



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/03591/2017

THE IMMIGRATION ACTS

Heard at Manchester
On 3 August 2018
Given orally at hearing

Decision & Reasons Promulgated
On 6 September 2018

Before

THE HON. MR JUSTICE LANE, PRESIDENT

Between

ANGELA CHIOMA EMERIBE
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss G Patel, Equity Law Chambers
For the Respondent: Mr Bates, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by Mrs Angela Chioma Emeribe, with permission granted by the First-tier Tribunal, against the decision of First-tier Tribunal Judge Heatherington, who, in a determination promulgated in January 2018, dismissed the appellant's

appeal under the Immigration (European Economic Area) Regulations 2016. The essence of the appellant's case is that she is a widowed lady in Nigeria who is entirely financially dependent upon her son, the sponsor, Mr Godwin Emeribe, a person present in the United Kingdom exercising EU Treaty rights here.

2. The sponsor appeared in person before the First-tier Tribunal. He had beforehand produced on the appellant's behalf a considerable amount of documentary material. He came to the hearing with further material. Although the sponsor had done his best to collate and index all the material, it was in many respects somewhat impenetrable.
3. The judge heard evidence from the sponsor and made a series of findings. Those findings begin at paragraph 11. The judge said that he was not satisfied on the evidence that the sponsor was an EEA national exercising Treaty rights in the United Kingdom; he was also not satisfied with the financial dependence of the appellant on the sponsor; or that the appellant's pension in Nigeria was not being and had never been paid. The issue of the appellant's pension is of significance and I shall return to it later.
4. At paragraph 12, the judge made findings regarding the position of the sponsor's brother. The judge appears to have formed the view from oral evidence that the sponsor indicated at one point that both he and his brother provided for their mother, the appellant.
5. However, paragraph 12 records the sponsor as drawing back from what he was earlier said to have indicated, claiming that as the elder son he took cultural responsibility for the needs of the appellant.
6. At paragraph 13, the judge noted a previous hearing in relation to an application made by the appellant. At that hearing, the judge who heard it was satisfied that the sponsor's brother had been financially dependent on the sponsor for a number of years. The present judge noted that at the hearing before him the sponsor claimed that the brother continued to be financially dependent on him and had never contributed to his mother's maintenance. The judge said, however, that there was no evidence to support this. Those paragraphs are said in the grounds to be at best irrelevant to the issue before the judge, which was whether the appellant is dependent within the terms of the Regulations upon the sponsor.
7. I have sympathy with that. The judge does not make clear what point is to be derived from this particular finding. It does not seem to me that the judge made a clear finding that the sponsor's brother was providing for the appellant.
8. The next finding, at paragraph 14, related to the employment of the sponsor. At the date of the decision, which is the relevant date for present purposes, the sponsor was employed with Xpress Solutions but he was later employed by Community Integrated Care. The judge was concerned that there was insufficient evidence of that employment.

9. Miss Patel, who appears on behalf of the appellant, and who has in a short space of time done an excellent job in getting to grips with the often problematic nature of the documentary material, says that if one looks at the main bundle of documents that was before the judge, it can be seen that at the relevant times the sponsor was either in employment or was a registered job seeker. Either way he was, Miss Patel submits, a qualified person, exercising Treaty rights in the United Kingdom. I am prepared in the circumstances to find that is so.
10. The crucial issue, in my view, relates to the nature of the pension to which the appellant is entitled. This is a pension paid to her by the Imo State Government. The judge made a number of findings about this at paragraph 15 of his decision. The judge referred to a draft release from the Imo State Government, which referred only to twelve months unpaid pension. This was a document in the so-called extra bundle before the judge. The sponsor told the judge that the appellant received this document but the sponsor was unclear in what circumstances. It was accompanied by no explanation, according to the judge. However, the judge reminded himself that he should not judge what might happen in Nigeria by reference to United Kingdom standards. Nevertheless, the judge considered that Nigeria was country where it was easy to obtain false documents. The judge also believed that the evidence before him was to the effect that the pension had never been paid. The judge was not satisfied about the pension evidence.
11. For all these reasons, the judge dismissed the appeal.
12. Is there, then, an error of law in the judge's decision? So far as the pension issue is concerned, Miss Patel submits that there is. She says that if one looks at the main bundle, one sees at the front that there is an affidavit from the appellant relating to the pension. The affidavit states that the appellant has not been paid a pension since December 2014. That there have been difficulties in paying pensions in Imo State is evidenced not only by material in the extra bundle to which the judge had regard but also in material in the main bundle. There is also reference made to it in connection with a previous entry application made by the appellant under the Regulations. The appellant has consistently averred that she has not been paid a pension since December 2014.
13. I do agree with Miss Patel that there is an error in paragraph 15 of the judge's decision regarding the pension issue. The question for me, however, is whether that error is material.
14. Mr Bates for the respondent submits that it is not. He does so essentially for the following reason. If one looks at the news document relied on in the extra bundle, one sees not only that there are complaints about pensions not being paid, but that in fact there were complaints about only 40% of the accumulated pension arrears being paid to those entitled to receive them. There is a trenchant denial of any problem by a spokesman for the Imo Government, who said, amongst other things, that more than 99% of pensioners in the state have been paid arrears of their pensions up to December

2016 and the remaining 1% of pensioners who were admitted in the first payment exercise are said to be pending and are at the moment receiving their cheques.

15. Looking at the material in its entirety, I am not satisfied that any judge could reasonably have formed the conclusion that the appellant had made good her claim to have been denied payment of arrears and to be continuing to be denied a pension. The material put forward by the appellant shows, as I have indicated, a denial by the Imo State Government that there are any continued problems regarding arrears. More importantly, there is in that material no indication that - whatever might have been the position regarding arrears - pensioners are not now receiving on an ongoing basis the pensions to which they are entitled.
16. Mr Bates also makes the valid point that the appellant has failed to give an indication as to her financial position by reference to relevant bank statements. That is also true of the sponsor himself.
17. In the circumstances, therefore, although I find that the judge was wrong to make the finding that he did regarding the employment of the sponsor and that he made an error in paragraph 15 in relation to the pension, the overall evidence relating to the pension is clearly of crucial importance in this case and it cannot discharge the burden that is on the appellant.
18. Therefore, although there are errors in the judge's decision, they are not material. In my view, the decision would have been bound to be the same. This does not of course in any way preclude a fresh application being made, however burdensome that may be to the appellant and the sponsor. Both will, I hope, now appreciate the importance of showing that all relevant requirements of the Regulations are met. This means that pension issue must be the subject of proper evidence, if the respondent or a judge in the future is to come to the conclusion that the requirements of the Regulations are made out.
19. I dismiss the appellant's appeal.

No anonymity direction is made.

Signed

Date 2 September 2018

The Hon. Mr Justice Lane
President of the Upper Tribunal
Immigration and Asylum Chamber