IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-001525
First-tier Tribunal Nos:
EA/50617/2021
IA/03031/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 02 February 2023

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

ERNEST KOFI AMOAH
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr H Kannangara, Counsel, instructed by R Spio & Co Solicitors
For the Respondent: Ms S Lecointe, Senior Home Office Presenting Officer

Heard at Field House on 29 April 2022

DECISION AND REASONS

1. This is an appeal by a citizen of Ghana against a decision of the First-tier Tribunal dismissing his appeal against a decision of the respondent under the Immigration (European Economic Area) Regulations 2016. He had applied for an EEA family permit to join his sister, a German national, as an extended family member.

2. The grounds of appeal to the Upper Tribunal make two points. There is said to be unfairness or procedural irregularity in refusing to admit evidence that was not served in accordance with directions and refusing to adjourn, and also that the judge failed to direct himself correctly in the assessment of essential needs.

3. According to the grounds:

> "The FtTJ fails to consider that essential needs is a test of material needs which turns on the facts of each case. There is no established general position with respect to essential needs. The FtTJ finding that transportation, food and clothing does not come within essential needs is clearly inconsistent with case law".

4. I have considered a Rule 24 notice signed by Mr T Melvin, Senior Home Office Presenting Officer opposing the appeal.

5. In order to make sense of this appeal I need to look rather carefully at what the First-tier Tribunal actually decided.

6. The judge noted, correctly, that the application was considered under Regulation 8 of the 2016 Regulations and that the appellant was treated as an extended family member of an EEA national.

7. The respondent accepted that the appellant and sponsor had lived together in Germany with their mother after moving to Germany from Ghana. The respondent considered that there were periods then when the appellant was dependent on his mother rather than on his sponsor. It was the appellant's case, set out in the application form, that the sponsor moved from Germany to the United Kingdom in 2005 and that the appellant followed in August 2016. It was the respondent's view that that long gap indicated that the relationship was not one of dependency. Other points were noted including the appellant's claim that he received £25 a week from his sponsor before he came to the United Kingdom but had produced no independent evidence to support that.

8. It was the appellant's case that since he arrived in the United Kingdom he had received £100 a month from the sponsor but the claim was lacking in detail. In particular, there were no dates to support the claim of payment before 6 December 2019.

9. The respondent did not accept there was emotional dependency. The time that they had spent apart was too much for that.

10. The judge was asked to admit further evidence. He refused to do that and explained why he would not admit further evidence. The judge then refused to adjourn the hearing.

11. As far as I can see I have not been given a copy of the further evidence upon which the appellant sought to rely. However, it did relate in the most general terms to the payment of money and the judge said:

> "I noted that the sponsor says in her statement that she would hand money to the appellant when she visited the family in Germany and at other times she would send money for him if she knew someone who was travelling there. I did not consider that the introduction of a third party to confirm the receipt of this money by the appellant would take the matter any further".

12. The judge noted that the appellant referred to his sister supporting him, providing him with pocket money and buying him clothes and him spending

weekends with his sister until they left Germany. The judge noted evidence that the appellant's sister sent money with friends who travelled from Germany.

13. In 2015 the appellant had a chance to get work in Belgium and his sister sent him money to get to Belgium and arrange for his stay and later his sister paid for him to come to the United Kingdom.

14. The appellant gave evidence and was cross-examined.

15. The sponsor gave supporting evidence. The judge noted that the sponsor said that whenever she travelled to Germany she bought clothes for the appellant and whenever she knew someone going to Germany she asked that person to take money for him as a gift from her.

16. The judge also noted a well-known passage from **Lim v ECO Manila [2015] EWCA Civ 1383** which states:

> "In my judgment, the critical question is whether the claimant is in fact in a position to support himself or not, and Reyes now makes that clear beyond doubt, in my view. That is a simple matter of fact. If he can support himself, there is no dependency, even if he is given financial material support by the EU citizen. Those additional resources are not necessary to enable him to meet his basic needs. If, on the other hand, he cannot support himself from his own resources, the court will not ask why that is the case, save perhaps where there is an abuse of rights. The fact that he chooses not to get a job and become self-supporting is irrelevant".

17. The judge noted that there was no breakdown of the appellant's expenses before he came to the UK, and no documentary evidence to back up the claim that he was supported in Germany by the sponsor. It was the appellant's case that he was emotionally dependent and that was not enough but was a relevant factor. There had been little challenge to the evidence. However, the appellant's sister had been invited to comment on there being very little evidence about how she had supported him before he came to the United Kingdom. The appellant's sister said that she did not know that such evidence would be needed. The judge noted that it was accepted by the respondent that money had been given since December 2019 because that was supported by the sponsor's bank account. The judge accepted that the appellant had been dependent on his sister since then. The judge then applied his mind directly to whether the appellant was dependent on her before coming to the United Kingdom. The judge looked at the application form, found that the appellant had indicated that he was a member of his sister's household before he came to the UK but had not claimed there that he was dependent on her. Under the heading "Income" he had ticked a box to indicate that he had regularly received money from the sponsor, saying about £25 a week. The appellant was asked to give details on another part of the form of regular income before coming to the UK and he mentions living with his sister's friend and being provided for by his sister's money while he was there but the judge found that must relate to the time in Belgium rather than when she was allegedly supporting him in Germany. Under the heading "Accommodation" the appellant had said he had lived with his sister before coming to the UK but that only makes sense if it was taken to mean when they all lived in Germany. The appellant did say that the sponsor was not the person mainly responsible for the paying of that accommodation. Under the heading "Outgoings and Expenditure", where the form asks the appellant to list his regular outgoings and expenditure

before coming to the UK and to give details of any person who helped, the appellant had only indicated that all his expenses were paid by his sister while he was living in Belgium with her friend. The judge noted that neither the appellant nor his sister had taken advantage of the opportunity to state unequivocally in their witness statement that the appellant's essential daily living needs were paid for by the sponsor and they had not made the claim in oral evidence.

18. At paragraph 31 the judge said:

> "It is not credible that the sponsor supported the appellant (after she left Germany in 2005) to meet his essential daily needs by means of payments to him when she visited Germany or when people she knew visited Germany. There is no evidence of the frequency of such visits or the amounts handed over. It is not credible that she supported the appellant before she left Germany since the examples given (pocket money, clothing and travel money) do not relate to his essential daily living needs. I take into account that an applicant does not need to be 100% dependent on a sponsor to succeed under the 2016 Regulations, but in this case I find there is insufficient evidence to show that the appellant was at least partly dependent on the sponsor for his essential daily living needs. That finding applies not only to the period when he was living in Germany, but also to the three months when he was living with a friend of the sponsor in Belgium; the sponsor does not say that she took money to him in Belgium or sent money via friends, and if she had used bank transfers or money transfers such as Western Union that evidence would still be available now and could have been produced. As with the period when he lived in Germany, I find that the sponsor did no more than provide the appellant with discretionary spending money. The evidence falls far short of establishing on balance that the appellant was dependent on the sponsor either in Germany or in Belgium".

19. Before me Mr Kannangara was cautious to remind me not to lose sight of the second ground of appeal, namely that the judge had misdirected himself. This is not made out. The judge has not excluded the possibility of money for travel, food or clothing being part of dependency. Rather, the judge has evaluated the evidence as a whole and has found that there is credible evidence of some payments sometimes but not evidence of payment with the kind of frequency that would be necessary on the kind of sums talked about to establish dependency. That was plainly open to the judge.

20. I now turn to the possibly more dominating question of whether the decision to exclude the evidence was fair and the refusal to adjourn was fair.

21. The fundamental problem with the appellant's case here is a lack of detail about what the additional witness was ever going to say. The judge is not criticised for summarising it as some evidence of some payments being made and the judge has accepted that some payments were made. I do find it slightly concerning that the judge had so much to say about the failure to comply with directions and the inconvenience that an adjournment would be to the organisation of a list. These are not irrelevant but they do not determine the question of whether refusing to adjourn the hearing was fair. However, they are very relevant when it is appreciated that the additional evidence that was going to be produced, as far as it is possible to tell on the skimpy evidence available, was of peripheral value. Once that is appreciated then the rest makes sense. There is no obvious

unfairness. The judge was clearly asking himself whether it was fair to admit the evidence and fair to adjourn and concluded for sensible reasons that were given that it was not.

22. There is no error of law here. The judge made a proper decision on the material that was before him and gave proper reasons for not allowing material of unknown value to be added on the morning of the hearing or to give even more time for it to be produced formally on a later occasion.

23. There is no material error of law here and I dismiss the appellant's appeal.

Notice of Decision

24. The appellant's appeal is dismissed.

Jonathan Perkins

Judge of the Upper Tribunal
Immigration and Asylum Chamber

23 January 2023