



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

Appeal Numbers:  
UI-2022-001694 (EA/06815/2021)  
UI-2022-001698 (EA/06818/2021)

**THE IMMIGRATION ACTS**

**Heard at Field House  
on 24 August 2022**

**Decision & Reasons Promulgated  
on 4 October 2022**

**Before**

**UPPER TRIBUNAL JUDGE CANAVAN**

**Between**

**ENTRY CLEARANCE OFFICER**

Appellant

and

**CLEMENT TABI MENSAH**

First Respondent

**MELODY NYARKO**

Second Respondent

**Representation:**

For the appellant: Mr S. Walker, Senior Home Office Presenting Officer

For the respondents: Ms V. Bonsu, Sponsor

**NOTICE OF DECISION**

1. For the sake of continuity I shall refer to the parties as they were before the First-tier Tribunal although technically the appellant in the appeal before the Upper Tribunal is the Entry Clearance Officer.
2. On 06 December 2020 the original appellants (Mr Mensah and Ms Nyarko) applied for a family permit to join an EEA national relative in the UK. They

appealed the respondent's (SSHD) decision dated 24 March 2021 to refuse the applications.

3. First-tier Tribunal Judge Jarvis ('the judge') allowed the appeals in a decision promulgated on 24 January 2022. Neither the appellants nor the respondent were legally represented. The judge spoke to the sponsor and said that he asked her some questions about the relevant issues [7]. He said that he also considered the evidence contained in the Home Office bundle [10]. The judge went on to consider the two alternative requirements of regulation 8 of The Immigration (European Economic Area) Regulations 2016 relating to (i) membership of the sponsor's household [13]-[17]; or (ii) dependency [18]-[22]. He found that the appellants had failed to produce sufficient evidence to show that they were dependent within the meaning of EU law [22]. However, he concluded that they were members of the sponsor's household [17].
4. The respondent appealed the First-tier Tribunal decision on the following grounds, which I will quote in full in order to understand my conclusions relating to error of law:

**'Ground One - making a material misdirection in law on any material matter**

It is respectfully submitted that the First tier Tribunal Judge (FTTJ) has erred in law by allowing this appeal under Regulation 8 of the EEA Regulations 2016. It is submitted that it has not been established to the required standard the Appellant's are mainly or fully financially dependent on the Sponsor, nor that the personal circumstances of the Appellants has been made out.

**Ground Two - Failure to provide reasons/adequate reasons**

It is submitted that the FTTJ has made a decision to issue a family permit without giving reasons as to why certain aspects of the EEA Regulation requirements have not been met.

At [18] the Judge states that:

*'the overall evidence does not establish that the Appellants are mainly or wholly financially dependent upon the Sponsor, specially there is no direct evidence from Appellant 2'* [sic - this an inaccurate quote]

From [21-23] the Judge notes that

*'the Appellant 1's has a very limited evidence and the Sponsor evidence was not credible enough to meet the threshold* [sic - this is an inaccurate quote]

*I therefore conclude that the Appellants have not established that they are dependent upon their EEA national Sponsor in the way envisaged in EU and domestic law, applying the holistic approach. I therefore formally find that the Appellants have established that they are residing in the EEA national Sponsor's household in Ghana but that they have not established that the are mainly or wholly financially dependent upon her.'*

Overall the Judge only accepts evidence that the Sponsor does own a property in Ghana [16] and at [17] Judge also accepts the overall evidence that the Appellants have been residing in the Sponsor's property since their mother passed away in 2016 and they are therefore members of the Sponsor's household in Ghana (reg.8(2)(b)(ii)).

The judge appears to be satisfied that the appellants would become dependent on the sponsor once they arrive in the UK, however it is respectfully submitted that the Judge has misdirected himself in law by approving the grant of a family permit with sparse evidence from the Sponsor & Appellants.

The issue surrounding financial dependency remains unresolved.'

5. First-tier Tribunal Judge L.K. Gibbs granted permission to appeal to the Upper Tribunal in the following terms:

'3. The grounds of appeal assert that the judge has erred in the way in which he has considered the issue of dependency, and that he had made findings on limited evidence. I have considered the decision in this light and although the respondent chose not to attend the appeal hearing to challenge the evidence I nonetheless consider that there is an arguable error of law.'

6. Having considered the First-tier Tribunal decision and the grounds of appeal I asked Mr Walker what the extent of his submissions might be given both grounds appeared to challenge findings relating to the issue of dependency, which was an issue that the judge found had not been made out. Neither ground formulated any challenge to his core finding that the appellants met the alternative requirement of regulation 8(2)(b) to be a member of the EEA sponsor's household. Mr Walker said that he was not making an application to amend the grounds of appeal. He would rely on the grounds as drafted and did not intend to make any further submissions. In light of Mr Walker's indication I found that it was not necessary to hear from the sponsor and dismissed the Secretary of State's appeal.

### **Decision and reasons**

7. The Secretary of State did not attend the First-tier Tribunal appeal hearing. Nor, it seems, did the representative who drafted the grounds of appeal pay much attention to the reasons given by the judge for allowing the appeal. The grounds of appeal are poorly drafted. They quote the decision inaccurately and in places are grammatically incorrect and/or incoherent. In my view permission to appeal should never have been granted by the First-tier Tribunal. The grant of permission did not explain how or why such poorly drafted grounds could possibly be arguable.

8. The first ground amounts to nothing more than a general statement of disagreement with a point that had already been found not to be made out by the appellants and could not have made any material difference to the outcome of the appeal. The second ground is incoherent, but again appears to focus on the issue of dependency. Nowhere in the grounds is any challenge mounted to the judge's reasons for finding that the

appellants met the alternative requirement to be a member of the sponsor's household.

9. For the reasons given above I conclude that the grounds of appeal fail to identify any error of law in the First-tier Tribunal decision that would have made any material difference to the outcome of the appeal.

## DECISION

The grounds fail to identify an error of law in the making of the First-tier Tribunal decision

The First-tier Tribunal decision shall stand

Signed M.Canavan Date 24 August 2022  
Upper Tribunal Judge Canavan

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### **NOTIFICATION OF APPEAL RIGHTS**

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email