



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: EA/00134/2019

THE IMMIGRATION ACTS

Heard at Field House  
On 18 November 2019

Decision & Reasons Promulgated  
On 26 November 2019

Before

UPPER TRIBUNAL JUDGE KEITH

Between

FRANCES MARY BANGURA  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr S Appiah, directly instructed  
For the respondent: Mr S Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The error of law decision was given orally at the end of the hearing on 18 November 2019 and these written reasons reflect the oral decision. I reserved my remaking decision, which is contained later in this decision and reasons.
2. This is an appeal by the appellant against the decision of First-tier Tribunal Judge Munonyedi (the 'FtT'), promulgated on 25 July 2019, by which she dismissed the appellant's appeal against the respondent's refusal of her application for an EEA Residence Card as the extended family member of her cousin, a French national, Saidu Jabbie, said to be exercising treaty rights in the UK. The respondent's decision under appeal was dated 30 September 2016, but was incorrectly recorded by the F-tT as being dated 30 October 2018, the date of a later decision. The lateness of the appellant's appeal was explained and an extension of time was granted by F-tT Judge

Shanahan on 30 October 2018, as a result of the litigation confirming the right of appeal for extended family members in the case of Khan v SHHD [2017] EWCA Civ 1755. The appellant initially had not been given the right of appeal.

3. The gist of the issues was whether the appellant was either a member of her cousin's household or dependent on him prior to coming to the UK in August 2015; and whether she was currently financially dependent on him or a member of his household since her arrival.
4. The grounds of appeal were not only that the F-tT had considered the wrong decision; by reference to the wrong EEA regulations (2016 as opposed to 2006), but also applied the wrong case-law, applying human rights appeal case law (Kugathas v SSHD [2003] EWCA Civ 31) rather than the well-known authority for extended family member cases of Dauhoo (EEA Regulations - reg 8(2)) [2012] UKUT 79 (IAC) and had impermissibly imported consideration of whether the appellant was choosing to be dependent on her cousin, which was not relevant. The FtT had erred in not considering, for the purposes of the value of any savings the appellant might have made, the effect of hyper-inflation in Venezuela, where she had lived immediately prior to coming to the UK in August 2015.

### **The grant of permission**

5. First-tier Tribunal Judge Grant-Hutchinson granted permission on 10 October 2019, identifying that it appeared that the F-tT had considered the wrong decision, by reference to the wrong regulations, using the wrong legal test; and in failing to consider remittances over time; the true value of the appellant's savings; and in impermissibly considering the motives for the appellant coming to the UK.

### **The hearing before me**

#### *The respondent's submissions*

6. While Mr Whitwell accepted that the F-tT had considered the wrong decision under the wrong provisions, the basis of the refusal (a dispute as to previous and current dependency and household membership) remained unchanged and so in that specific context, the error was not material. While the F-tT had unfortunately referred to matters which were not directly relevant, such as the motive for the cousin's support for the appellant, the finding had been clear that the claim of dependency was fabricated; and there was never sufficient evidence before the F-tT to demonstrate prior membership of the cousin's household when they were both children; or, given the limited remittances, dependency.

#### *The appellant's submissions*

7. The appellant presented evidence that the cousin had returned to Sierra Leone, the appellant's country of origin, to the common family home, on the death of his mother, for family visits, when the appellant lived there prior to 2010. He had sent remittances over many years and the appellant's college bursary in Venezuela covered only part of her costs. The lack of proper analysis of the evidence could not be considered immaterial in the circumstances.

*Discussion on error of law*

8. I concluded that the FtT's errors of law were material in this case. Not only had the FtT considered the incorrect decision by reference to the EEA Regulations 2016 rather than the EEA Regulations 2006, but of greater importance was the fact that the FtT had considered the appeal by reference to the authority of Kugathas, to which I have referred, rather than the well-known authority of Dauhoo. The reasoning clearly impacted on the eventual decision, noting at paragraph 21 of the FtT's decision as follows:

"21. It is my finding that the appellant has not been dependent upon the sponsor whilst living outside the UK. Any financial help given by the sponsor to the appellant is the sort of help family members give to one another from time to time."

9. Clearly therefore, the motive of the sponsor in providing financial support to the appellant was critical in the FtT's analysis and I do not accept that the FtT's conclusion around fabrication of the claimed dependency was uncontaminated by the failure to consider the structured approach in Dauhoo, namely whether there had been prior membership of the cousin's household and/or financial dependency; and current membership of the cousin's household and/or financial dependency. In these circumstances the cousin's motives around that support or membership were not relevant; nor was the issue of whether the appellant was dependent on her cousin as a matter of the appellant's choice, rather than necessity. Therefore, the FtT's decision was not safe and cannot stand.

*Decision on error of law*

10. I therefore set aside the FtT's decision entirely.

*Remaking*

11. Given the limited factual areas of dispute I regarded it as appropriate to remake the decision on the appellant's appeal, rather than remit remaking to the First-tier Tribunal.
12. I dealt with the remaking by way of submissions only, without any live evidence, but I considered the appellant's bundle ("AB") which had been before the FtT. The parties' representatives were content to proceed on that basis.
13. It was not disputed that the appellant was related, as claimed, to her cousin and was therefore his extended family member. What remained in dispute was the prior and current living arrangements and also the claimed financial dependency.

*The appellant's submissions*

14. Mr Appiah referred to the money remittances from the appellant's cousin to the appellant when the appellant was in her country of origin, Sierra Leone, between 2005 and 2010; and between 2010 to 2015, when the appellant lived in Venezuela, as illustrated in the remittances at pages [97] and [119] AB.

15. Broadly speaking, the documented remittances, setting aside for one moment the issue of undocumented remittances which were given via third parties such as family, friends or relatives, for which there was a witness statement at page [35] AB comprised twelve remittances whilst the appellant was in Sierra Leone totalling £2,234 and then for the period from 2010 to 2014, twelve remittances totalling £1,305. Whilst the appellant had initially received a bursary for attending college whilst in Venezuela which covered her course costs, flight and accommodation it did not cover her food and as she had confirmed in her witness statement, she also subsequently self-funded a second course. I asked what income the appellant received when she began work in August 2014 up until Venezuela in August 2015, when she left Venezuela to enter the UK and Mr Appiah confirmed was that she was receiving a salary of a sterling equivalent of £2,000 a month as a professor at the university, having not previously been employed.
16. Mr Appiah candidly accepted that there did not appear to be any documentary evidence of ongoing remittances during the period that the appellant was receiving her salary and working as a professor from 2014 to 2015, immediately prior to entering the UK. Nevertheless, he submitted that she relied on prior remittances which she had saved over a period of time to meet her basic needs; and even if, which was not admitted, she had not received any undocumented remittances after 2014, nevertheless she had also been a member of her cousin's household in Sierra Leone up to 2010, during which he regularly visited her.
17. Mr Appiah asserted that there was also current financial dependency and household membership, evidenced by bank statements to a shared address as well as limited evidence of financial transfers from the cousin to the appellant but also noting that these were likely to be more limited amounts when the appellant was now living with her cousin in the UK.

#### *The respondent's submissions*

18. Mr Whitwell asked me to consider the total value of documented remittances, £2,234 for the period 2005 to 2010; and £1,305 for the period from 2010 to 2014, comprising a total of £3,539 or over nine years an annual average of £393.22, which was hardly a large sum. In contrast, in the appellant's visa application to enter the UK, question [58] at page [165] AB, she stated that she worked as a professor and had savings, of a sterling equivalent, of £20,000. She had also been in receipt of a bursary in the initial course that she had received. There was neither financial dependency prior to coming to the UK nor membership of the appellant's household. There needed to be either membership of household or financial dependency in the period from 2014 to when the appellant entered the UK in August 2015 and that the gap of that year meant that the appellant's claim had to fail, even if there were prior household membership and dependency.

#### *Discussion and conclusions*

19. Regulation 8(2) of the 2006 Regulations states:

“A person satisfies the condition in this paragraph if the person is a relative of an EEA national, his spouse or his civil partner and:

- (a) the person is residing in a country other than the UK and is dependent on the EEA national or is a member of his household;....
- (c) the person satisfies the condition in paragraph (a), has joined the EEA national in the UK and continues to be dependent on him or a member of his household.”

20. In terms of my findings, what is clear is that in the period in which the appellant lived in Venezuela from 2010, until when she entered the UK on 22 August 2015, she was not a member of her cousin’s household. He has never lived in Venezuela nor has he maintained any household there. Taking the appellant’s assertions at their highest, any common household membership ended in 2010. Prior to that date, the appellant and her cousin had, when growing up as children, shared a common home with the cousin’s mother, until the cousin left Sierra Leone to live in France in 1999. Whilst the cousin’s witness statement confirms that he sent remittances to Sierra Leone (albeit it is unclear whether to his mother of the appellant) he does not suggest that after his departure in 1999, and prior to his mother’s death in 2005, that his mother’s home in Sierra Leone amounted to his household the purposes of the EEA regulations. Instead, he had been a former member of that household, leaving it as a minor, aged 15. Whilst he refers to returning to Sierra Leone in December 2005 to get married and returning again in October 2006, April 2007 and in 2008, the durations of his stays are unspecified; and Mr Appiah was unable to confirm who owned or rented his deceased mother’s home in Sierra Leone, in which the appellant continued to live. I do not accept that the fact of the cousin’s return visits to Sierra Leone on four occasions between December 2005 and 2008 meant that the appellant became a member of his household, on the death of his mother, where the remaining circumstances of the family home in Sierra Leone remain unclear. I find that the appellant has never been a member of her cousin’s household prior to coming to the UK on 22 August 2015.

21. In relation to claimed financial dependency, the appellant is unclear in her witness statement about what financial support her cousin provided to her prior to going to Venezuela in October 2010, albeit the remittance slips in the AB, which I have considered, provide some basic evidence, but no clear pattern of how the appellant managed her finances in Sierra Leone and who she was, in truth, dependent on. Whilst the cousin refers to remittances that were sent prior to the death of his mother on 9 May 2005 he does not provide any detail on the further remittances until the appellant went to study in Venezuela. Whilst the appellant has referred to Western Union money transfers between October 2010 and December 2014, and asserted that her scholarship did not cover all of her costs and things that she would need, the precise nature of those needs were unspecified and it is possible to make a finding, with any confidence, that the remittances were used by the appellant in terms of her basic needs. I find that the appellant, despite the remittances provided, was not dependent on her cousin during the period from 2005, when her aunt died, until she obtained a job as a professor on 5 August 2014.

22. Even had I found otherwise, it is even clearer that following getting a job as a professor on 5 August 2014, for which she received a monthly salary of sterling equivalent of £2,000, that she was not dependent on her cousin after that date. Even taking into account the financial instability in Venezuela, and even assuming that the appellant's substantial savings of the sterling equivalent of £20,000 might have been accrued over a number of years, including through remittances from her cousin (which amounted to nowhere near £20,000), the absence of any further direct remittances, together with the absence of any detailed evidence on how the appellant's personal finances were affected by any wider economic instability in Venezuela, lead me to find that the appellant was not dependent on her cousin whilst employed during the period from August 2014 August 2015, by virtue of her significantly well-paid job, which was explained why he ceased sending her remittances.
23. In summary, I conclude that the appellant was not dependent on, or a member of the household of, her cousin prior to entering the UK on 22 August 2015. Even had I concluded otherwise in relation to dependency prior to the appellant starting her job on 5 August 2014, that would have left a gap between August 2014 and August 2015 during which there was no dependency. Regulation 8(2) of the EEA regulations refers to an applicant continuing to be dependent on their sponsor prior to entering the UK, which means that even if there had been financial dependency prior to August 2014, any dependency would not continue by virtue of the gap in the period from 2014 2015. However, my dismissal of the appeal rests on the fact that there was no prior financial dependency or household membership at all prior to the appellant entering UK, and as a consequence she fails to meet the requirements of regulation 8(2).

*Decision*

24. I remake the F-tT's decision and dismiss the appellant's appeal.

Signed *J. Keith*

Date: 22 November 2019

Upper Tribunal Judge Keith

**TO THE RESPONDENT**  
**FEE AWARD**

The appeal has failed and so there can be no fee award.

Signed *J. Keith*

Date: 22 November 2019

Upper Tribunal Judge Keith