



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/04170/2017

THE IMMIGRATION ACTS

Heard at Field House
On 17th May 2018

Decision & Reasons Promulgated
On 6th July 2018

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

KIPTIEU SALAMATU CAREW
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Adewoye, Solicitor at Prime Solicitors
For the Respondent: Mr S Walker, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant appeals against the decision of First-tier Tribunal Judge Suffield-Thompson promulgated on 22 February 2018, in which the Appellant's appeal against the decision to refuse to issue her with an EEA Family Permit dated 22 March 2017 was dismissed.
2. The Appellant is a national of Sierra Leone, born on 15 February 1947, who applied for an EEA Family Permit to join her daughter (the Sponsor), a Polish national residing in the United Kingdom.

3. The Respondent refused the application on 22 March 2017 on the basis that the Sponsor was not a qualified person. Although the Sponsor was employed, her earnings were below the Primary Earnings Threshold (PET) and her main income was from Child Tax Credits and Working Tax Credits. The Respondent accepted that the Sponsor had made money transfers to the Appellant since 2009 but it had not been established that these were for her essential needs and her wider circumstances, such as housing and other family members had not been established. Overall it was not accepted that the Appellant was wholly financially dependent on the Sponsor and therefore the requirements of regulation 12 of the Immigration (European Economic Area) Regulations 2006 were not met. That decision was maintained on review by an Entry Clearance Manager on 19 August 2017 and 3 October 2017.
4. Judge Suffield-Thompson dismissed the appeal in a decision promulgated on 22 February 2018 on all grounds. In relation to the issue of whether the Sponsor was a qualified person, Judge Suffield-Thompson found that her earnings were below the PET, with the majority of her income coming from benefits which could be taken away and were not guaranteed. The Sponsor's evidence that she was in receipt of maternity pay and sick pay was not accepted as it was not evidenced on the payslips provided. Further, the Sponsor was not found to have the disposable income required to send £50 a month to the Appellant and support herself and her children.
5. In relation to the Appellant's circumstances, Judge Suffield-Thompson found that even if the Sponsor was sending the money as claimed, it did not pay for the Appellant's essential needs in Sierra Leone where she is provided with accommodation, food and care by a friend. The letter from that friend, Mrs Diop was found to have been written deliberately in such a way as to support the Appellant's claim and there was no evidence that the Appellant herself pays rent or contributes to her food, keep or medicines. As such, the Appellant had not established that she was dependent on the Sponsor.

The appeal

6. The Appellant appeals on two grounds. First, that there was a material mistake of fact in the First-tier Tribunal's decision as there was evidence in the Appellant's bundle of the Sponsor receiving both maternity pay and sick pay; both of which explain why she had not met the PET for a specified period. Further, even if the PET was not met, the First-tier Tribunal erred in failing to consider in any event whether the employment was genuine and effective. Secondly, that there was a mistake of fact in the First-tier Tribunal's decision which was on the basis that the Appellant lived in Sierra Leone whereas she was living with the Sponsor's friend in Senegal. The Appellant was not paying rent and there was clear evidence as to what the remittances from the Sponsor were for.
7. Permission to appeal was granted by Judge Pooler on 5 April 2018 on all grounds.
8. At the oral hearing, the Appellant's circumstances in Senegal, with living arrangements made by the Sponsor for her to live with the Sponsor's friend there and the financial support provided by the Sponsor were emphasised. This financial

support covered all of the Appellant's essential needs. The factual mistakes made by the First-tier Tribunal in this regard were, it is submitted, material as they affected the assessment of who the Appellant was dependent on.

9. In relation to the Sponsor's earnings, the Appellant's bundle included payslips evidencing maternity pay and sick pay, together with sick notes. In any event, there was sufficient evidence to establish genuine and effective employment – the Sponsor was employed for 23 hours a week at a salary over the PET and had regularly sent remittances for four years to the Appellant. The factual findings were therefore inconsistent with the evidence before the First-tier Tribunal.
10. Mr Walker, on behalf of the Respondent, accepted that there was a factual error in the First-tier Tribunal's determination as to where the Appellant was living and accepted a material error of law in relation to the Sponsor's earnings and evidence of sick pay and maternity pay affecting whether the PET was met.
11. The parties were content that the decision should be re-made on the papers if a material error of law was found and no further evidence would be required.

Findings and reasons

12. As properly accepted by the Respondent and for the reasons set out below, there are clear errors of fact and law in the First-tier Tribunal's decision with findings reached which were contrary to the evidence before it. As such it is necessary to set aside the decision and remake it.
13. The first issue is whether the Sponsor is a qualified person pursuant to regulation 6 of the Immigration (European Economic Area) Regulations 2006, in the present case, as a worker. To establish this, the Respondent expects a person to have earnings in excess of the PET which at the time of the decision was £155 gross per week or £672 gross per month; or otherwise to establish that their employment was genuine and effective.
14. The evidence before the First-tier Tribunal of the Sponsor's employment included a letter from Coniston Lodge confirming her employment from 28 November 2013 for 23 hours a week and another from Lifestyle Care Management Ltd confirming employment and maternity leave (and receipt of statutory maternity pay); as well as payslips dated between February 2016 and April 2017. At the beginning of that period those payslips showed 'SMP' or statutory maternity pay as well as 'SSP' or statutory sick pay in January and February 2017. The payslips for March and April 2017 (after the Sponsor's return to work from maternity leave and ill-health) show earnings above the PET.
15. The First-tier Tribunal materially erred in failing to consider and attach weight to this evidence of the Sponsor's employment and her oral evidence which was consistent with it; instead reaching a conclusion in paragraph 24 which was contrary to this evidence. The Appellant has clearly established that the Sponsor is a worker, being employed to work 23 hours a week which in a normal month as at the date of the hearing (i.e. absent maternity leave or ill-health), was for earnings over the PET. The

months in which earnings were lower were fully explained and evidenced and in any event, the employment was genuine and effective. It was long-term employment for regular hours at a sufficient level for the Sponsor in her circumstances.

16. The second issue is whether the Appellant was dependent on the Sponsor. The Respondent did not, in the reasons for refusal letter, take issue with the Sponsor's remittances to the Appellant since 2009, which were expressly accepted. The First-tier Tribunal however did not expressly accept this, for no reason other than the Judge doubted that the Sponsor would have sufficient disposable income to do so. There was no proper basis for that finding, although in any event the First-tier Tribunal went on to consider whether the money paid for the Appellant's essential needs.
17. It is clear that the First-tier Tribunal proceeded on an incorrect factual basis that the Appellant was still living in Sierra Leone, when in fact she was living in Senegal pursuant to arrangements made for her by the Sponsor. There were written statements before the First-tier Tribunal from the Appellant and the Sponsor and a letter from the person with whom the Appellant currently lives. These statements consistently set out that since 2009 (after the death of the Appellant's husband in 2004 and carer in 2009), the Sponsor had arranged for the Appellant to live with her friend in Senegal (to whom no rent was paid) and paid her £50 a month for her upkeep. This money was for food, medication and other miscellaneous items. The Appellant has no other income or family in Sierra Leone.
18. The First-tier Tribunal's findings on this evidence that the Sponsor does not pay for the Appellant's essential needs are flawed, inconsistent with the evidence and in any event set out inadequate reasons for the rejection of consistent evidence before it. Contrary to the reasons given in paragraph 26 of the decision, the lack of evidence that the Appellant pays for accommodation or upkeep herself supports the Appellant's claim of dependence on the Sponsor. Further, there is no clear basis upon which the letter from the friend hosting the Appellant could be discounted because it was written deliberately in such a way to support the application – there is nothing to undermine the information contained in that letter and of course it was written to support the application, but that of itself does not affect the weight to be attached to it.
19. I find that the consistent evidence is that the Appellant is financially dependent upon the Sponsor for her essential needs, with accommodation being arranged for her by the Sponsor and remittances to pay for her food, medication and general upkeep. There is no dispute that this has been the consistent position since 2009 and remains to date. As such, the evidence clearly establishes dependency and overall, the Appellant satisfies the requirements of an extended family member under regulation 8 of the Immigration (European Economic Area) Regulations 2006 and also for the issue of a family permit under regulation 12 of the same.
20. For these reasons, the making of the decision of the First-tier Tribunal involved the making of material errors of law and I therefore set aside the decision. The appeal is remade and allowed.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it is necessary to set aside the decision.

I set aside the decision of the First-tier Tribunal and remake the decision on appeal.

The Appellant's appeal is allowed under the Immigration (European Economic Area) Regulations 2006.

No anonymity direction is made.

Signed



Date

5th July 2018

Upper Tribunal Judge Jackson