



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001364

First-tier Tribunal No: EA/50655/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 4th of July 2024

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**Abimbola Mojisola Olaleye
(NO ANONYMITY ORDER MADE)**

Appellant

and

An Entry Clearance Officer

Respondent

Representation:

For the Appellant: Mr Olabode Olaleye ('the Sponsor')

For the Respondent: Mrs Newton, a Senior Home Office Presenting Officer.

Heard at Manchester Civil Justice Centre on 2 July 2024

DECISION AND REASONS

1. The Appellant appeals with permission a decision of First-tier Tribunal Judge Jepson ('the Judge'), promulgated following a hearing at Manchester on 13 November 2023, in which the Judge dismissed her appeal against the refusal of her application for leave to enter the UK, on 30 June 2023.
2. The Appellant is a citizen of Nigeria born on 11 November 1945 who claimed to be the dependent parent of her son, Mr Olabode Eniola Olaleye (the Sponsor) the holder of an Irish passport.
3. The Entry Clearance Officer (ECO) raised two issues, firstly that it was not accepted the Appellant and Sponsor are related as claimed and, second, nor was it accepted that dependency had been established on the evidence.
4. The Judge's findings are set out from [26] of the decision under challenge.
5. The Judge notes that there was no issue taken regarding the Sponsor's status in the UK.
6. The Judge notes at [32] that in a previous refusal letter of 9 May 2003 the same issue was raised namely that an affidavit without something to show its legal

status was insufficient to establish the relationship is as claimed. What was different on this occasion, as noted by the Judge, was the availability of the DNA report which confirmed the Appellant and Sponsor are related as mother and son. The Judge therefore finds this issue resolved in the Appellant's favour to the required evidential standard [35].

7. The Judge accepts there is evidence of money being transferred, bank to bank, on a fairly regular basis but finds two elements missing namely bank statements from the Appellant showing receipt and those for the Sponsor showing where the money came from.
8. At [43] the Judge finds there is little documentary evidence setting out the Sponsor's circumstances and that it was reasonable to expect that such material would be provided. The Judge also notes there was nothing clearly setting out the Appellant's essential needs as there was no breakdown of what the claimed figure of £170 per month covers.
9. At [46] - [48] Judge writes:
 - 46.) The sponsor seeks to deal with that by arguing there is nothing in the Rules to require detail about how money is spent. While I agree there is nothing quite so explicit, the definition of dependency quoted about does refer to essential living needs. In order to find the sponsor covers those, I need to first know what they are. It is not enough, I find, to simply cite an amount sent each month.
 - 47.) It is there, in regard to this issue, the appeal falters. There is nothing here which clearly sets out the essential needs of the Appellant. Without that, I cannot be satisfied she is dependent on the sponsor. While a less central point, I am also concerned at the lack of documentary evidence showing his circumstances. There remains a question mark as to the source of money going into the sponsor's Nigerian bank account, the lack of letters from the named recipients of money intended for the Appellant. I am surprised the Appellant's bank statements have not been produced.
 - 48.) Dependency has not been established to the required standard. For that reason, the Rules are not satisfied in full.
10. The Appellant sought permission to appeal on five grounds. Permission to appeal was granted on Ground 4 and 5 only by another judge of the First-tier Tribunal on 25 January 2024.
11. A renewed application in relation to Ground 3 was made to the Upper Tribunal but refused by Upper Tribunal Judge Rimington on 17 April 2024.
12. The two grounds on which permission has been granted read:
 4. Issue of Sponsor's Income: The issue of the appellant's sponsor's proof of income was not raised by the respondent as a reason for refusal, and it was not an issue submitted for determination. The Tribunal's decision appears to introduce a new point of contention that was not part of the initial grounds for refusal or part of the Immigration Rules Appendix EU (Family Permit). However, as this issue has been raised, I have attached Sponsor's Payslips as proof of income.
 5. Judicial Neutrality: The appellant contends that the Immigration and Asylum First-tier Appeals Tribunal Judge cannot act as both the mouthpiece of the respondent and a fair umpire between the appellant and the respondent. There is a concern that the judge's role in highlighting the absence of certain documents that were not raised by the respondent as reason for refusal may have exceeded the bounds of impartiality.

Discussion and analysis

13. The application was refused by the ECO in the following terms:

Reasons for Refusal

On 18 May 2023 you made an application for an EU Settlement Scheme (EUSS) Family Permit under Appendix EU (Family Permit) to the Immigration Rules on the basis you are a 'family member of a relevant EEA citizen'.

I have considered whether you meet the validity, eligibility and suitability requirements for an EUSS Family Permit, which are set out in Appendix EU (Family Permit) to the Immigration Rules (<https://www.gov.uk/guidance/immigration-rules/appendix-eu-family-permit>). You can also find out more about the requirements in the guidance on GOV.UK (<https://www.gov.uk/family-permit/eu-settlement-scheme-family-permit>).

You have stated that the family relationship of yourself to the EEA citizen sponsor is dependent parent. As evidence of this relationship you have provided an Affidavit.

An affidavit is a self-declared statement from a person before a notary public. You have not provided evidence from the competent authorities in Nigeria who have the legal powers to confirm it, that an affidavit is an acceptable alternative to a birth certificate or any other document from those authorities.

Therefore, I am not satisfied, based on the evidence you have provided in isolation, that you are a 'family member of a relevant EEA Citizen'.

In addition to the above, you have not provided adequate evidence to show that you are dependent on a relevant EEA or Swiss citizen, or their spouse or civil partner, as set out in Appendix EU (Family Permit) of the Immigration Rules.

Consideration has been made, based on the evidence and information you have provided, and having regard to your financial and social conditions, or health, as to whether you cannot meet your essential living needs (in whole or in part) without the financial or other material support of the relevant EEA citizen or of the spouse or civil partner.

You have stated on your visa application form that your EEA citizen sponsor arrived in the UK on 1 March 2011. You have also stated that you receive £170 per month in financial support from them.

You have provided a bank statement for an account your EEA citizen sponsor holds at Zenith Bank covering the period of May 2022 to May 2023. This shows several transfers of payments which do name you as the intended beneficiary. However, you have not provided your own bank statements, and therefore without such evidence, I am unable to sufficiently determine that you cannot meet essential living needs without financial or other material support from your relevant EEA Citizen sponsor or their spouse or civil partner.

It is noted that you have previously provided money transfer receipts covering the period of October 2022 and February 2023. Unfortunately, this limited amount of evidence submitted in isolation does not prove that you are financially dependent on your sponsor. I would expect to see substantial evidence of dependency over a prolonged period, given the period of time your EEA citizen sponsor has been in the UK.

It is also noted that you have not provided any evidence of your own domestic circumstance in Nigeria. Without such evidence I am unable to sufficiently determine that you cannot meet essential living needs without financial or other material support from your relevant EEA Citizen sponsor or their spouse or civil partner. You have not provided evidence which fully details your circumstances, income and expenditure and evidence of

your financial position, including any other income you may receive and bank statements in your name over a significant period of time. Therefore, I cannot be satisfied that any funds that your sponsor sends to you is your only or main source of income and used to meet your essential living needs.

On that basis I am not satisfied that you are dependent on a relevant EEA or Swiss citizen or their spouse or civil partner. Therefore you do not meet the eligibility requirements for an EUSS family permit as a dependent parent of a relevant EEA or Swiss citizen, or their spouse or civil partner.

Your application is therefore refused.

14. I do not find it made out there has been procedural unfairness in the manner in which the Judge conducted the appeal or determines its merits.
15. Ground 4 relates to a claim the Judge erred in unfairly referring to the Sponsor's income and ability to afford remittances when this was not an issue raised by the ECO. I accept the Sponsor is correct when he refers to this not being an issue raised in the refusal, but if one reads the determination carefully the Judge does not dismiss the Appellant's appeal for this reason. It is also clear that the issue of affordability was raised with the Sponsor at the hearing and that the Judge refers to the evidence given by the Sponsor and states that if that evidence is true, he can clearly afford the payments that he is making to his mother. There is within the bundle pay slips showing that he does have sufficient income to enable him to afford the payments that he is making. That point was clearly an issue raised with the Sponsor, the Sponsor was able to reply to the same, but was not in any event a point material to the reason why the Judge dismissed the appeal.
16. So far as the claim of bias or lack of judicial neutrality is based upon the point raised in Ground 4, it is not made out. The role of the Judge was to assess the basis on which the appeal arose, by consideration of evidence of the application, decision, grounds of appeal, and evidence provided in support of the appeal, and to decide whether on that evidence the required legal test had been satisfied. That was all the Judge was doing in this appeal.
17. The Appellant needs to prove legal error material to the decision of the Judge to dismiss the appeal for the reasons set out at [46] and [47].
18. In discussion with the Sponsor at this hearing he stated that he gave oral evidence in relation to the payments he makes to his mother. He stated he does not question his mother about what she spent the money on and, in fact, had never asked her. He did not know. He did not keep tabs on her and how she spent it.
19. The Sponsor also refer to the application form and his case is, in reality, that the Judge had both the application form and the oral evidence and that should have been sufficient.
20. I have looked again at the application form but have to agree with Mrs Newton that there is nothing in that form which adequately deals with the Appellant's circumstances or provides the evidence the Judge found was lacking.
21. There can be no merit in the claims that the Appellant and Sponsor were unaware of what was required as within the application itself, on page 7 of 8 in relation to guidance on the documents required, is a section headed "other documents" which states "*evidence that Abimbola Mojisola Olaleye is dependent on Olabode Eniola Olaleye -for example, money transfer receipts or bank statements showing money transfers from Olabode Eniola Olaleye or evidence of accommodation provided by Olabode Eniola Olaleye.*"
22. As noted in the refusal, no such evidence was provided. Before the Judge, therefore, there had been two previous occasions on which the need for evidence to establish dependency had been highlighted.

23. Although the Sponsor claim the economy in which his mother lives is an informal, cash-based economy, and questioned why he was required to provide such evidence in light of the same, the test is a legal test which needs to be met by the provision of best evidence by anybody seeking application to enter and remain in the United Kingdom on the basis the Appellant was. It was not made out that the evidence does not exist. The Sponsor had proved that payments were being made. There was nothing to show the purpose for which the payments were being made or, more importantly, that without such remittances the Appellant would be unable to meet her essential needs.
24. The Judge clearly considered the evidence with the required degree of anxious scrutiny. The weight to be given to that evidence was a matter for the Judge. The Judge clearly took the Sponsor's evidence into account but did not find the material provided sufficient to enable the Appellant to discharge the burden of proof upon her to the required standard to show that she was entitled to the grant of leave to enter and remain in the United Kingdom being sought.
25. When considering whether a judge below has made a material error of law it is important to have regard to the guidance provided by the Court of Appeal in Vopli v Volpi [2022] EWCA Civ 462 @ [2] and Ullah v Secretary of State for the Own Department [2024] EWCA Civ 201 @ [26]. I have done so.
26. Having sat back and reviewed this matter I do not find the Appellant has established the Judge's findings are outside the range of those reasonably open to the Judge on the evidence. It has not been established that the decision to dismiss the appeal is rationally objectionable.

Notice of Decision

28. No legal error material to the decision to dismiss the appeal is made out. The determination shall stand.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

2 July 20204