



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-005189

First-tier Tribunal No:
EA/14463/2021

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 21 July 2023**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

**Mr Curtis Osagie Ada
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr H Sarwar, Counsel instructed by Kays Solicitors
For the Respondent: Mr P Lawson, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 11 July 2023

DECISION AND REASONS

1. The appellant is a national of Nigeria. He arrived in the United Kingdom in January 2020 as a visitor. He has a wife and four children in Nigeria who live in the family home that the appellant inherited when his father passed away.
2. On 8 June 2021 the appellant made an application to the respondent under the EU Settlement Scheme. He claimed to be the dependent relative of a relevant EEA citizen, Manlibe Beatrice Wognin David, a half-sibling. The application was refused by the respondent for reasons set out

in a decision dated 3 October 2021. The respondent concluded the appellant had not provided sufficient evidence to confirm that he is a dependent relative of a relevant EEA citizen.

3. The respondent also considered whether the appellant meets the eligibility requirements for pre-settled status under the EU settlement scheme set out in Rule EU14 of Appendix EU. She said:

“...you have not provided sufficient evidence to confirm that you are a dependent relative of a relevant EEA citizen. Therefore, you do not meet the requirements for pre-settled status on this basis.”

4. The appellant’s appeal against that refusal was dismissed by First-tier Tribunal Judge Groom for reasons set out in her decision promulgated on 17 August 2022.

5. The appellant claims that at paragraph [26] of her decision, Judge Groom solely looked at the question of dependency by reference to financial dependence. However a ‘family member of a relevant EEA citizen’ is defined in Annex 1, *inter alia*, as follows:

“a person who does not meet the definition of ‘joining family member of a relevant sponsor’ in this table, and who has satisfied the Secretary of State, including by the required evidence of family relationship, that they are (and for the relevant period have been), or (as the case may be) for the relevant period (or at the relevant time) they were:

...

(e) the dependent relative, before the specified date, of a relevant EEA citizen (or of their spouse or civil partner, as described in subparagraph (a) above) and the dependency (or, as the case may be, their membership of the household or their strict need for personal care on serious health grounds) continues to exist at the date of application (or did so for the period of residence relied upon)” (*my emphasis*)

6. The appellant claims the failure to address whether the appellant was a member of the household before the specified date and at the date of application is material to the outcome of the appeal. The appellant claims there was substantial documentary evidence adduced of the appellant being a member of the sponsor’s household on 31st December 2020, and at the date of application on 8th June 2021. The appellant claims Judge Groom failed to assess any of the documents identified by the appellant relating to his membership of the sponsor’s household and the evidence presented is documentary evidence of cohabitation. If it was to be rejected, the Judge was required to set out her reasons for doing so. It was an issue that was at the heart of the appeal. Finally, the appellant claims Judge Groom irrationally rejected, at [26], the appellant’s claim that he was dependent prior to the specified date and at the date of application. The appellant claims the sum of £3,500 the appellant referred to in his visa application form would not have been sufficient to obviate the dependency.

7. Permission to appeal was granted by First-tier Tribunal Judge Gumsley on 11 October 2022. Judge Gumsley said:

“As to the substantive Grounds of Appeal, although the FtT Judge made adverse findings as to the credibility of the Appellant and his account, I am persuaded that it is arguable that the FtT Judge made a material error of law in failing to consider the issue as to membership of household adequately or at all, instead concentrating entirely upon dependency.”

The hearing before me

8. I was referred by the parties to the decision of the Upper Tribunal in Sohrab and Others (continued household membership) Pakistan [2022] UKUT 00157 (IAC), in which the Upper Tribunal held *inter alia*:

“To be a member of an EEA national’s household requires a sufficient degree of physical and relational proximity to the EEA national through living in the household of which the EEA national is the head, living together as a unit, with a common sense of belonging. There should be a genuine assumption of responsibility by the EEA national for the EFM. Questions of the commencement of the assumption of responsibility and the duration of dependency or household membership are relevant.”

9. Before me, Mr Sarwar adopted the grounds of appeal. He accepted grounds 1 and 2 of the grounds of appeal that focus upon the failure to address whether the appellant was a member of the household of the sponsor at the relevant times, and the failure to give adequate reasons can be taken together. By the third ground, the appellant claims that in any event, the finding made by Judge Groom at paragraph [26] of her decision is irrational.
10. Mr Sarwar referred to paragraphs [6] and [7] of the appellant’s witness statement dated 10 December 2021 in which he claims that the rent for the address at which he lives is paid by his sister, as are the bills and essentials such as a groceries and other necessities. That was supported by what is said by the sponsor in paragraphs [7] to [9] of her witness statement dated 10 December 2021. There were also other documents before the First-tier Tribunal that are identified in paragraph [13] of the appellant’s grounds of appeal. The documents confirm the appellant’s address as being the same as that of the sponsor, including bank statements, utility bills and other correspondence. There is evidence of the appellant and sponsor being jointly responsible for a debt to Severn Trent Water Ltd and evidence of other utility bills being the responsibility of the sponsor. Mr Sarwar submits there was evidence before the First-tier Tribunal which was plainly capable of establishing that the sponsor was the head of the household and a genuine assumption of responsibility by her, for the appellant. Mr Sarwar referred to paragraph [13] of the decision of Mr Justice McCloskey in MK Pakistan (duty to give reasons) [2013] UKUT 641, in which the Tribunal referred to a letter supporting the appellant’s claim regarding his lifelong adherence to, and association with the Ahmadi faith in Pakistan. The Tribunal said; “...it was incumbent on the Tribunal to explain why the document was afforded no weight at all. One does not know, for example, whether the First-tier Tribunal found that the document was a forgery or was in some way suspect or unreliable...”. The Tribunal

recognised the weight to be attached to the letter was for the Tribunal however *"it was incumbent on the judge to explain his reasons for his robust and outright rejection of this important piece of evidence. It was not sufficient for the Judge to refer vaguely to "the complete lack of credibility shown from the evidence before me" in the context of his rejection of the letter.."*. Mr Sarwar submits the failure of Judge Groom to engage with the evidence relied upon by the appellant, and if it was rejected, to explain why, amounts to a material error of law capable of affecting the outcome of the appeal.

11. Mr Sarwar submits that in any event it was irrational and perverse for Judge Groom to reject the appellant's claim that he was dependant on the sponsor prior to the specified date and date of application, because he had money in the sum of £3500 that he intended to bring with him to the UK. A sum of £3500 would mean that between January 2020 and the specified date (December 2020), the appellant have less than £318 per month to spend and even less if the sum of £3,500 was used by the appellant between January 2020 and the date of his application in June 2021.
12. In reply, Mr Lawson submits that at paragraph [19] of her decision Judge Groom properly set out the definition of a *"Family member of a relevant EEA citizen"* and it is likely that she had the relevant issues in mind. He submits Judge Groom made adverse credibility findings regarding the evidence of the appellant and sponsor, and she was entitled to dismiss the appeal for the reasons set out in her decision.
13. After hearing the parties submissions, I informed the parties that in my judgement the decision of Judge Groom is not vitiated by a material error of law and that I dismiss this appeal. I informed the parties that I would set out my reasons for dismissing the appeal in writing, and this I now do.

Decision

14. It is common ground between the parties that in order to succeed before the First-tier Tribunal it was for the appellant to establish that he was the dependent relative, before the specified date (*31 December 2020*), of a relevant EEA citizen, and the dependency (or, his membership of the household) continued to exist at the date of application (8 June 2021).
15. Judge Groom found at [21] that the appellant was not dependent on the sponsor whilst he lived in Nigeria. At paragraph [26] of her decision, she said:

"I do not accept that the Appellant was dependant on Ms David from the time he arrived in the UK, which was prior to the specified date and date of application, because the details in the visa application form simply do not support that claim. It was apparent that he had money in the sum of £3500 that he intended to bring with him to the UK which was specified on the visa application form which the Appellant did not dispute during the hearing. Again, if the Appellant was a dependent relative as he claims, I find it implausible that he would have arrived with such a sum of money in the first instance."

16. Although I accept that in paragraph [26] of her decision, Judge Groom does not expressly refer to the question whether the appellant was a member of his sponsor's household, that in my judgment is immaterial to the outcome of the appeal. The appellant and sponsor gave evidence before the First-tier Tribunal. Their evidence is set out at paragraphs [12] to [18] of the decision. Importantly:

"13. The Appellant stated that he started work in the UK in October 2021 and has been sending money to his wife and his four children in Nigeria for food, clothing and schooling. The Appellant also claims that he has been financially supporting his mother and siblings who also remain in Nigeria.

14. The Appellant went on to state in his oral evidence that he financially contributes towards some of the bills in Ms David's property.

15. The Appellant further stated that if his appeal were successful, he would move out of Ms David's property straight away.

16. With regards to Ms David's oral evidence, she claims that her brother arrived in the UK in January 2020, and he had told her that he was coming to visit the UK and that he should stay with her.

17. Ms David went on to say that she took the Appellant to look for work in a factory. He has been working and his earnings are partly to take care of his family members back in Nigeria."

17. At paragraphs [21] to [25] of her decision Judge Groom referred to the inconsistencies in the evidence of the appellant and sponsor, and she did not consider either of them to be credible or reliable. Albeit the decision is brief, Judge Groom gave sound reasons for the adverse credibility findings she made.

18. In paragraph [38] of its decision in Sohrab and Others (continued household membership) Pakistan, the Upper Tribunal said:

"38. Against that background, and approaching the question of household membership by reference to its ordinary meaning, we consider that members of an EEA national's household will demonstrate a degree of physical and relational proximity to the EEA national, with the EEA national(s) being the head of the household. There must be a sense in which the home is the EEA national's home, with the EEA national at the head, rather than merely a shared home to which all contribute to and bear responsibility for equally. Such relational proximity is likely to have a number of facets but will primarily include the persons living together as a unit, with a common sense of belonging, with the EEA sponsor at the head. In Chowdhury at [32], Macur LJ said it was reasonable and rational to look for a "genuine assumption of responsibility by the EEA national for a member of his extended family" when construing the requirement, and to that end, questions of the commencement and duration of dependency or household membership were relevant to that assessment.

19. The claim made by the appellant and sponsor in their witness statements that the rent and bills for the property in which they live is at odds with their oral evidence as set out in paragraph [16] above. Judge Groom found the appellant and sponsor were not credible and reliable witnesses. She rejected their evidence that the appellant was dependant on Ms David from the time he arrived in the UK.

20. At page 47 of the appellant's bundle before the FtT, the appellant provided his 'Current Account' bank statements for the period September 2021 to December 2021. The statements post-date the application and show the appellant lives at the same address as the sponsor. The statements show regular credits into the account of earned income. The appellant's payslips at page 50 to 57 of the bundle, again post-date his application, but confirm his own income and that he lives at the same address as the sponsor. There is correspondence addressed to the appellant at pages 58 - 60, and 62 of the bundle. The NHS 'Registration Confirmation Letter' addressed to the appellant that is at page 59, pre-dates the application but simply establishes the address at which the appellant lives. The other correspondence post-dates the application. There is evidence of a joint debt owed by the appellant and sponsor to Severn Trent Water Ltd, at pages 143 - 144 and 156 - 157 of the bundle. The letter from a debt recovery agent is dated 23 July 2021 and post dates the application, although the 'amended bill' at page 156 is dated 28 April 2021 and pre-dates the application. There is evidence of an Assured Shorthold Tenancy that commenced on 21 December 2018 (*prior to the appellant's arrival in the UK*) between pages 158 and 170 of the appellant's bundle but the crucial pages setting out details of the property and the tenant are missing.
21. I accept the requirements of 'dependency' and 'household membership' are alternates. The evidence provided by the appellant in support of his claim that he was a member of the sponsor's household before 31 December 2020 and that he was a member of the sponsor's household at the date of application was extremely limited. As I have set out, much of the evidence in fact post-dates the application.
22. Although the evidence that is highlighted in the appellant's grounds of appeal is, taken at its highest, capable of establishing that the appellant and sponsor were living at the same address before 31 December 2020 and at the time of the application, it is evidence of a shared home to which the appellant and sponsor contribute. The oral evidence of the appellant himself was that he financially contributes towards some of the bills in Ms David's property. Importantly, I note that at page 61 of the appellant's bundle, there is an 'Electricity Bill' addressed to the appellant and dated 20 June 2020. That electricity bill pre-dates the specified date (31 December 2020) and the date of the appellant's application. It is in the sole name of the appellant. It is a document that cannot be reconciled with the appellant's claim that he is a member of the EEA national's household and the claim in his witness statement that all the bills are paid for by his sister. The evidence before the First-tier Tribunal could not on any view demonstrate a genuine assumption of responsibility by the sponsor for the appellant so that the Tribunal could rationally conclude the appellant was a member of his sponsor's household for the purposes of his application under the EU Settlement Scheme.
23. The appellant's general assertion that Judge Groom failed to give adequate reasons for her decision adds nothing. I have reminded myself of what was said in MD (Turkey) v SSHD [2017] EWCA Civ 1958 that adequacy

means no more nor less than that. It is not a counsel of perfection. Still less should it provide an opportunity to undertake a qualitative assessment of the reasons to see if they are wanting, even surprising, on their merits. The purpose of the duty to give reasons, is in part, to enable the appellant to know why he has lost, and it is also 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. Judge Groom reached conclusions and findings that were open to her on the evidence before the Tribunal. She gives adequate reasons for the findings made.

24. Finally, I also reject the appellant's claim that Judge Groom irrationally rejected the appellant's claim that he was dependent on the sponsor from the time that he arrived in the UK because his claim is inconsistent with his claim in the visa application that he would be bringing £3,500 to the UK. Although I accept that on its own, a sum of £3,500 may not obviate dependency over a lengthy period, the difficulty with the appellant's claim is that he did not claim that he had become dependent upon the sponsor after his arrival in the UK by reason of the circumstances he found himself in. His claim as set out in the witness statements before the Tribunal was that he had always been supported by the sponsor and that she had continued to pay for all his expenses after he came to the UK. Judge Groom did not find the appellant and sponsor to be credible witnesses. She noted the inconsistencies in the accounts given by the appellant and sponsor. It was in my judgment undoubtedly open to Judge Groom to reject the appellant's claim that he was dependent on Ms David from the time he arrived in the UK. On his own account, as Judge Groom noted, the appellant had £3,500 that he intended to bring with him to the UK.
25. The burden of proof rested with the appellant. Judge Groom carefully considered the claims advanced by the appellant and reached conclusions and findings that were open to her on the evidence before the Tribunal. She gives adequate reasons for the findings made. A fact-sensitive analysis was required. The findings and conclusions reached by the judge were neither irrational nor unreasonable in the *Wednesbury* sense, or findings and conclusions that were wholly unsupported by the evidence. It was open to Judge Groom to conclude that neither the appellant nor sponsor is a witness of truth and to make adverse the credibility finding for the reasons set out in her decision. The decision must be read as a whole. Here, it cannot be said that the Judge's analysis of the evidence is irrational or perverse. The Judge did not consider irrelevant factors, and the weight that she attached to the evidence either individually or cumulatively, was a matter for her.
26. It follows that I dismiss the appeal.

Notice of Decision

27. The appeal is dismissed.

V. Mandalia

Upper Tribunal Judge Mandalia

Judge of the Upper Tribunal
Immigration and Asylum Chamber

11 July 2023