



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002254
UI-2023-002255
First-tier Tribunal No: EA/01900/2022
EA/01910/2022

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 16th of January 2024**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHEPHERD

Between

**(1) AUDREY ADOFO
(2) RAIS OBREMPONG ASARE
(NO ANONYMITY ORDER MADE)**

Appellants

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Ahmed, counsel (instructed by ARS Advantage Law Limited)
For the Respondents: Ms Arif, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 14 December 2023

DECISION AND REASONS

Background

1. This matter concerns appeals against the Respondent's decision letters of 7 January 2022 refusing the Appellants' applications made on 27 June 2021 for European Family Permits under the EU Settlement Scheme. The First Appellant is the mother of the Second Appellant.

2. The Appellants applied under the EU Settlement Scheme to join the Sponsor, Mr George Asare, on the basis that he is the First Appellant's stepfather and the First Appellant is dependent on him.
3. The Respondent refused the Appellants' claims by separate letters dated 7 January 2022. Both applications were considered under Appendix EU (Family Permit) to the Immigration Rules on the basis the Appellants each claimed to be a 'family member of a relevant EEA citizen'. The First Appellant was refused on the basis that she had not provided sufficient evidence to prove both relationship and dependency. The Second Appellant was refused on the basis that he had not provided sufficient evidence to prove relationship. In both cases, issue was taken with birth certificates provided by the Appellants on the basis that they were not contemporaneous.
4. The Appellants appealed the refusal decisions.
5. Their appeals were heard together as linked appeals by First-tier Tribunal Judge Athwal ("the Judge") at Birmingham on 2 December 2022. The Judge subsequently dismissed both the appeals in a decision promulgated on 7 December 2022.
6. The Appellants applied for permission to appeal to this Tribunal on grounds which may be summarised as follows:

(a) First Appellant - misdirection in law:

In [9] - [29] the Judge erred by failing to adopt the correct approach to determining the question of dependency; as per the case authorities, the situation of dependency has to exist at the time of application, there is no need to demonstrate historic dependency and dependency can be in whole or in part.

The Judge erred in failing to consider and reach findings on material evidence showing that the First Appellant was an unemployed, single mother who was the full-time carer for the Second Appellant and had no resources of her own to provide for their essential needs. The evidence provided was sufficient to demonstrate dependency, especially given that the Judge finds in [19] and [25] that the Sponsor had been providing money since at least 2014.

The Judge erred in reaching various adverse inferences from the tenancy agreement provided, finding at [21]-[22] that the Sponsor not being named on the agreement undermined the evidence that he assisted with providing accommodation to the Appellants; the Judge should have sought clarification from the Appellants before drawing these adverse inferences; the provision of accommodation went towards demonstrating dependency.

The Judge erred in making contradictory findings, stating at [24] that the oral testimony was credible in relation to the absence of receipts, and yet going on to dismiss the appeal.

Overall, the Judge takes irrelevant matters into account and makes findings contrary to the evidence, and the decision as a whole lacks adequate reasoning on material matters.

(b) Second Appellant -misdirection in law/findings contrary to law

The Judge erred in considering the Appellants' appeals together when they were two separate appeals.

The Second Appellant was under 21 years of age and it was accepted that he was the grandchild of the spouse of an EEA national. He therefore fell within the definition of "child" and "family member of a relevant EEA citizen" in Annex 1 to Appendix EU; there was no requirement for him to demonstrate dependency.

As relationship had been accepted; the Judge erred in dismissing the Second Appellant's appeal.

7. Permission to appeal was granted by First-tier Tribunal Judge Boyes on 6 February 2023, stating:

"1 The application is in time.

2. The grounds assert that the Judge erred in respect of the second appellant by inserting an element of dependency therein and in respect of the first appellant, similarly with the element of dependency but this time applied in error.

3. The grounds are arguable for the reasons explained therein. They need no further elucidation from me, they speak for themselves.

4. Permission is granted on all matters raised."

8. The Respondent filed a rule 24 response responding to the grounds as follows:

"3. The respondent submits that the grounds of appeal is [sic] resisted, and no material error of law has been identified.

4. The appellant argues that the incorrect EU laws were applied. It should be noted that the applications were submitted after the transition period had ended therefore, Appendix EU applied.

5. The respondent submits the First Tier Tribunal Athwal (the Judge) applied the correct law and test [14], [15] and [27], therefore it is submitted there is no material error of law.

6. The respondent opposes the appellant's appeal. In summary, the respondent will submit inter alia that the judge of the First-tier Tribunal directed himself appropriately.

7. The respondent requests an oral hearing."

The Hearing

9. The matter came before me for hearing on 14 December 2023.

10. Ms Arif attended for the Respondent and Mr Ahmed attended for the Appellants.

11. It was agreed with both representatives that the applicable rules for both Appellants were contained in Appendix EU (Family Permit) given the applications,

Refusal Letters and Judge's decision all referred to this, and not Appendix EU as referred to in the grounds of appeal and rule 24 response.

12. Mr Ahmed took me through the grounds of appeal. He made a further submission concerning the amount paid by the Sponsor towards the Appellants' rent. He said that the Judge at [25] of her decision appears to take the total figure set out in the expense schedule (of GHS 1,055 being 455+600) and finds that the money transfer receipts do not show sufficient amounts being sent since 2017 to cover this total figure. The reason he said this was an error was not entirely clear. It was agreed that the tenancy agreement showed that two years' worth of rent had been paid upfront, amounting to 14,400 GHS. Mr Ahmed appeared to say that it was the Sponsor's evidence that he only paid part of this amount and his brother, to whom he sent the transfers, paid the rest. As to what evidence there was of this, Mr Ahmed relied on the list from the brother showing the amounts of money he had received, and the oral evidence.
13. I queried this as there did not appear to be anything in the decision recording such oral evidence, and the list was simply a list with no explanation. Mr Ahmed referred me to paragraph 14 of Theresa Ampofo's witness statement (wife of the Sponsor) and submitted that the evidence was that money was sent to the Sponsor's brother to pass onto the Appellant and it was accepted that financial support was given. He said the Judge did not properly understand the position; the list of monies sent to the brother correlates with the table of expenses and the upfront payment of rent. This goes to the question of accommodation, which was part of the overall support provided such that it was a material error.
14. Ms Arif replied to helpfully concede that the Second Appellant's appeal should have been allowed on the basis that, relationship having been accepted, he fell within the relevant definitions and did not need to prove dependency. However, she submitted that the Judge did not err in her findings concerning dependency for the First Appellant. She took me through the rule 24 response. As regards the point about the brother and the rent, she said the Judge was entitled in [22] to add up the amounts received by brother and find that they did not equal the amount of rent the tenancy agreement showed had been paid. She said the Judge found in [23] and [24] that there was a lack of receipts, which led to her overall findings in [25] that the evidence as a whole was insufficient to demonstrate dependency, concluding she had not been provided with "a true picture of the first Appellant's financial situation in Ghana". She submitted that the Judge's reasons which had been attacked in the grounds of appeal were not the only reasons given by the Judge for her overall conclusion, which was sound and open to her on the evidence such that there was no material error of law.
15. Mr Ahmed replied to repeat the points he had already made. He attempted to clarify matters by saying that the evidence was that the brother only ever passed onto the Appellant what he received from the Sponsor, which is all shown in the receipts. He said the error was that the Judge miscalculated in marrying up receipts with the rent, expecting the receipts from 2017 to 2021 to include the rental figure of 600 when this only applied from 3 February 2021, the start of the tenancy agreement; prior to this, the First Appellant was living with her aunt and just paying living expenses.
16. At the end of the hearing, I reserved my decision.

Discussion and Findings

17. I remind myself of the important guidance handed down by the Court of Appeal that an appellate court must not interfere in a decision of a judge below without good reason. The power of the Upper Tribunal to set aside a decision of the First-tier Tribunal and to proceed to remake the decision only arises in law if it is found that the tribunal below has made a genuine error of law that is material to the decision under challenge.
18. I also remind myself of the headnote of MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC), heard by the then President of this Chamber as a member of the panel:
- “(1) It is axiomatic that a determination discloses clearly the reasons for a tribunal’s decision.
- (2) If a tribunal finds oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it is necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight is unlikely to satisfy the requirement to give reasons.”
19. I shall first discuss those grounds relating to the Second Appellant.
20. The Refusal Letter for the Second Appellant rejected his application on the sole basis that he had not sufficiently proved his relationship to Sponsor. The Sponsor had been said in the application to be the husband of his maternal grandmother, Theresa Ampofo.
21. I cannot see that the Respondent undertook a review of the appeals so there was no concession on anything prior to the hearing.
22. At [9] of her decision, the Judge records that (my emphasis in bold):
- “The representatives agreed that only one issue was before me: whether the first Appellant had provided sufficient evidence to show that she **and her son** are dependent upon the Sponsor and Mrs Ampofo for their essential needs.”
23. I agree that this was an error, as the only matter put into issue concerning the Second Appellant was the question of relationship, and not also dependency.
24. At [10] the Judge states that:
- “Ms Bibi had considered the DNA report provided by the Appellant and now accepted that Mrs Ampofo was the mother of the first Appellant and grandmother of the second Appellant. The Sponsor’s marriage to Mrs Ampofo was never disputed. The relationship between the appellants and the Sponsor was therefore no longer in dispute.”
25. In this paragraph the Judge is effectively finding that the sole issue in respect of the Second Appellant has been resolved by the acceptance of relationship by the Respondent’s representative based on the DNA report.
26. As agreed at the hearing before me, and as the Judge correctly set out in her decision at [2] and [14], the applicable rules are to be found in Appendix EU (Family Permit). The relevant parts of these state as follows:

“FP6.

(1) The applicant meets the eligibility requirements for an entry clearance to be granted under this Appendix in the form of an EU Settlement Scheme Family Permit, where the entry clearance officer is satisfied that at the date of application:

(a) The applicant is not a British citizen;

(b) The applicant is a family member of a relevant EEA citizen;

(c) The relevant EEA citizen is resident in the UK or will be travelling to the UK with the applicant within six months of the date of application;

(d) The applicant will be accompanying the relevant EEA citizen to the UK (or joining them in the UK) within six months of the date of application; and

(e) The applicant ("A") is not the spouse, civil partner or durable partner of a relevant EEA citizen ("B") where a spouse, civil partner or durable partner of A or B has been granted an entry clearance under this Appendix, immediately before or since the specified date held a valid document in that capacity issued under the EEA Regulations or has been granted leave to enter or remain in the UK in that capacity under or outside the Immigration Rules.

FP9. (1) Annex 1 sets out definitions which apply to this Appendix. Any provision made elsewhere in the Immigration Rules for those terms, or for other matters for which this Appendix makes provision, does not apply to an application made under this Appendix.

Annex 1 Definitions

"Family member of a relevant EEA citizen"

a person who has satisfied the entry clearance officer, including by the required evidence of family relationship, that they are:

...

(d) the child or dependent parent of a relevant EEA citizen, and the family relationship:

(i) existed before the specified date (unless, in the case of a child, the person was born after that date, was adopted after that date in accordance with a relevant adoption decision or after that date became a child within the meaning of that entry in this table on the basis of one of sub-paragraphs (a)(iii) to (a)(xi) of that entry); and

(ii) continues to exist at the date of application; or

(e) the child or dependent parent of the spouse or civil partner of a relevant EEA citizen, as described in subparagraph (a) above, and:

(i) the family relationship of the child or dependent parent to the spouse or civil partner existed before the specified date (unless, in the case of a child, the person was born after that date, was adopted after that date in accordance with a relevant adoption decision or after that date became a child within the meaning of that entry in this table on the basis of one of sub-paragraphs (a)(iii) to (a)(xi) of that entry); and

(ii) all the family relationships continue to exist at the date of application; or

...

“Child”

(a) the direct descendant under the age of 21 years of a relevant EEA citizen (or, as the case may be, of a qualifying British citizen) or of their spouse or civil partner; or

(b)(i) the direct descendant aged 21 years or over of a relevant EEA citizen ... or of their spouse or civil partner; and

(ii)(aa) dependent on the relevant EEA citizen or on their spouse or civil partner:

(aaa) (where sub-paragraph (b)(ii)(aa)(bbb) below does not apply) at the date of application; or

(bbb) (where the date of application is after the specified date and where the applicant is not a joining family member) at the specified date; or

...

‘dependent’ means here that:

(a) having regard to their financial and social conditions, or health, the applicant cannot meet their essential living needs (in whole or in part) without the financial or other material support of the relevant EEA citizen ... or of their spouse or civil partner; and

(b) such support is being provided to the applicant by the relevant EEA citizen ... or by their spouse or civil partner; and

(c) there is no need to determine the reasons for that dependence or for the recourse to that support ...

in addition:

..

(b) ‘direct descendant’ also includes a grandchild or great-grandchild...

27. It can be seen from these definitions that there is no requirement of dependency for a direct descendant child under the age of 21 years, and that ‘child’ includes grandchild.
28. As the Respondent has now conceded, the Judge should have found that the Second Appellant, being a child under 21 years and the direct descendant grandchild of the spouse of the Sponsor who is a relevant EEA citizen, satisfied the requirements of Appendix EU (Family Permit). She should therefore have allowed his appeal, and it was a material error not to do so.
29. It was agreed between the parties that the error of law is such as to require the decision of the Judge to be set aside and the decision to be re-made, allowing the Second Appellant’s appeal.
30. In the circumstances, for the reasons I have given, I therefore set aside the decision of the Judge concerning the Second Appellant for error of law and re-make the decision, allowing the Second Appellant’s appeal.
31. I now turn to those grounds relating to the First Appellant.

32. It is not in dispute that, in accordance with being a child aged over 21 of the spouse of a relevant EEA citizen, the First Appellant needed to demonstrate that she was dependent on the Sponsor in accordance with the definition set out above. In other words, she needed to show that, as at the date of application and having regard to her financial and social conditions, or health, she cannot meet her essential living needs (in whole or in part) without the financial or other material support of the Sponsor.
33. The case of Latayan v SSHD [2020] EWCA Civ 191, which reviews the previous case law on dependency, held as follows:

[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."

34. 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. ..."

35. As to the approach to evidence, guidance had previously been given by this Tribunal in Moneke and others (EEA - OFMs) Nigeria [2011] UKUT 341 (IAC):

"41. Nevertheless dependency is not the same as mere receipt of some financial assistance from the sponsor. As the Court of Appeal made plain in *SM (India)* (above) dependency means dependency in the sense used by the Court of Justice in the case of *Lebon* [1987] ECR 2811. For present purposes we accept that the definition of dependency is accurately captured by the current UKBA ECIs which read as follows at ch.5.12:

"In determining if a family member or extended family member is dependent (i.e. financially dependent) on the relevant EEA national for the purposes of the EEA Regulations:

Financial dependency should be interpreted as meaning that the person needs financial support from the EEA national or his/ her spouse/civil partner in order to meet his/her essential needs - not in order to have a certain level of income.

Provided a person would not be able to meet his/her essential living needs without the financial support of the EEA national, s/he should be considered

dependent on that national. In those circumstances, it does not matter that the applicant may in addition receive financial support / income from other sources.

There is no need to determine the reasons for recourse to the financial support provided by the EEA national or to consider whether the applicant is able to support him/herself by taking up paid employment.

The person does not need to be living or have lived in an EEA state which the EEA national sponsor also lives or has lived."

42. We of course accept (and as the ECJs reflect) that dependency does not have to be "necessary" in the sense of the Immigration Rules, that is to say an able bodied person who chooses to rely for his essential needs on material support of the sponsor may be entitled to do so even if he could meet those needs from his or her economic activity: see SM (India). Nevertheless where, as in these cases, able bodied people of mature years claim to have always been dependent upon remittances from a sponsor, that may invite particular close scrutiny as to why this should be the case. We note further that Article 10(2)(e) of the Citizens Directive contemplates documentary evidence. Whether dependency can ever be proved by oral testimony alone is not something that we have to decide in this case, but Article 10(2)(e) does suggest that the responsibility is on the applicant to satisfy Secretary of State by cogent evidence that is in part documented and can be tested as to whether the level of material support, its duration and its impact upon the applicant combined together meet the material definition of dependency.

43. Where there is a dispute as to dependency (as there was in the present case) immigration judges should therefore carefully evaluate all the material to see whether the applicant has satisfied them of these matters."

36. The case of Lim v ECO [2015] EWCA Civ 1383 also held that:

"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. It follows that on the facts of this case, there was no dependency. The appellant had the funds to support herself. She was financially independent and did not need the additional resources for the purpose of meeting her basic needs."

37. The Judge in her decision expressly sets out at [27] the provisions of Appendix EU (Family Permit) relevant to the First Appellant, having recorded at [2] that she had applied on the basis that she was a dependent family member of a relevant EEA citizen. The Judge also refers in [29] to the need to show dependency to meet essential needs. The Judge was therefore aware of the correct legal test to be applied concerning dependency. I can see nothing in her decision which indicates she was assessing the situation as at the wrong date or that she applied the wrong test.

38. As per the above case authorities, the Judge needed to undertake an holistic assessment so as to establish whether there is dependence that is genuine.

39. The Judge's findings are contained in [16] - [29] of her decision.

40. At [12] the Judge states that:

“I took into account the entirety of their evidence, a full note of which is to be found in the record of proceedings, whether or not referred to specifically below”.

41. At [25] she states that:

“I have considered the evidence as a whole”.

42. She can be seen to have considered the following factors prior to reaching her overall conclusions:

- (a) money transfer remittances [17]
- (b) the oral evidence - the Sponsor is recorded as having said the money sent is used towards accommodation, school fees and medical treatment [18]
- (c) the circumstances around how money is sent by the Sponsor and who to [19]
- (d) the Sponsor’s evidence that, in addition to money being transferred, money will sometimes be taken in person to Ghana and left with the Appellant [20]
- (e) the Appellant’s tenancy agreement as against the other evidence concerning payment of rent, including the remittance receipts, witness evidence and table of expenses [21] [22] [23]
- (f) the provision of receipts and evidence concerning school fees [24].

43. I now address the specifics of the grounds of appeal.

44. The first allegation is that the Judge erred in failing to take into consideration and reach findings on material evidence showing that the First Appellant was an unemployed single mother who was the full-time carer for the Second Appellant and had no resources of her own to provide for their essential needs.

45. Whilst the Judge does not specifically mention the background situation of the First Appellant as being an unemployed, single mother beyond the indirect reference to it in [3], I do not consider it made out that the Judge did not take this into account.

46. It is well established that a Judge need not mention each and every single piece of evidence provided they address the main issues in dispute. The application and evidence were based on the premise that the First Appellant was unable to support herself and her child due to her particular circumstances. These circumstances in themselves were not sufficient to evidence dependency given they relate only to the First Appellant’s background and not to the support she receives. I do not see that it would have taken the matter any further for the Judge to have expressly acknowledged this. As above, I have found the Judge was aware of the correct legal test and what the First Appellant needed to establish and I consider she addressed her mind to this, as can be seen in her consideration of the several factors set out above. It may also be somewhat misleading to describe the First Appellant as the ‘full-time’ carer for the Second

Appellant given there was evidence that he attended school, and this attendance is something that the Judge clearly does take into account as she discusses evidence from the school and payment of the school fees [3] [18] [19] [24].

47. I find this part of the grounds to be mere disagreement. I consider that the sentiment expressed in headnote (3) of Durueke (PTA: AZ applied, proper approach) [2019] UKUT 197 (IAC) is relevant in this regard (my emphasis in bold):

“Particular care should be taken before granting permission on the ground that the judge who decided the appeal did not "sufficiently consider" or "sufficiently analyse" certain evidence or certain aspects of a case. **Such complaints often turn out to be mere disagreements with the reasoning of the judge who decided the appeal because the implication is that the evidence or point in question was considered by the judge who decided the appeal but not to the extent desired by the author of the grounds or the judge considering the application for permission.** Permission should usually only be granted on such grounds if it is possible to state precisely how the assessment of the judge who decided the appeal is arguably lacking and why this is arguably material.”

48. The grounds next assert that the Judge erred in reaching various adverse inferences from the tenancy agreement provided, finding at [21]-[22] that the Sponsor not being named on the agreement undermined the evidence that he assisted with providing accommodation to the Appellants; the Judge should have sought clarification from the Appellants before drawing these adverse inferences; the provision of accommodation went towards demonstrating dependency.

49. Those parts of the decision dealing with the tenancy agreement are as follows:

“21. The Appellant has provided a copy of her tenancy agreement and I have compared the recorded information against the Sponsor’s evidence. The Sponsor told me that the rent was paid by his brother and the reasons for it. I have set that out above. If that is correct then I would have expected Mr Kwame to be a witness on the contract. He is not named in the contract and I find that this undermines the Sponsor’s evidence.

22. The agreement records that the rent has been paid in full for two years, the tenancy ends on 3 February 2023. The amount paid was GHS14,400.40 on 1 February 2021. The money remittance receipts at pages 33 to 35 of the first Appellant’s Respondent’s bundle show two payments made in October 2020 and December 2020. The total amount sent was GHS 850. No further money was sent until 20 February 2021, which is a month after the tenancy contract commenced. On that date 8,300 GHS was paid to Mr Kwame. Even if I total all the money that was sent to Mr Kwame up until April 2021, after which money was sent to the Appellant, it does not amount to GHS 14,400.40. The remittance receipts do not corroborate the Sponsor’s evidence that he sent rent money to his brother to pay for the Appellant’s rent. The remittances for that period are insufficient to have paid for the rent set out in the tenancy agreement. I find that this further undermines the Sponsor’s evidence.

23. I have considered the tenancy agreement against the Appellant’s statement and expenses table. The Appellant states at paragraph 15 that her rent is paid monthly and this information is recorded in her expenses table. That is not consistent with the tenancy agreement.”

50. I agree that the Judge’s finding that she would have expected the brother to be named as a party or witness to the tenancy agreement, given he had paid the rent, is somewhat irrational. I do not consider it automatically follows that because you help someone pay what is due under a contract that you yourself

should be named on the contract. The Judge does not explain why she considers this should be the case, or what this is based on. There is no indication that the witnesses were afforded an opportunity to comment on this. This is an error.

51. I do not consider this error in itself to be material though, because three other reasons are given as to why the evidence around the tenancy agreement and rent is found wanting. Those reasons are that:
 - (a) the amounts shown on the money transfer receipts provided do not amount to the 14,400.40 worth of rent paid upfront as recorded on the tenancy agreement;
 - (b) the remittance receipts do not corroborate the Sponsor's evidence that he sent money to his brother to pay for the First Appellant's rent;
 - (c) both the First Appellant's witness statement and the expenses table show that rent is paid monthly, which is not consistent with the tenancy agreement.
52. The Judge records the Sponsor's evidence that from 2014 he and his wife would send regular remittances to the Appellant and would pay for her rent and school fees [18], and that the Sponsor sent his brother, Mr Kwame, money if the rent, school fees or medical bills had to be paid. That is the extent of the record of the oral evidence in the decision going to rent, save what is mentioned in [21]-[23] set out above.
53. The First Appellant in her witness statement at paragraph 15 says that the Sponsor sends money to his brother who passes it on to her for major expenses including the rent. In paragraph 22 she says she rents the house with her stepsister and uses the money received from her mother and stepfather for several things including the rent. The witness statement from the Sponsor's wife contains very similar content.
54. The witness statement from the Sponsor also contains the same content save at paragraph 14 where it adds the wording I have highlighted in bold:

"Also I send money to my brother...which he gives to Audrey for the major expenses such as their rent **(which we paid in full)...**"
55. As discussed at the hearing before me, there is no witness statement from the Sponsor's brother, only an undated, signed list of monies he says he has received from the Sponsor to take care of the First Appellant. The list shows amounts sent for the period 20 February 2021 and 26 April 2022 inclusive.
56. I note the tenancy agreement is a single sheet of paper dated 1 February 2021 and states that the rent payable per month is 600 GH for 24 months. It further states that "payment has been made to the landlord with an amount of GH 14,400.00 rent expires on 03/02/2023".
57. I cannot see that the Judge erred in anything she says in [22]. She correctly records that two years' worth of rent was paid upfront and was entitled to calculate whether the amounts transferred added up to a sufficient amount to pay this total. There is no indication that she expected to see amounts from 2017 sufficient to include a monthly rent of 600GH, or the total of 1,055; this does not feature at all. Rather she looks at the amounts sent in the months leading up to,

and around the start of, the tenancy agreement and finds she cannot see that enough money was sent to cover the 14,400. It was open to her to find this and to conclude as a result that this undermined the Sponsor's evidence that he sent money to his brother to cover the First Appellant's rent.

58. At the hearing before me, Mr Ahmed made contradictory submissions. On the one hand he appeared to say that the brother paid some of his own money towards the rent, and yet also said that all the money the brother had, which he passed on to the First Appellant, was shown in the money transfer receipts. There also appeared to be a third submission, that the brother was paying money back to the Sponsor concerning the rent.
59. I cannot see that there was any evidence before the Judge to support the contention that the brother uses anything other than the Sponsor's money, contained in the money transfers, to pay the rent. As above, there is nothing from the brother himself by way of explanation as to what he gets and passes on and for what. There is simply a list of money he says he has received to take care of the First Appellant. I do not have a record of the proceedings, or a witness statement from Appellant's counsel who appeared at the hearing before the Judge and so have no evidence to indicate that matters were said in oral evidence which are not recorded in the Judge's decision.
60. The Judge was therefore entitled to find in [22] that the amounts shown on the money transfer receipts provided do not amount to the 14,400.40 worth of rent paid upfront as recorded in the tenancy agreement, and that the remittance receipts do not corroborate the Sponsor's evidence that he sent money to his brother to pay for the Appellant's rent.
61. I also find the Judge was entitled to find in [23] that both the First Appellant's witness statement and expenses table show that rent is paid monthly, which is not consistent with the tenancy agreement. I do not know why the First Appellant's witness statement differs from the Sponsor's witness statement, which recorded that the rent had been paid in full upfront. As the full two years' worth of rent is shown by the tenancy agreement as having been paid in full upfront, the implication is that the First Appellant did not need to pay it monthly as an ongoing expense, which is what is indicated by the table of expenses. If, on the other hand, the upfront payment is said to have been paid by the First Appellant putting aside a monthly amount of 600, then the money transfer receipts could be expected to bear that out and the Judge finds that they do not.
62. Overall, I find the Judge's three reasons given as to why the evidence around the tenancy agreement and rent is found wanting are sound and were open to her on the evidence. Because she has given these reasons, I find it likely that she would have reached the same conclusions even without her erroneous finding that the brother should have been named as a party or witness to the tenancy agreement. This error is therefore not material.
63. The final part of the grounds asserts that the Judge made contradictory findings, stating at [24] that the oral testimony was credible in relation to the absence of receipts, and yet going on to dismiss the appeal. The grounds also note that the Judge had found that financial support was provided, which I assume also goes towards saying there are contradictory findings, although this has not been made clear.

64. I find this to be a misreading of the Judge's overall findings at [24] and is akin to "island hopping" i.e. taking a selection of the evidence rather than the whole of the evidence that the Judge heard. What the Judge says at [24] is this:

"The Appellant has provided a table of her expenses but has not provided any receipts to corroborate it, in particular those of medical bills and school fees. The Sponsor explained that in Ghana the issuing of receipts was not commonplace. A record of fees paid were recorded in the recipient's account book and they did not issue a receipt. I accept this explanation as credible. However, he was unable to explain why a letter from the school confirming that the Sponsor paid for the school fees was not obtained."

65. The Judge clearly finds that, despite the credible explanation for a lack of receipts, the Sponsor has not been able to explain why there is no letter from the school confirming that he actually paid for school fees. The latter point has not been challenged and clearly has to be read in relation to the former. Finding that there is a credible explanation for a lack of receipts in isolation was not a determining factor. Given the case law I have cited above, accepting that financial support had been provided was also not a determining factor because financial support in itself is not sufficient to demonstrate genuine dependency.

66. I address one further point for the sake of completeness. Towards the end of the hearing, Mr Ahmed appeared to submit that if the Judge 'got it wrong' concerning the Second Appellant, then she got it wrong for the First Appellant. I disagree. As he put forward himself, the two appeals fell to be decided on different bases. The Second Appellant did not need to prove dependency whereas the First Appellant did. Relationship was accepted by the Respondent in respect of both Appellants. The material error that I have found concerning the Second Appellant was due to the Judge failing to recognise that, relationship having been accepted, that was it for the Second Appellant's appeal. In no way can it be said that this error in some way infected the Judge's findings concerning the First Appellant and dependency.

67. It follows that I find the grounds regarding the First Appellant not to be made out. No material error of law is disclosed.

Conclusion

68. I am satisfied the decision of the First-tier Tribunal did involve the making of a material error of law but find that it is confined to the findings made concerning the Second Appellant only, such that I have set aside and remade the Judge's findings concerning the Second Appellant, allowing his appeal.

69. The findings concerning the First Appellant and the dismissal of her claim are sound and are upheld.

Notice of Decision

1. The decision of the First-tier Tribunal involved the making of an error of law and I have set it aside and remade it only as regards the Second Appellant, allowing his appeal.

2. The decision of the First-tier Tribunal as regards the First Appellant is upheld.

L. Shepherd
Deputy Judge of the Upper Tribunal

Appeal Numbers: UI-2023-002254, UI-2023-002255
First-tier Tribunal No: EA/01900/2022 EA/01910/2022

Immigration and Asylum Chamber
8 January 2024