



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-001999
UI-2022-002000
First-tier Tribunal No:
EA/04558/2021
EA/04561/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 09 July 2023

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

(1) Frank Owusu
(2) Kofi Kye Yeboah
(NO ANONYMITY DIRECTION MADE)

Appellants

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr S Kumar, Optimus Law

For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 4 July 2023

DECISION AND REASONS

1. The appellants are nationals of Ghana. On 16 December 2020 they applied for an EEA Family Permit to join their sponsor, Mrs Josephine Baah, in the United Kingdom as extended family members. The applications were refused by the respondent on 4 March 2021. The respondent was not satisfied the appellants are financially dependent on their EEA sponsor as claimed in accordance with Regulation 8 of the Immigration (European Economic Area) Regulations 2016 ("the 2016 Regulations").

2. The appellants' appeals against those decisions were dismissed by First-tier Tribunal Judge Chohan for reasons set out in a decision promulgated on 10 January 2022. The appellants claim Judge Chohan failed to consider material matters. They claim he failed to have regard to the income and expenditure breakdowns that had been provided and the numerous receipts for purchases made to meet the appellant's essential living needs covering a period of five years. The appellants claim the judge failed to consider the evidence of the sponsor set out in her witness statement, in which she confirmed the appellants have part-time and casual jobs only and rely upon her for their main income. She also confirmed that they had "less work in 2020-2021" because of the Covid pandemic. The appellant's claim that it does not follow from the fact that they work part-time, that they are not dependent on the sponsor.

3. Permission to appeal was granted by Upper Tribunal Judge Norton-Taylor on 28 September 2022. He said:

"... It is right that the judge referred to a holistic view of the evidence and that such evidence was "limited" as opposed to non-existent. However, there are several references to there being nothing to "suggest" relevant financial dependency, despite what appears to have been evidence which did "suggest" the contrary. A judge need not provide extensive reasons, or indeed reasons for the reasons. Having said that, it is arguable that in the present case the judge has failed to adequately explain why the appellants' financial circumstances were either not as were being claimed, or simply did not disclose relevant dependency."

4. Before me, Mr Kumar Adopt the grounds of appeal. My attention was drawn to the decision of the Court of Appeal in Latayan v SSHD [2020] EWCA Civ 191 in which Jackson LJ said:

"23. Dependency entails a situation of real dependence in which the family member, having regard to their financial and social conditions, is not in a position to support themselves and needs the material support of the Community national or his or her spouse or registered partner in order to meet their essential needs: *Jia v Migrationsverket Case C-1/05*; [2007] QB 545 at [37 and 42-43] and *Reyes v Migrationsverket Case C-423/12*; [2014] QB 1140 at [20-24]. As the Upper Tribunal noted in the unrelated case of *Reyes v SSHD (EEA Regs: dependency)* [2013] UKUT 00314 (IAC) , dependency is a question of fact. The Tribunal continued (in reliance on *Jia* and on the decision of this court in *SM (India) v Entry Clearance Officer (Mumbai)* [2009] EWCA (Civ) 1426):

"19. ... questions of dependency must not be reduced to a bare calculation of financial dependency but should be construed broadly to involve a holistic examination of a number of factors, including financial, physical and social conditions, so as to establish whether there is dependence that is genuine. The essential focus has to be on the nature of the relationship concerned and on whether it is one characterised by a situation of dependence based on an examination of all the factual circumstances, bearing in mind the underlying objective of maintaining the unity of the family."

Further, at [22]

"... Whilst it is for an appellant to discharge the burden of proof resting on him to show dependency, and this will normally require production of relevant documentary evidence, oral evidence can suffice if not found wanting. ..."

5. Mr Kumar submits the evidence of the appellants included a manuscript statement of the monthly income and expenditure of the appellants (*pages 16 - 19 of the appellants bundle*) and receipts supporting the appellants expenditure (*pages 50 - 68 of the appellants bundle*). There was also evidence before the Tribunal regarding payments sent to the appellants. Mr Kumar submits Judge Chohan does not refer to that evidence or engage with it in his decision. He submits Judge Chohan was required to conduct a holistic examination of a number of factors, including financial, physical and social conditions, so as to establish whether the appellants are dependent on the sponsor as they claim. Mr Kumar submits Judge Chohan failed to have adequate regard to the evidence of the sponsor that the appellants were not earning very much during the Covid pandemic and relied heavily upon the financial support provided by the sponsor. He submits that if the required holistic examination had been completed, it is likely that the outcome of the appeal would have been different.
6. In reply, Mr Bates submits the difficulty for Judge Chohan here was that there was inadequate evidence before the Tribunal regarding the income of the appellants and the extent to which they relied upon money received from the sponsor to meet their essential living needs. The income and expenditure breakdowns are vague and although some of the receipts provided by the appellant show what they spent money on, the receipts do not on their own establish that the appellants relied upon money sent by the sponsor to meet their essential living needs. Mr Bates refers to the bank statement at page 80 of the appellant's bundle that relates to an account held by Frank Owusu. The statement refers to cash deposits and withdrawals, but there is no further explanation. There was no evidence in the form of witness statements made by the appellants setting out their circumstances and the judge had to do the best he could on the very limited material before the Tribunal. Mr Bates submits that at paragraph [5] Judge Chohan properly identified the issue in the appeal. At paragraphs [6] and [7] he referred to the claims made by the appellants. Mr Bates submits Judge Chohan correctly directed himself as to the test at paragraph [8] and on the limited evidence before the Tribunal it was open to Judge Chohan to conclude the appellants have failed to discharge the burden that is upon them, that the money transferred by the sponsor is for the essential and basic needs of the appellants.

Decision

7. At paragraph [5] of his decision, Judge Chohan sets out the relevant part of Regulation 8 of the 2016 Regulations. Two issues arise. The first is whether the appellants are related to the sponsor as claimed. That was

not in issue in this appeal. The second is whether there is evidence that the appellants are dependent upon the EEA national. Judge Chohan had properly noted, at [3], that the only issue in the appeal was financial dependence.

8. Although Mr Kumar is right to refer to the decision of the Court of Appeal in Latayan v SSHD in which Jackson LJ said that questions of dependency must not be reduced to a bare calculation of financial dependency but should be construed broadly to involve a holistic examination of a number of factors, including financial, physical and social conditions, so as to establish whether there is dependence that is genuine, that is not the way in which the appellants claim was advanced before the First-tier Tribunal ("FtT"). At paragraph [5] of the appellants' skeleton argument before the FtT, the appellants claim was summarised in the following way:

"The Appellants submit they are dependent upon the Sponsor, who provides for their **essential needs**, like accommodation, maintenance, help with medical treatment, clothes, education, food etc. This has been done by sending money to the appellants by money transfers or in person when the sponsor visited or via visiting third parties."

9. The evidence before the Tribunal was limited to that contained in the appellants' bundle and included a witness statement signed by the sponsor, who attended the hearing of the appeal and gave oral evidence. In her witness statement she explains the appellants' circumstances in Ghana, confirming they have part-time and casual jobs only and that "*they had less work in 2020-21 because of the Covid pandemic*". The witness statement and oral evidence of the sponsor is addressed by Judge Chohan in paragraphs [6] and [7] of his judgment. He noted it is not disputed that the sponsor has been making money transfers to Ghana, but the issue is whether the appellants are actually financially dependent on the sponsor. The use of the words "*there is nothing to suggest*" by Judge Chohan in paragraphs [7] and [9] is perhaps an unfortunate phrase to adopt, but when the phrase is read in the context of what Judge Chohan said in those paragraphs as a whole, it is in my judgment clear that Judge Chohan was expressing his concern regarding the lack of evidence to establish that the appellants' are dependent upon the money transfers from the sponsor to meet their essential living costs.
10. 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.

11. The evidence before the FtT was extremely limited. There were, as Mr Kumar acknowledges, no witness statements from the appellants providing any explanation of their income and expenditure and the extent to which they rely upon their sponsor to meet their essential living needs or setting out the physical and social conditions in which they live so that they are dependent upon the sponsor. At pages 16 and 17 of the appellants' bundle there was a manuscript note of the second appellant's income and expenditure for September, October and November 2021. A similar note of the first appellant's income and expenditure for the same period was at pages 18 and 19 of the bundle. Their income fluctuates, no doubt because each of the appellants clearly have some income of their own. As far as their expenditure is concerned, again as Mr Kumar acknowledges before me, the evidence was limited. There were receipts issued by the 'Electricity Company of Ghana Ltd' at pages 50 to 56 of the appellants' bundle for April 2020, June 2020, February 2021, March 2021, June 2021, July 2021, and August 2021. Without any explanation in the evidence before the Tribunal, the 'customer' is Nana Gyasi, and not the appellants. There were also some other receipts, at pages 57 to 68 that include a taxi fare, and other purchases. Without going into a detailed analysis of that evidence, it is difficult to see how some of the expenditure could on any view, be considered to be for 'essential living needs'. At pages 80 and 81, there were bank statements showing credits and debits into savings accounts held by the appellants. There was no evidence before the FtT regarding the claimed drop in the appellants' income during the Covid pandemic. Although I accept there is no express reference in the decision of Judge Chohan to the evidence I have referred to above, at paragraphs [8] and [9] of his decision, Judge Chohan said:

“8. It is well established jurisprudence that an appellant must show that the financial support is needed for material support to meet their essential needs in their country of origin. It is not enough to show that financial support is provided by an EEA national to a family member; the family member must need that support to meet basic needs. In other words, there needs to exist a situation of real dependence. The appellants have failed to establish that.

9. On the facts and evidence of this case, it is apparent that the appellants are in employment, albeit part-time. The appellants are living in rent free accommodation. The picture put forward in respect of the appellants' circumstances is that they cannot survive without the financial support from the sponsor. However there is limited evidence in respect of the appellants' circumstances in Ghana. The evidence that has been presented suggests that they are in part-time employment and able to support themselves financially. There is nothing to suggest otherwise. Certainly, the evidence does not establish that the money transferred by the sponsor is for the essential and basic needs of the appellants. Perhaps more

importantly, there is nothing to suggest that there exists a situation of real dependence. The burden rests with the appellants, which they have failed to discharge.”

12. Judge Chohan plainly had the correct test in mind. It was in my judgment open to Judge Chohan to have concerns about the evidence before the Tribunal for the reasons set out in his decision. The duty to set out reasons for the decision reached is not a counsel of perfection. The purpose of the duty to give reasons, is in part, to enable the appellants to know why their appeal has been dismissed and to enable an appellate court or Tribunal to see what the reasons for the decision are, so that they can be examined in case there has been an error of approach. Having considered the decision of Judge Chohan as a whole, there is in my judgment no material error of law capable of affecting the outcome of the appeal.
13. It follows that I dismiss the appeal.

Notice of Decision

14. The appeal is dismissed.

V. Mandalia

Upper Tribunal Judge Mandalia

Judge of the Upper Tribunal
Immigration and Asylum Chamber

5 July 2023