



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-006169
UI/2022/006170
First-tier Tribunal No:
EA/02699/2022
EA/02799/2022

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 26 April 2023**

Before

**UPPER TRIBUNAL JUDGE RIMINGTON
DEPUTY UPPER TRIBUNAL JUDGE SAFFER**

Between

**HUAWA GWANDU ABUBAKAR
JUMY AMANAH AKUDO CHUKWUNEKE
(NO ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Pullinger of Counsel

For the Respondent: Mr Walker, Senior Home Office Presenting Officer

Heard at Field House on 22 March 2023

DECISION AND REASONS

1. The First Appellant was born on 12 October 1986 and her daughter, the Second Appellant, on 18 February 2020. They are citizens of Nigeria. They appealed against the decision of the Respondent dated 9 February 2022, refusing them EEA Family Permits as direct family members of an EEA national from Germany who it was asserted is the First Appellant's mother and Second Appellant's grandmother. The relationship issue is no longer in dispute and accordingly we will not refer to this again.

2. Mr Walker accepted that the Judge had materially erred in requiring the Second Appellant to establish dependency on her Sponsor as she was under 21. He conceded that in relation to the Second Appellant, the decision by Judge Beg should be set aside and a fresh decision made allowing her appeal. We agree and accordingly we will not refer to this again.
3. The Respondent refused the applications as there was no *“evidence to prove you are dependent on a relevant EEA or Swiss citizen”* and there was a lack *“of evidence to show that you cannot meet your essential living needs without financial or other material support from the relevant EEA or Swiss citizen... and that you are being supported by the relevant EEA or Swiss citizen.”*
4. They appeal against the decision of First-tier Tribunal Beg, promulgated on 14 September 2022, dismissing the appeal.

Permission to appeal

5. Permission was granted by First-tier Tribunal Judge Dixon on 15 November 2022 who stated:
 - “2. The grounds argue that the Judge has erred in various ways ...
 3. The grounds are arguable for the reasons stated in the grounds.”

The First-tier Tribunal decision of 14 September 2022

6. Judge Beg made the following findings:

“17. In considering the issue of financial dependency, I take into account the pay slips of the sponsor in the respondent's bundle. I also take into account her Santander Bank and NatWest bank accounts and money transfer receipts in the appellant's supplementary bundle.

18. In **Reyes v Sweden [2015] EUECJ C-423/12 1283** paragraph 25 the court held that it is not enough simply to show that financial support is in fact provided by the EU citizen to the family member. The court referred to **Centre Public d'Aide Sociale De Courcelles v Leban (case 316/85) [1987] ECR 2811** where the court referred to the existence of a situation of real dependency which must be established. At paragraph 22 of that case the court referred to the need for material support in the state of origin of the descendent who is not in a position to support himself. The court also held at paragraph 24 of that case that the financial support must be necessary for the putative use dependant to support himself in the stage of origin.

19. The sponsor gave evidence that she obtained German nationality in 2007 or 2008. There is no credible documentary evidence before me that she supported her daughter after her daughter returned from Germany to Nigeria. She said that her daughter came to live with in Germany when she was 11 or 12 years old and she stayed there for two or three years before she returned to Nigeria.

20. The sponsor gave evidence that she came to the United Kingdom in 2017 and began supporting her daughter. She said that she initially sent funds to her daughter through Western Union money transfer; the funds were sent through a friend called Anam who physically took the money to the office of Western Union to send to Nigeria on the sponsor's behalf. The funds were not directly sent to the first appellant but to her maternal aunt.

21. An affidavit from Chika Esther Chinyelu, dated 16 September 2021 states that she is the sponsor's sister and receives funds from the sponsor on a monthly basis for the upkeep of her daughter. The funds are received by her through her UBA bank account. The letter from MA Consultants dated 1 October 2021, states that funds are sent through Ms Chika as the first appellant does not have a bank account.

22. In evidence, the sponsor did not state that she sent funds directly to her sister's UBA bank account. She said it was her friend Anam who transferred money into her sister's bank account because he has online banking. There is no letter or witness statement from him regarding the role that he has played in sending funds to the sponsor's sister on her behalf. Ms Chinyelu, the sponsor's sister has not provided a copy of her UBA bank account.

23. The receipts for GT bank dated 2020-2022 are in the supplementary appellant's bundle. The beneficiary is the sponsor's sister. The receipts dated 29 August 2020 and 27 February 2021 have the words "mama" written on them. In evidence, the sponsor said that is because those funds were sent to her mother. I find that there is no clear credible evidence that the funds sent to the sponsor's sister by a third party were sent on the sponsor's behalf and were intended to the benefit of the appellants. The sponsor has not provided any receipts from Western Union.

24. In evidence the sponsor said that she only sends her mother money from time to time and that she sends money to her daughter amounting to between £150 and £300. She said she did not send money every month. The funds are used by the first appellant to pay for her rent, any outgoings and food. She said the appellants live in their own accommodation and do not live with the sponsor's mother. The sponsor also gave evidence that her mother's children from another marriage also provide some assistance to her.

25. The first appellant has not provided any evidence of her rent and outgoings. The sponsor also gave evidence that her daughter has never worked. She said that her other daughter who lives in Germany and is now in her 30s has never worked. There is no documentary evidence that she is being supported by the state. I do not find it credible that the sponsor's daughter in Germany has never worked and does not contribute to sending funds to her sister in Nigeria. She is a single person without dependents.

26. I find that the receipts provided do not provide cogent evidence that the funds sent to the sponsor's sister were sent on the sponsor's behalf and were intended for the benefit of the appellants. Even if I accept, that some funds were sent indirectly by the sponsor to the

appellants, they are limited. The sponsor gave evidence that she is not able to send funds every month to her daughter.

27. I do not find that the sponsor is the sole source of income for the appellants. I bear in mind that she gave evidence that she did not start sending them any funds until 2017 on arrival in United Kingdom despite the fact that she moved to Germany in 1999 and obtained German citizenship in 2007/2008. In taking the evidence as a whole, I do not find that there is in existence a situation of real dependency. Consequently, I do not find that the appellants are financially dependent upon the sponsor to meet their essential living needs. The appellants are not entitled to a family permit under the EU settlement scheme.”

The Appellants’ grounds seeking permission to appeal

7. The grounds asserted that:

“8. The Respondent’s guidance does not set out a no minimum threshold of funds that need to be shown to establish dependency. In addition, the money received from the Sponsor does not need to be the Appellants’ only source of income - the guidance states “in whole or in part”, meaning that even if the First Appellant received money from her sister in Germany, this does not prevent her from being dependent upon the Sponsor for her essential living needs. FTJ Beg at 26 has erred by relying on criticisms relating to the First Appellant’s sister and whether she does or does not work and support the Appellants [para 25]. The Judge essentially found it not credible that a single person living in Germany who *does not* work would not financially contribute to the Appellants and erred in concluding that “*the Sponsor is not the sole source of income for the appellants*” [27]. In any event, the Sponsor does not **need** to be the sole source of income for the Appellants to show dependency on their Sponsor.

9. FTJ Beg also errs in relying on the lack of evidence to establish dependency between 2007/08 and 2017 at paragraph 19. The First Appellant is a joining Family Member and only needed to establish dependency on the date of application i.e. 30 June 2021. Additionally, the First Appellant lived with the Sponsor in Germany, and as such has established prior member of the same household. As noted in *Dauhoo* [2012] UKUT 79 (IAC) the First Appellant meets the fourth example: prior membership of a household and present dependency.

10. The Appellants provided money transfer receipts in their supplementary bundle as well as the Sponsor’s NatWest and Santander bank accounts to establish that she had the funds to support the Appellants. The Sponsor’s pay slips were included in the Respondent’s bundle. The Sponsor’s evidence was that her other daughter does not work, the First Appellant does not work, and that funds were initially sent through Western Union to a friend called Anam who collected the money to send to Nigeria to the First Appellant, through a maternal aunt, as the First Appellant does not have a bank account. An affidavit from Chika Esther Chinyelu dated 16 September 2021 was included in the bundle; no criticisms have been raised in respect of the affidavit or the reliability of it’s content. The Sponsor’s evidence was that the money varied between £150 to £300 and are used for rent and food -

both of which are essential needs. The Appellants do not live with the Sponsor's mother/First Appellant's grandmother - though the Sponsor also sends money to her sister for the mother's use, separate to the sums sent to the Appellants. It is submitted that the Sponsor's oral evidence ought to have been afforded more weight in light of the acceptance of their biological relationship, previous membership of the household, and in light of the documentary evidence and affidavits provided.

11. The Judge stated at [26] that even if she accepted some funds were sent indirectly by the sponsor to the appellants, they are limited, as the Sponsor is not able to send money every month. The frequency of funds is arguably immaterial; what is required by Chowhudry (extended family members dependency) [2022] UKUT 188 (iac) is stability, and it is submitted that the Sponsors send money when she can afford to and those sums are sufficient to support the Appellants for several months given the difference in the cost of living between Nigeria and the UK. In Rahman [2013] QB249 (C-83/11) the Court held

35. In light of the foregoing, the answer to the third and fourth question referred is that, in order to fall within the category, referred to in art.3(2) of Directive 2004/38, of family members who are 'dependents' of a Union citizen, **the situation of dependence must exist in the country from which the family member concerned comes, at the very least at the time when he applies to join the Union citizen on whom he is dependent.** (emphasis added)

12. Rahman goes on at paragraph 32 to suggest that at least one facet of stable family ties, is economic dependence. In light of that, combined with Respondent's guidance, the First Appellant only needed to establish that she was dependent on the Sponsor at the time of application. Or in the alternative, that the First Appellant was dependent continuously on the Sponsor and continues to be dependent [Chowdhury, 30] and there has not been a break in their dependency - the Appellants have been continuously supported by the Sponsor since 2017 (FTJ Beg noted a gap before 2017 but arguably this is not detrimental to the first appellants as the sponsor did not enter the UK until 2017)."

Rule 24 notice

8. There was no rule 24 notice.

Oral submissions

9. Mr Pullinger noted that neither he nor Mr Walker had the supplementary bundle submitted by the Appellants referred to by Judge Beg in paragraph 17. Nor did we. It was accepted that this was not problematic in considering whether a material error of law had been made.

10. Mr Pullinger submitted that there was no requirement for the First Appellant to be wholly reliant on the funds provided. There can be gaps in the provision. There is no minimum funding threshold. There only needs to be stability of funding. It is unclear why evidence of dependency from the sister in Nigeria was rejected.

11. There is a discrepancy between paragraph 21 and 23 of Judge Beg's decision. That is because in paragraph 21 the evidence was that funds were sent from the Sponsor to Ms Chinyelu for the First Appellant's upkeep through her UBA bank account, and MA Consultants wrote that was because the First Appellant did not have a bank account. However at paragraph 23 the Judge found that there is no clear credible evidence that the funds sent to Ms Chinyelu were sent on the Sponsor's behalf and were intended for the benefit of the First Appellant.
12. It is not clear why unchallenged evidence was rejected. Judge Beg had not given reasons why dependency was not accepted.
13. Mr. Walker accepted there was no requirement for sole dependency but he submitted that a full financial picture was required but this was not fully before the Judge.

Discussion

14. There is no material error of law regarding the issue of dependency in relation to the First Appellant for these reasons.
15. The grounds correctly assert that there is no requirement for the Sponsor to be the sole source of income, that stability rather than frequency of funding is what is required, and that dependency at the date of application is all that is needed to be shown when combined with prior membership of a household. It is not suggested that there was prior membership of a household.
16. The Judge found ([19]) that there was no credible documentary evidence that the Sponsor supported the First Appellant after the First Appellant returned from Germany to Nigeria. Her summary of the evidence regarding that issue appear in the subsequent paragraphs. The Judge was entitled to find that it was not credible there was no financial support from the relative in Germany.
17. Turning to the evidence in the affidavit of Ms Chinyeku, the judge found there was a contradiction between her evidence and that of the sponsor. The Judge noted ([22]) the discrepancy in the transmission chain of funds, namely whether it was directly through Ms Chinyeku ([21]) or it had the additional involvement of Anam ([20]). The Judge noted the lack of evidence from Anam and lack of Ms Chinyelu's UBA bank statement. The weight to attach to each piece of evidence, including the Sponsor's oral evidence, was a matter for the Judge. Her findings on that were open to her on the evidence. On that ground alone the Judge was entitled to dismiss the appeal as if the transmission chain of funds had not been established, it could not be said there was dependency.
18. Moreover, the refusal letter asserted that evidence had not been provided to show the First Appellant could not meet her essential living needs. The Judge noted at [25] that the First Appellant had had not

provided evidence of rent and outgoings. The Appellant had therefore failed to establish that even if funds had been sent by her Sponsor and received by her, that they were for essential living needs as there is no cogent evidence of what those needs are. There was no comparative analysis of income needs in Nigeria or the cost of essential living needs. We conclude the judge adequately reasoned why she did not accept dependency on the evidence provided.

Notice of Decision

19. The Judge did not make a material error of law regarding the First Appellant.
20. The Judge did make a material error of law regarding the Second Appellant. We set aside that decision. We remake the decision and allow the appeal of the Second Appellant.

Laurence Saffer

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

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.