was at times vague and, with respect, not particularly impressive. One might have thought that she would have come to the hearing with a clear appreciation of the types of questions which may be put to her and the information which she could impart.
- 18.** Having said that, her evidence did not need to be particularly impressive and elements of vagueness are unlikely, as a general rule, to fatally undermine the entirety of a witnesses evidence. In addition, I have of course considered her evidence in the context of the evidence as a whole, including the documents which were before the First-tier Tribunal (which are been included in the consolidated bundle) and the new evidence provided for the resumed hearing. Taking a holistic view of the evidence, and in light of what I say below, I find that the sponsor has provided essentially truthful evidence on the core issues in this case.
- 19.** For the avoidance of any doubt, it is accepted that the appellant is the brother of the sponsor and I so find.
- 20.** It is quite clear to me that the sponsor has in fact been sending money to the appellant over a considerable period of time. Specifically, the evidence

demonstrates that the financial support probably began as long ago as 2008 and has, I find, continued to date. It has never been suggested that the money transfer receipts from Utility Link and Western Union and printouts from Sendwave at pages 61-93 of the bundle are forgeries or in any other way unreliable as evidence demonstrating the remittance of funds from the sponsor to the appellant. On the evidence before me, there is no reason to doubt their authenticity and reliability. I find that the amounts of money sent by the sponsor has varied over the course of time, sometimes being as high as £400 and sometimes as low as £20. The frequency of the remittances has also varied: in the past, when larger single amounts were sent, there were intervals of some months; more recently, the amounts have been less, but with greater frequency - fortnightly or even weekly.

- 21.** I find that the sponsor is the sole director of Best Cleaning Solutions Ltd. There has been no dispute about this. It is true that the sponsor appears to have had a relatively modest income from her business and I have not seen her latest accounts. I was not provided with details of any other sources of income or whether her husband works. Whilst I acknowledge that the remittances to the appellant must have amounted to a significant financial consideration for the sponsor, the fact that her commitment may have potentially placed a strain on her finances is not, of itself, reason enough for me to conclude that she is not the source of the funds sent in her name to the appellant. I note also the sponsor was not confronted by any questioning cross-examination to the effect that she (or at least her own money) was not in fact the source of the remittances.
- 22.** In summary, the sponsor has a long track-record of financially supporting the appellant.
- 23.** The next, and crucial, question is whether that financial support has contributed, in whole or part, to the ability of the appellant to meet his essential living needs in Ghana.
- 24.** Against the appellant, there is a lack of certain forms of documentary evidence such as utility bills which might go to illuminate the nature of his essential living needs. However, I consider this in the context of (a) the evidence that has been presented and (b) the relatively uncontroversial observation that certain aspects of Ghanaian life is likely to be conducted on a cash basis and that certain documents may be difficult to obtain or not exist at all. I emphasise that the second point is in truth of much less significance than the first.
- 25.** The rental agreement for the appellant has been in evidence throughout the proceedings. It has never been challenged as being either a forgery or otherwise unreliable. I find that it both genuine and reliable. It does not of course show where the funds for the rental payments by the appellant originated from, but it does go to prove one aspect of his essential living needs, namely accommodation.

- 26.** I take into account the expenses schedules set out at pages 60-80 of the bundle (as mentioned earlier, the pagination has gone awry). The schedules cover the years 2008 to 2022. They list the remittances from the sponsor in sterling and Ghanaian Cedis, a breakdown of the various expenses (including food, shelter, clothing, and transport), and the cost of each expense.
- 27.** Of course, it could be that these schedules were simply concocted in an attempt to prove a dependency which did not in fact exist. On the evidence as a whole, for the following reasons I do not find that to be the case. The sponsor's long-standing financial support of the appellant is indicative (but not decisive) of a genuine need on his part. The sponsor's written and oral evidence has stated that he relies on her funding for his essential living needs. That evidence is consistent with what the appellant said in his witness statement. The specific figures set out in the expenses schedules have not been the subject of any cross-examination or submission from the respondent. Finally, by way of example, I note that the figure set out in the schedules for shelter (i.e. accommodation) of 200 Cedis corresponds with the figure set out in the rental agreement.
- 28.** There was a question in my mind as to whether the appellant had been earning a wage whilst working as a trainee mechanic between 2016 and 2021. The appellant and sponsor have both said that the former was never paid a wage as such. I have no specific evidence on whether apprentice mechanics in Ghana would normally receive a wage. However, I do not regard it as wholly implausible that no formal wage would be paid; the trainee might only have been provided with what was described as "pocket money". Further, I have considered the letter from Bohyeba Welding and Fabrications, dated 29 July 2022. This letter confirms that the appellant was not paid "specific monthly earnings", but was provided with, for example, food during working hours. The letter also confirms that the appellant left in 2021. The absence of a specific address on the letter does not materially undermine its reliability. The letter is on headed paper. There is no evidence to suggest that the company simply does not exist. All-told, I regard this letter as containing reliable information.
- 29.** It might have been said by the respondent (but was not in fact said) that the appellant had obtained employment after leaving his apprenticeship in 2021. There is no evidence to indicate that this was in fact the case and the evidence that is before me all states that the opposite is true.
- 30.** The sponsor's disclosure of the appellant's former marriage and children was of some concern to me. Mr Whitwell made the respectable argument that the appellant may well have found work to support his children and that this would in turn undermine his claimed dependency on the sponsor. Absent the other considerations which I have set out, above, would have held greater force. However, I am prepared to accept that the appellant's ex-wife divorced him because of his inability to provide for the family.

- 31.** Bringing all of the above together, I am satisfied that the financial support received by the appellant from the sponsor has been, and continues to be, necessary for the former to meet his essential living needs in Ghana. It follows that the appellant has been able to demonstrate that he has been, and continues to be, dependent on the sponsor for the purposes of regulation 8 of the Regulations.
- 32.** Accordingly, the appellant's appeal is allowed.

Anonymity

- 33.** There is clearly no basis on which an anonymity direction should be made in this case and I make no such direction.

Notice of Decision

- 34.** The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law and that decision has been set aside.
- 35.** I re-make the decision by allowing the appeal under the Immigration (European Economic Area) Regulations 2016.

Direction to the appellant

- 1) The appellant's solicitors shall, no later than 10 days after this decision is sent out, provide a written explanation as to why the consolidated bundle was filed and served in contravention of the direction made by Judge Plimmer in her error of law decision. The written explanation must be marked for the attention of Upper Tribunal Judge Norton-Taylor.**

Signed: H Norton-Taylor

Date: 12 October 2022

Upper Tribunal Judge Norton-Taylor