



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-
002302

First-Tier Tribunal No:
EA/08747/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

6th December 2023

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

**ISSAC OWUSU OSEI
(NO ANONYMITY ORDER MADE)**

Appellant

and

THE ENTRY CLEARANCE OFFICER

Respondent

Heard at Field House on 22 November 2023

DECISION AND REASONS

Introduction

1. The appellant challenged the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision on 2 May 2021 to refuse him an EEA family permit. He is a citizen of Ghana. The appellant remains outside the UK.
2. For the reasons set out in this decision, I have come to the conclusion that this appeal must be dismissed.

First-tier Tribunal decision

3. The appeal was considered on the papers by the First-tier Tribunal, at the appellant's election. The First-tier Judge accepted, on the evidence before him, that the sponsor was indeed a Belgian citizen exercising Treaty rights in the UK.
4. The First-tier Judge was not satisfied as to the evidence of dependency. Although the appellant had been dependent on the sponsor for his essential needs in February 2020, when the application was made, the First-tier Judge was not satisfied on the evidence that he remained dependent at the date of decision or the date of hearing. There was no evidence of financial support beyond September 2020.
5. The First-tier Tribunal dismissed the appeal.

Upper Tribunal appeal

6. The appellant appealed to the Upper Tribunal. Upper Tribunal Judge Perkins granted permission on the basis that the appellant should have been put on notice that he was required to show continuing dependency: see *Reyes (EEA Regulations dependency)* [2013] UKUT 321 (IAC).
7. On 11 October 2022, the Secretary of State responded saying that she did not oppose the appellant's application for permission to appeal on the basis that the First-tier Judge took a point against the appellant that had not been raised in the refusal decision. She invited the Upper Tribunal to remit the appeal to the First-tier Tribunal for remaking.
8. It is common ground, therefore, that the First-tier Tribunal did materially err in law and both parties agree that this is a case where the decision of the First-tier Tribunal must be set aside and remade. As the appeal was decided on the papers, it is not necessary to remit it to the First-tier Tribunal. The Upper Tribunal can consider the appeal afresh, as it will have all the relevant material before it.
9. On 1 August 2023, I set aside the decision of the First-tier Tribunal, with no findings of fact or credibility preserved. I directed the appellant to file and serve any evidence that he is still dependent on his sponsor, together with further written submissions if so advised, and gave the respondent a right of reply if such evidence and/or submissions were served.

Procedural matters

10. **Mode of hearing.** The decision in this appeal is considered on the papers, having regard to the documents which were before the First-tier Judge and any new evidence produced by the appellant.

New evidence

11. The appellant did send in additional evidence. He sent a statutory declaration by himself, and a witness statement from the sponsor, together with the sponsor's Halifax bank statements for May, June and July 2023, and money transfer receipts from Mobile Money for £100 in May 2023, £35 in June 2023 and £50 in July 2023.
12. The appellant's statutory declaration dated 14 August 2023 asserts that his sponsor cousin, Ms Mary Opoku, 'remits sufficient money to me for my upkeep and maintenance' and that he is not working.
13. Ms Opoku's statement says that:

"I write to confirm that, the appellant, Isaac Owusu Osei is still a dependent [sic] on I, the EEA sponsor and that, I have still been providing him with all financial assistance for his upkeep and maintenance'."
14. The respondent did not exercise his right of reply.
15. That is the evidence, together with the evidence before the First-tier Tribunal, on which I must assess whether the appellant remains dependent on his EEA sponsor.

Conclusions

16. The evidence is insufficient. The appellant needed to show that he is financially dependent on his sponsor to meet his essential needs. No detail has been provided as to what his financial needs are in Ghana, or to what extent the sponsor's contributions for three months this year demonstrate dependency.
17. The evidence before me remains insufficient to establish that the appellant is dependent on the sponsor and I therefore dismiss the appeal.

Notice of Decision

18. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

I set aside the previous decision. I remake the decision by dismissing the appeal.

Judith A J C Gleeson
Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 22 November 2023