



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-002741
UI-2022-002742
UI-2022-002743
First-tier Tribunal No:
EA/02426/2021
EA/02427/2021
EA/02428/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 23 April 2023

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

MRS MARCELA DA SILVA GUIMARAES
MR TIAGO ALEXANDRE DA SILVA
MASTER MURILO AUGUSTO GUIMARAES DA SILVA
(NO ANONYMITY ORDER MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Islam, instructed by Bright Legal Solicitors
For the Respondent: Mr C Williams, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 2 March 2023

DECISION AND REASONS

Background

1. The appellants are nationals of Brazil. The first and second appellants are a married couple and the third appellant is their son. On 9 November 2020 they applied for family permits as extended family members of Mr Mateus Augusto Da Silva Guimaraes, the brother of the first appellant, under Regulation 8(2) & 36 of the Immigration (European Economic Area) Regulations 2016 ("the 2016 Regulations").

2. The application was refused by the respondent on 4 January 2021. The respondent concluded, *inter alia*, that the appellants had had failed to provide evidence to show that they were dependent upon and / or residing with Mr Mateus Augusto Da Silva Guimaraes prior to entering the United Kingdom and that since they entered the United Kingdom, they have continued to be dependent upon their sponsor.
3. The appellants' appeal against that decision was dismissed by First-tier Tribunal Judge Roots for reasons set out in a decision promulgated on 23 March 2022. The appellant's claim Judge Roots erred in his understanding that 'membership of the sponsor's household' did not form any part of the appellants claim. The appellant also claim Judge Roots erred in his conclusion that the appellants have not established that they are dependent upon their sponsor, in light of the evidence that they are all living together in the same household, and that they see each other and eat together, every day. They claim Judge Roots erred in concluding that there are significant issues with the evidence as to financial support from the sponsor and inconsistencies in the evidence before the tribunal. The appellants maintain that they needed, and continue to need the support of their sponsor to meet their essential needs and have remained part of their sponsor's household.
4. Permission to appeal was granted by First-tier Tribunal Judge Boyes on 16 May 2022. Judge Boyes said:

"The grounds assert that the Judge erred in the assessment of what constitutes dependency and the relevance of membership of the same household. The Learned Judge, it appears, held that as the membership of the same household issue was not contained in the skeleton argument, it was not relevant."

The issues in the appeal before me

5. At the outset, Mr Islam confirmed there are two issues for me to consider. The first is the assessment by Judge Roots as to whether the appellants are members of the same household as their sponsor, when there was no doubt that as at the date of the hearing before the First-tier Tribunal, the appellants' and sponsor all lived together in the same household. The second issue is whether Judge Roots applied the correct test of 'dependency'. Mr Islam helpfully summarised the appellant's submissions before me in this way:
 - a. The appellants' claim they were dependent on the sponsor when they lived in Brazil. They accept they were not members of the sponsor's household when they previously lived in Brazil.
 - b. The appellants' claim that since their arrival in the UK they have continued to be dependent on the sponsor. Alternatively, they have been members of their sponsor's household since their arrival in the UK.

- c. The appellants accept there was a lack of evidence before the First-tier Tribunal to substantiate their claims that they received financial support from their sponsor to meet their essential living needs.
6. Mr Islam, quite properly in my judgment, acknowledged the difficulties faced by the appellants' in seeking to persuade me that there is a material error of law in the decision of the First-tier Tribunal given the paucity of the evidence before the Tribunal and the findings made by Judge Roots.
7. Having heard from Mr Islam I did not call upon Mr Williams to respond.

Error of Law decision

8. I informed the parties that I am satisfied that Judge Roots reached a decision that was open to him on the evidence that was before the Tribunal and that I dismiss the appeal before me. I informed the parties that I will set out my reasons for dismissing the appeal in writing, and this I now do.

My reasons for dismissing the appeal.

9. I have had regard to the decision reached by Judge Roots and his reasons for dismissing the appeal. In summary, the two issues in the appeal before the First-tier Tribunal were identified in the appellants' skeleton argument dated 4 March 2022. The first was whether the appellants are related to the sponsor as claimed. The second is whether there is evidence that the appellants were dependent on the sponsor before coming to the UK and since their arrival in the UK. In paragraph [3B] of the skeleton argument, the appellants claimed there is evidence before the Tribunal 'of utility bills in their respective names confirming that they all live together as a family in the same household'.
10. Judge Roots referred to the relevant parts of Regulation 8 of the 2016 Regulations at paragraph [3] of his decision. The appellants must first establish that they are the relatives of an EEA national. Provided the relationship is established, there are two separate routes to qualification. The appellants must demonstrate they were either: (i) dependent on the EEA national in a country other than the UK, or (ii) a member of the EEA national's household in a country other than the UK. Although 'dependence' and 'membership of the EEA national's household' are alternative routes, there is often likely to be some overlap in the evidence.
11. Judge Roots heard evidence from the first and second appellants, and their sponsor. Judge Roots was satisfied that the appellants' are related to the sponsor as claimed.
12. Judge Roots noted at paragraph [16] of his decision that the question whether the appellants were members of the sponsor's household in Brazil was not identified as an issue in the appellants skeleton argument. Nevertheless, at paragraph [17], he noted the appellants were not members of the sponsor's household in Brazil. That, Mr Islam accepts, is

correct. Judge Roots accepted that the appellants are living as part of the sponsor's household as at the date of the hearing.

13. At paragraph [18] Judge Roots correctly went on to say that the question is whether the support from the sponsor is necessary to enable the appellants to meet their essential living needs. Judge Roots did not accept that the appellants' have established that the sponsor has provided significant support to them either in Brazil or in the UK. He referred to the paucity of evidence relating to the financial circumstances of the appellants and rejected the claim that the appellants were dependent upon their sponsor to meet their essential living needs.
14. As Mr Islam quite properly acknowledged the fact that the appellants do not claim to have been members of the sponsors household when they were living in Brazil, taken together with the judge's finding that they were not dependent on their sponsor to meet their essential living needs when they were in Brazil, poses significant difficulties for the appellants. In effect, they are unable to establish past dependency or membership of the EEA national's household. Their claim essentially fails at the first hurdle. Judge Roots accepted at [17] that the appellants are living as part of the sponsor's household at the date of the hearing, and at [34] that "accommodation is an essential living need", but without establishing past dependency or membership of the EEA national's household, their appeal was bound to fail.
15. In Lim - ECO (Manila) [2015] EWCA Civ 1383 Lord Justice Elias, with whom McCombe LJ, and Ryder LJ agreed, said, at [25], it is not enough simply to show that financial support is in fact provided by the EU citizen to a family member. The family member must need the support from his or her relatives in order to meet his or her basic needs. The correct test was set out at paragraph [32] of the decision. The critical question is whether the individual is in fact in a position to support themselves. That is a simple matter of fact. If they can support themselves, there is no dependency, even if he/she is given financial material support by the EU citizen. Those additional resources are not necessary to enable them to meet their basic needs. Whether the appellants were dependent on the sponsor was therefore a factual question for the judge to assess on the evidence before the Tribunal. The burden rested upon the appellants.
16. It was in my judgment open to Judge Roots to have concerns about the evidence before the Tribunal for the reasons set out in his decision. In the absence of credible evidence to establish that the appellants were dependant upon their sponsor before their arrival in the UK, it was open to the Judge to find, as he did at [37], that the appellants have not established that they need support from the sponsor to meet their essential living needs and to dismiss the appeal.
17. There is in my judgment no material error of law capable of affecting the outcome of the appeal. It follows that I dismiss the appeal.

NOTICE OF DECISION

18. The appeal is dismissed. The decision of First-tier Tribunal Judge Roots stands.

V. Mandalia

Judge of the Upper Tribunal
Immigration and Asylum Chamber

2 March 2023