IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001218

First-tier Tribunal No: EU/50551/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 19th of December 2024

Before

UPPER TRIBUNAL JUDGE RIMINGTON
DEPUTY UPPER TRIBUNAL JUDGE WELSH

Between

ABIGAIL ESI ABBAN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Ogumbusola of Counsel
For the Respondent: Mr Terrell, Senior Home Office Presenting Officer

Heard at Field House on 5 November 2024

DECISION AND REASONS

Introduction

1. This is an appeal against a decision of First-tier Tribunal Judge Chana ("the Judge"), promulgated on 14 February 2024. By that decision, the Judge dismissed the Appellant's appeal against the decision of the Secretary of State to refuse her application under the EU Settlement Scheme ("EUSS") for settled status or pre-settled status as a joining family member. The sponsor was her mother, a Spanish national.

Factual background

2. The Appellant is a national of Ghana, born on 10 September 2001. She entered the United Kingdom ("UK") on 9 November 2022, together with her brother (date of birth 6 November 2003), having been granted a EUSS Family Permit. On 17 November 2022, she made her application for settled/pre-settled status. The Respondent considered the application under two separate routes and found the Appellant satisfied the requirements of neither because:

(1) she had not commenced her continuous period of qualifying residence in the UK prior to the specified date;

(2) further or alternatively, she had provided insufficient evidence to demonstrate that she was dependent on her sponsor.

The decision of the Judge

3. The Judge found that:

(1) given it is not in dispute that the Appellant had only resided in the UK since November 2022, she could not demonstrate that her period of continuous qualifying residence commenced prior to the specified date [9] and

(2) the Appellant had failed to demonstrate that she is dependent on her sponsor [13].

The grounds of appeal and grant of permission

4. The grounds of appeal plead as follows:

(1) Ground 1 - "it is respectfully submitted; the qualifying period is not five years from 31 December 2024 for an applicant who entered the UK with a family permit. If it were, no applicant could succeed under the rules, because December 2020 to present is only a little over four years".

(2) Ground 2 - "further, the IJ failed to make clear findings as to the evidence of dependency. Whether it was dependency prior to coming to the UK or dependency while in the UK. This is relevant because dependency prior to coming to the UK was considered by the Respondent and found to be adequate and a family permit issued. Dependency in the UK was clearly set out in the Appellant's witness statement … At paragraph 12 the IJ proceeded on the assumption documentary evidence is the only credible evidence in immigration hearings. It is submitted that in an appeal hearing, oral evidence is as good as documentary evidence where it is implausible to provide documents in support."

5. Permission to appeal was granted on both grounds, on 21 March 2024, by First-tier Tribunal Judge Lodato.

Upper Tribunal hearing

6. Mr Terrell relied upon his skeleton argument and both advocates made oral submissions. During the course of this decision, we address the points they made.

Discussion and conclusions

Ground 1

7. There is no merit in this ground. “Continuous qualifying period” is defined in Annex 1 to Appendix EU and it requires the period of residence to have commenced before the specified date, irrespective of whether an applicant seeks to demonstrate either five years of continuous residence or that they are in the process of accruing five years of continuous residence.

Ground 2

The issuing of a Family Permit

8. The Appellant made her application for a family permit in June 2021 (pdf page 64), at which time she was under the age of 21. Having regard to the definition of a ‘family member of a relevant EEA citizen’ and a ‘child’ in Annex 1, the grant of the permit did not require her to prove dependency; it was sufficient that she was the daughter of an EEA citizen and that she was under the age of 21. Consequently, the fact that the family permit was issued was irrelevant to the question of dependency under Appendix EU and it follows that the Judge did not err in not taking this factor into account.

The assessment of the evidence of dependency

9. The Judge’s reasoning is found at [12-13]

> “The Appellant has not provided credible evidence that she is dependent on her sponsor other than to state that that (sic) her sponsor provides her with food, accommodation and all of her essential needs. However the Appellant has not provided evidence of this.
>
> I have considered the evidence of the money transfer receipts and the most recent transfer receipt is dated April 2021 but the transfers are limited. The Appellant has failed to provide evidence to show the sponsor has continued to support her financially since coming to the United Kingdom. I therefore find that the Appellant has not established that she is dependent on her sponsor.”

10. Mr Ogumbusola confirmed to us that the Judge was correct in noting that the most recent evidence of money transfers was April 2021. Whilst we agree with Mr Ogumbusola that the Judge could not have expected money transfer receipts relating to the period following the Appellant’s arrival in the UK, namely from November 2022, dependency prior to her coming to the UK would have been relevant to the assessment of the likelihood that dependency continued thereafter. We can see no error in the Judge’s approach to this evidence.

11. However, there are two pieces of evidence to which the Judge made no specific reference. Firstly, evidence from the school that the Appellant had attended in Ghana confirming that the Appellant’s school fees had been paid by the sponsor. This would have been relevant to the question of dependency prior to arrival in the UK and, as stated above, would have informed the decision as to current dependency. However, we do not consider the failure to take this evidence into account to be material because it relates to the period 2016 to 2018, some four years before the application under consideration, and so only very little weight could have been attached to it.

12. Secondly, the witness statement of the sponsor. There are a number of weaknesses in this evidence. It was notably brief. The relevant section of the witness statement is limited to two sentences: “From the moment she arrived, [the Appellant] was living with me and continues to live with me. I am responsible for accommodation and subsistence, she is my daughter” (paragraph 11 of the witness statement). The statement does not detail (i) how the accommodation is paid for (ii) the living arrangements of the family or (iii) the nature of the subsistence provided. Bank statements and payslips are included in the bundle but no reference is made to them in the witness statement and so it remains unclear what it is these documents are said to demonstrate. No other corroborative evidence, such as a witness statement from the stepfather, was adduced.

13. The impression created is that the sponsor was acting under the misapprehension that, because her son’s application had succeeded, there must have been some mistake made in respect of her daughter. However, her son’s application succeeded because he was under the age of 21 and therefore did not have to demonstrate dependency.

14. On 19 December 2022, the Respondent wrote to the Appellant advising that a decision had not been made but inviting the Appellant to provide further evidence of dependency and included the following in the letter:

> “Evidence of dependency might take the form of for example:
>
> Evidence of your financial dependency, such as bank statements or money transfers from the relevant EEA citizen (or qualifying British citizen or relevant sponsor) or the spouse or civil partner.”

15. The judge specifically recorded at [4] in her decision that:

> “The Respondent has attempted to contact the Appellant on numerous occasions between 19 December 2022 and 18 January 2023 to request specified evidence but this has not been provided”.

16. Evidently the request for independent documentary evidence had been made and it is in this context that the judge approached the evidence. Further, it is not incumbent on the judge to cite each and every piece of evidence. The judge at [11] onwards may have phrased the reasoning more elegantly but did record at [12] that, in effect, there was a bare statement that the sponsor provides “her with food accommodation and all of her essential needs.” The judge added, “however the appellant has not provided evidence of this”. Owing to the limitations of the Appellant’s evidence, which would extend to the content of the sponsor’s evidence, we have reached the conclusion that the judge’s failure to cite the sponsor’s evidence is not indicative of it being ignored or that its specific reference would have altered the conclusion. We therefore find that there was no material error of law.

Notice of Decision

17. The decision of the First-tier Tribunal involved no making of a material error on a point of law and so the decision stands.

C E Welsh

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

7 December 2024