Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: EA/01140/2017
EA/01141/2017

THE IMMIGRATION ACTS

Heard at Birmingham	**Decision & Reasons Promulgated**
On 1st October 2018	**On 26th October 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

(1) MISS CHINEMEREM SANDRA UZOMA
(2) MISS GINIKACHI KERRI-ANN UZOMA
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

ENTRY CLEARANCE OFFICER - ABUJA

Respondent

Representation:

For the Appellants: Mr B Aquere (Solicitor)
For the Respondent: Ms H Aboni (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Graham, promulgated on 7th March 2018, following a hearing at Birmingham on 13th February 2018. In the determination, the judge dismissed the appeal of the Appellants, whereupon the Appellants

subsequently applied for, and were granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellants

2. The Appellants are two sibling sisters. The first Appellant was born on 20th August 2000, and the second Appellant was born on 20th February 1998. Both are citizens of Nigeria. Both made applications for family permits under Regulation 12 of the Immigration (European Economic Area) Regulations 2006 to join their uncle, who is the Sponsor, by the name of Obed Okpala Ugokwesaese, an EEA national residing in the UK.

The Appellant's Claim

3. The essence of the Appellant's claim is that they are the nieces of an EEA national, who had previously applied for entry clearance, but at the time the ECO was not satisfied that the Appellants had provided sufficient evidence of their relationship. On this occasion there was evidence of money transfers, which showed regular payments by the Sponsor to the Appellants. However, the ECO remained unsatisfied that the Appellants' essential needs in Nigeria, such as the rent and the food, were being met by the Sponsor in the UK. The Appellants had, after all, lived with their grandmother, and therefore the ECO was not satisfied that the Appellants were totally dependent on the Sponsor, and had no other family members in Nigeria able to give them financial and emotional support.

The Judge's Findings

4. The judge, having reviewed the evidence on this particular occasion, noted how the Appellants' mother had passed away, and there was a medical certificate, confirming the cause of the death, as being on 15th December 2014, to which there was no challenge, with respect to the reliability of the documents submitted. Accordingly, the judge found that the Appellants' mother had died in 2014. The judge then looked at the evidence in relation to the money transfers to the Appellants in Nigeria. She went on to conclude that, "I also accept therefore that the Sponsor has played a part in financially supporting the Appellants in Nigeria since their mother's death" (paragraph 15).

5. The judge, however, immediately went on to then consider "whether the Appellant's are dependent upon the Sponsor for their essential needs." She observed that,

> "The Sponsor was asked in cross-examination as to the whereabouts of the Appellant's father. The Sponsor said that the girls' father had never been in their lives, his sister became pregnant out of marriage when she was still at school, the Sponsor said he did not know the whereabouts of the father" (paragraph 16).

6. The Sponsor also maintained at the hearing that he believed that the Appellant's father was in Dubai. He went on to give evidence that he had

visited his nieces in Nigeria in 2016 and he handed in two photographs to this effect (paragraph 17). The Sponsor had seen the Appellants living with their grandmother. It was recorded by the judge that, "he stated neither girl was studying or working in Nigeria" (paragraph 17).

7. Against this background, the judge went on to say that although there was evidence of "a level of financial support for the Appellants, there is no evidence that he pays for their essential needs as their essential needs have not been detailed" (paragraph 18). Moreover, the fact that the mother's death certificate shows the name of the Appellant's father, was something which, the judge concluded "suggests that their mother was in a relationship with their father".

8. Accordingly, her conclusion was that, "I have not accepted the Sponsor's evidence on this point and cannot discount the possibility that he plays a part in the Appellant's lives and contributes to their financial support" (paragraph 18). In short, it was the judge's conclusion that there was "nothing exceptional in these appeals" such as would lead the judge to the conclusion that there was "an ongoing relationship of dependency between the parties". The judge's view was that "the girls are not doing anything in Nigeria, they have finished their education and given their ages they could reasonably expect to find employment in Nigeria" (paragraph 19).

9. The appeals were dismissed.

Grounds of Application

10. The grounds of application, are repetitive and essentially make only one point one paragraph after another, namely, that the judge's findings at paragraph 15 that she had accepted that "the Sponsor has played a part in financially supporting the Appellants in Nigeria since their mother's death", meant that the conclusion that they were not dependent upon him was irrational. This is because case law in the form of **Lim (EEA – dependency) [2013] UKUT 00437**, makes it clear (at paragraph 24) that,

> "Even though it seems clear that not all of the sums sent in remittances…is for the Claimant (some is intended to have support her mother and the 10 year old grandchild), for dependency to arise it is not necessary that a person be wholly or even mainly dependent. If a person requires material support for essential needs in part, that is sufficient" (paragraph 24).

11. This is an additional aspect raised in the grounds of application, together with the reference to paragraph 15 of the judge's decision.

12. On 22nd June 2018, permission to appeal was granted by the Tribunal on the basis that whilst the judge gave reasons, it was arguable that the judge did not appreciate the dependency in EU law is a factorial question

only and the judge may have fallen into arguable error for reasons given in the grounds.

Submissions

13. In the submissions before me, Mr Aquere, appearing on behalf of the Appellant, submitted that if one has regard to what is said at paragraph 15 of the determination, namely, that the judge accepted that "the Sponsor has played a part in financially supporting the Appellants in Nigeria since their mother's death", then it must follow that there was a level of dependency, for the purposes of EEA law, such as to have allowed the Appellants to succeed in their appeal. He relied upon paragraph 24 of **Lim** which he read out for the Tribunal's assistance. Mr Aquere further submitted that there were receipts of payments to which the judge did not draw specific attention, which would have confirmed the level of dependency, in a way that met with the EEA requirements. A failure to do so was a material error of law.

14. For her part, Ms Aboni submitted that the findings made by the judge were comprehensive, and were open to her, and the position in EEA law had not been misunderstood. The judge had accepted that there was some financial support provided. However, the actual circumstances of these Appellant sisters, were such that the judge was not satisfied that the Sponsor was a person upon whom the Appellants were dependent, because, as the judge said, they have failed to show that the Sponsor "pays for their essential needs" (at paragraph 18).

15. In fact, at the end of paragraph 17, the judge made it quite clear that the Sponsor's evidence was that, "he stated neither girl was studying or working in Nigeria" (paragraph 17). If that was the case, then the fact that there were receipts for payment of fees must raise a question mark about the reliability of such documentation, especially given that there had been a previous application where such evidence had not been properly provided, leading to an immediate refusal for that reason alone. Other receipts, demonstrating the Sponsor provided financial support, would equally be seen in the same light, and the plain fact was that the Appellants failed to show that their essential needs were being met by the sponsoring uncle in the UK.

16. In reply, Mr Aquere, in his careful submissions before me, stated that the starting point had to be paragraph 15 where the judge recognised that "the Sponsor has played a part in financially supporting the Appellants' uncle." There then arose a question as to what the support was for. The support was for food and clothing. This is the matter expressly addressed by the ECO in the refusal letter. The ECO was not satisfied. It was wrong for the ECO not to be satisfied. Furthermore, the support was for purposes of health. The fact was that the sponsoring uncle had sent monies directly to the Appellants, and the Appellants had used these monies to pay for

medical bills, and the support was evidence in this manner. For the judge to state (at paragraph 18) that the Appellants had to demonstrate how "their essential needs" were being met, was the wrong test under EU law.

No Error of Law

17. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows. This is a case where the judge, as a factual matter, simply recognises that, contrary to a previous entry clearance application made by the Appellants, on this occasion, there was evidence that "the Sponsor has played a part in financially supporting the Appellants in Nigeria since their mother's death" (paragraph 15).

18. Second, however, over and above that, the judge had then also to be satisfied that the support that was being provided by the sponsoring uncle was one which was "material support for essential needs". Here the judge was not satisfied. The judge was not satisfied that the Appellants were dependent in any way upon the sponsoring uncle. This was for two reasons. First, he was not satisfied that the Appellants' father, who the Sponsor said lived in Dubai, and who had been named in the death certificate of the mother, was not a person who was actually providing for their essential needs (paragraph 16). Second, she was not satisfied that the receipts in relation to financial remittances were what they purported to be. I note that there is, for example, a receipt of 75,000 Naira for the "final step accompanying application" and it is for a Class 4 Joint Admissions and Matriculation Board Examination. However, the Sponsor's own evidence was that "neither girl was studying or working in Nigeria" (paragraph 17). If one then also looks at the medical evidence, such as the receipt dated 8th September 2016, from the then medical laboratories, it is unclear what this is for.

19. Mr Aquere has submitted that it does not matter. What matters is that monies are sent by the sponsoring uncle and that these monies are then drawn upon by the Appellants to purchase their essential needs. However, the judge's observation, which was well-made in this regard, was that "their essential needs have not been detailed" (paragraph 18). It is, for example, not clear what health needs the Appellants have, if any. It was said that payments were being made for their education, but the Sponsor himself stated that "neither girl was studying or working in Nigeria".

20. Accordingly, the judge was entitled to come to the conclusion that, insofar as the question of "material support for essential needs" is concerned, the Appellants were unable to demonstrate that this test had been met under EU law.

Decision

There is no material error of law in the original judge's decision. The determination shall stand.

No anonymity direction is made.

Signed Dated

Deputy Upper Tribunal Judge Juss 22nd September 2018