



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003966
UI-2022-003967
First-tier Tribunal No: EA/51170/2021
EA/51169/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 28 May 2023

Before:

UPPER TRIBUNAL JUDGE GILL

Between

Vera Larbi Tetteh
Bridget Oppong
(ANONYMITY ORDER NOT MADE)

First Appellant
Second Appellant

And

The Entry Clearance Officer

Respondent

Representation:

For the Appellants: Ms S Iqbal, instructed by Paul John & Co Solicitors.
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

Heard at Field House on 17 May 2023

DECISION AND REASONS

1. The appellants are nationals of Ghana, born (respectively) on 25 June 1992 and 22 January 1994. They appeal against a decision of Judge of the First-tier Tribunal S Meah (hereafter the “judge”) promulgated on 7 April 2022 following a hearing on 31 March 2022 held via a live link (CVP) by which the judge dismissed their appeals against the decisions of the respondent dated (in the case of the first appellant) 19 February 2021 and (in the case of the second appellant) 28 March 2021 to refuse their applications dated (respectively) 8 February 2021 and 18 December 2020 for family permits in order to join their maternal aunt, Ms Charlotte Gyiamah (hereafter the “sponsor”), a Dutch national exercising Treaty rights in the United Kingdom.
2. The appellants’ appeals were brought under regulation 36 of the Immigration (European Economic Area) Regulations 2016 (the “2016 EEA Regulations”) by virtue

of the transitional appeal rights provided for in the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations (SI 2020 1309) (specifically, regulation 82 read together with paras 3, 5 and 6 of Schedule 3).

3. The judge accepted that the appellants were related as claimed to the sponsor.
4. Ms Iqbal confirmed that she did not pursue any of the grounds that had been lodged but instead relied only upon the issue raised by Upper Tribunal Judge Kebede in granting permission to appeal.
5. Accordingly, the issue in the instant appeal is whether the judge materially erred in law in reaching his finding that the appellants' were not dependent on the sponsor "*at the material time*" which, according to para 38 of the judge's decision, he understood to be "*before the sponsor came to live in the UK in 2003*".
6. The appeals of the appellants were heard by the judge together with the appeal of their cousin, Florence Tetteh, the sponsor's daughter (EA/51171/2021). She made her application for a family permit on 19 January 2021. The judge accepted that Florence was the sponsor's daughter and that she was dependent upon the sponsor. He therefore allowed her appeal.
7. At the hearing before me, Mr Tufan accepted that the material time for deciding whether the appellants were dependent upon the sponsor was the date of their respective applications for family permits, albeit that all the evidence before the judge fell to be considered in order to decide whether the appellants were dependent on the sponsor as at the dates of their applications. Mr Tufan stated that he accepted that the appellants' appeals fell to be allowed.
8. I indicated that I was minded to set aside the judge's decision to dismiss the appellants' appeals and re-make the decision on their appeals by allowing their appeals. Mr Tufan said that he did not wish to persuade me to do otherwise.
9. I am satisfied that the judge did err in law in concluding that the appellants had to show that they were dependent on the sponsor before she came to the United Kingdom. As Mr Tufan accepted at the hearing before me, the material time for deciding whether the appellants were dependent upon the sponsor was the date of their respective applications for a family permit. I am satisfied that the error was material to the outcome, given that the judge allowed the appeal of Florence and that the appellants relied upon the same evidence in support of their appeals.
10. I therefore set aside the decision of the judge to dismiss the appeals of the appellants.
11. I proceed to re-make the decisions on their appeals.
12. The judge did not make any adverse comments on the credibility of the sponsor or the reliability of any of the documentation provided in order to establish that Florence was dependent upon the sponsor. The evidence before the judge was that the appellants and Florence live in the same household and rely upon the same remittances from the sponsor. Accordingly, given that the judge accepted dependency in the case of Florence, there is no reason to doubt that the appellants

were also dependent upon the sponsor. Indeed, on the same evidence and for the reasons given by the judge in respect of Florence, I am satisfied, on the balance of probabilities, that the appellants were also dependent upon the sponsor for their essential needs as at the dates of their respective applications for family permits.

13. The appellants have therefore established that they are extended family members under regulation 8 of the 2016 EEA Regulations.

Decision

The making of the decision of the First-tier Tribunal involved the making of an error of law sufficient to require it to be set aside. The decision of the First-tier Tribunal to dismiss the appeals of the appellants is set aside.

I re-make the decisions in the appeals by allowing the appellants' appeals against the respondent's decisions.

Signed
Upper Tribunal Judge Gill

Date: 17 May 2023

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