



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002315

First-tier Tribunal No: EA/50362/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 14th of May 2024

Before

UPPER TRIBUNAL JUDGE HANSON

Between

CHRISTINA NINSON
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Chaudhury instructed by Vine Court Chambers

For the Respondent: Ms Z Young, a Senior Home Office Presenting Officer.

Heard at Phoenix House (Bradford) on 24 April 2024

DECISION AND REASONS

1. The Appellant appeals with permission a decision of First-tier Tribunal Judge Forster ('the Judge'), promulgated following a hearing at Bradford on 14 April 2023, in which the Judge dismissed the appeal against the refusal of the application made on 31st December 2020 for a residence card as confirmation of her right to remain in the UK as an extended family member of an EEA national exercising treaty rights in the UK.
2. The application was refused on 6 February 2021 as on the evidence provided it was not accepted the Appellant was related as claimed to the Sponsor or that she was dependent on the Sponsor.
3. The Appellant is a citizen of Ghana, born on the 6 February 1987, who claimed to be the niece of Felix Bella Conduah ('the Sponsor'). The Sponsor is an EEA national from Austria.
4. Having considered the documentary and oral evidence the Judge sets out findings of fact from [11] of the decision under challenge. The determination shows the Appellant being represented by Counsel but no representative of the Secretary of State having been provided to assist the Judge.

5. On the first issue, that of the relationship between the Appellant and Sponsor, the Judge writes:
 13. On the evidence presented to me, which in the absence of a presenting officer, went unchallenged, I accept that Hannah Ackah and Abena Dwodoo are in fact the same person. This means that the Appellant is the Sponsor's niece because her mother and the Sponsor are half siblings.
6. This finding has not been challenged by the Secretary of State.
7. The issue of dependency is considered from [14]. The Judge noted the Appellant's evidence that the Sponsor had been sending her money for a long time through his wife, Joyce, to her Auntie Margaret, "and other family members with whom I lived in the same household". The Judge took into account the Appellant's claim she is not married and lived with her family and that when she came to the UK, she was about 33 years of age. The Judge took into account the Appellant's evidence that Auntie Margaret used the money for all their needs in the household, including hers. The Judge further noted the Appellant's oral evidence that the money from the UK was used to "pay bills in the house and for food and maintenance". The Judge notes the Appellant's evidence that the money sent helped other people as it was used for the house and that she was given part of the money. The Judge noted the Appellant's evidence that she lived with her auntie's children and their five grandchildren and that she confirmed they all benefited from the money that was sent from the UK.
8. The Judge notes the Sponsor's evidence on this point at [15]. The Judge records in this paragraph that the Sponsor was asked to look at the transaction report which showed money sent by his wife to various people in Ghana although he stated he did not know who most of the people were, but was able to identify his "big sisters", Alice Brown and Margaret Henewaa. The Sponsor's evidence was that the money he sends is for the upkeep of the house and also for his niece "when she needs some money".
9. The Judge's conclusions on this issue are set out at [16 - 17] in the following terms:
 16. It is notable that neither the Appellant nor the Sponsor either in the witness statements or in evidence at the hearing say how much or how frequently money was sent to Ghana. I am left to make my way through the receipts and transaction report. I am not given any specific figures on which to make an assessment. I accept that the Sponsor sent money to his sister Margaret Henewaa for the benefit of the family but I am not told how much of this, if anything, was specifically for the benefit of the Appellant. It is clear that the money was intended for the family as a whole and not just for the Appellant. I am not told about the circumstances in which the family live and nothing about their financial position. I do not know if the Appellant worked and had earnings when she was in Ghana. She was 33 years old and so had long since left education.
 17. The question for me is whether the Appellant could meet essential needs without the Sponsor's financial support. I have not been told how much the Appellant requires to meet her needs or what they are. And she has not done so. On the evidence provided to me, on the balance of probabilities, I find that the Appellant fails to satisfy all the requirements of regulation 8 of the 2016 Regulations.
10. The Appellant sought permission to appeal which was initially refused by another judge of the First-tier Tribunal but granted by Upper Tribunal Judge C Lane on 9 September 2023, on the basis it was arguable the Judge failed to consider relevant evidence as detailed in the grounds at [6 - 9].

11. No Rule 24 response had been filed by the Secretary of State. At the outset of the hearing Ms Young confirmed the Secretary of State's position was that it was accepted the Judge had erred in relation to the statement the Tribunal did not know if the Appellant worked and had earnings when she was in Ghana, but that such error was not material.

Discussion and analysis

12. The point conceded by the Respondent is claimed to have arisen for although the Judge claimed not to know if the Appellant worked and had earnings when she was in Ghana, in her witness statement the Appellant claimed that she was not married and still lived with her family [8], that Auntie Margaret used the money transferred for all their needs in the household including hers [9], and that she had never worked [10].
13. The Judge was well aware of the content of the Appellant's witness statement which is referred to at [14] of the determination. The Judge specifically records the evidence of the Appellant that she is not married and living with her family and specifically sets out the quote that "Auntie Margaret uses it for all our needs in the household including mine". I do not find it made out the Judge failed to consider the available evidence with the required degree of anxious scrutiny. I do not find any merit in the submission made to me that a fairness issue arises as a result of the failure of the Judge to consider the Appellant's situation and failure to take all the evidence into account.
14. The point taken by the Judge is more discreet, as set out in [16 - 17], which is that the evidence relied upon as a whole did not enable the Appellant to discharge the burden upon her to the required standard to show that she met the requirements of the 2016 Regulations.
15. The Appellant would have been aware that lack of evidence was an issue, for in the refusal notice the Respondent clearly states that the evidence that had been provided in support of the application was insufficient in showing or demonstrating financial dependency in Ghana or that the Appellant was a member of the Sponsor's household immediately prior to entering the United Kingdom, and that since entering the United Kingdom she had been continually dependent on him.
16. The refusal also contains a further statement in the following terms "*It is also noted that you entered the United Kingdom on 22 December 2020 with a visit visa. When you apply for this visa stated the reason for your visit was to see your family and friends particularly your brother Samuel Kwibena Ninson. This information contradicts your claims that you came to the UK as a dependent extended family member (EFM) of your EEA national sponsor.*"
17. The grounds of appeal also assert the Appellant's position was that she had shown dependency prior to coming to the UK which continued following her arrival in the UK, including household membership, which it was claimed the Judge ignored in the findings.
18. A key finding made by the Judge at [16] is that the evidence did not provide details of the circumstances in which the family in Ghana live and said nothing about their financial position. This is a material finding for the test, as noted by the Judge at [17], is that the Appellant was required to demonstrate dependency upon the EEA national without which she could not meet her essential needs. If the evidence had shown there was insufficient to meet the Appellant's needs without the support of the monies attributed to the Appellant from the EEA sponsor the Appellant may have been entitled to succeed. If, however, because there was additional family money coming into the household in Ghana the Appellant was able to meet her essential needs without the Sponsor's financial

support, i.e. it was not necessary, the Appellant could not discharge the necessary burden of proof upon her. This is the point the Judge is referring to at [16 - 17].

19. It is not made out the Judge's findings, which must be read as a whole, are outside the range of those available to the Judge on the evidence. Whether dependency has been proved is a question of fact. As the Appellant had not established she could meet the dependency test on the evidence in relation to her time in Ghana, the fact she will be dependent upon the Sponsor in the UK now, as she cannot work, does not assist, as the requirement is for such support to be continuous. In Chowdhury (Extended family members: dependency) [2020] UKUT 188 (IAC) it was held that extended family members of EEA nationals must prove that their dependence upon the EEA national sponsor is continuous. That finding was upheld by the Court of Appeal in Chowdhury v Secretary of State for the Home Department [2021] EWCA Civ 1220.
20. When considering an appeal against a decision of a court or tribunal below based upon its findings of fact, regard has to be had to the guidance provided by the Court of Appeal in Volpi v Volpi [2022] EWCA Civ 462 at [2] and Ullah v Secretary of State for the Home Department [2024] EWCA Civ 201 at [26]. I have done so. I find no legal error material to the decision to dismiss the appeal is made out.

Notice of Decision

21. The First-tier Tribunal has not been shown to have materially erred in law. The determination shall stand.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

30 April 2024