



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: EA/01028/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 20th December 2018**

**Decision & Reasons
Promulgated
On 25th January 2019**

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

**CLEMENT EROMOSELE AIKHUELE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms J Heybroek of Counsel, instructed by Paramount Solicitors

For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Nigeria who appealed against the decision of the respondent dated 24 June 2016 refusing his application for an EEA residence card as the family member of an EEA national exercising treaty rights in the United Kingdom. This is not the first application or decision the applicant had made, the first such application being made following entry in 2012 with subsequent applications in the intervening years up

until 6 January 2016. Those applications all resulted in refusals on similar grounds and two of those decisions were appealed to the First-tier Tribunal. On the first occasion, in a decision promulgated on 16 April 2013, the appeal was dismissed substantively by Judge Hamilton. On the second occasion, the appeal was dismissed in a decision promulgated on 5 November 2014 by Judge White.

2. The appeal then came before Judge Cassel in the First-tier Tribunal on the most recent occasion with a decision and reasons promulgated on 5 October 2018. On that occasion, the First-tier Tribunal had the benefit of the respondent's bundle of documents which included the previous two First-tier Tribunal decisions, documents from the appellant including a skeleton argument and a number of documents which overlapped with those that had previously been provided to the respondent and in previous appeals.
3. The key issue in the appeal was whether the appellant had established dependency on the sponsor, there being no claim to previous membership in the same household with the sponsor in Nigeria prior to arrival in the United Kingdom. On that point the First-tier Tribunal essentially relied upon the findings in the previous two determinations, having found in paragraph 12 by reference to the two previous appeal hearings that those findings of fact must be the starting point. That is correct in accordance with the case of Devaseelan (Second Appeals - ECHR - Extra-Territorial Effect) Sri Lanka [2002] UKIAT 00702 and it was noted that the only new evidence was that of Reverend Robinson, who had also given evidence in a previous appeal. The appeal was ultimately dismissed on the basis of the previous findings of fact of Judge Hamilton and of Judge White that there was no prior dependency in Nigeria between the appellant and the sponsor. For those reasons the appeal was dismissed as the requirements of the Immigration (European Economic Area) Regulations 2006 could not be met.
4. The appellant appeals with permission today on the basis that there was a failure to properly assess that key issue of dependency and the appellant's evidence of it, with the First-tier Tribunal relying solely on previous decisions with no new findings made. It was claimed that the remittance slips of money transfers had been disregarded and on a second ground, that there was no evidence from the respondent about a separate issue of deception on entry clearance. The latter ground is not material to the outcome of the appeal.
5. I find no error of law in the First-tier Tribunal's decision. It has been expressly accepted by the appellant that there was no new documentary evidence of dependency in Nigeria, with a limited number of money transfer receipts available, all of which had been submitted to the previous Tribunals and considered in the findings of fact made therein. The finding at paragraph 12 of the decision that the only new evidence before the most recent First-tier Tribunal was that of Reverend Robinson has been expressly accepted before me today as accurate. It is also accepted that

Reverend Robinson did not know either the appellant or the sponsor at the relevant time period and could only give evidence as to their general credibility rather than anything specific about the period of claimed dependency. In this case not only is the previous decisions of the First-tier Tribunal on dependency the starting point it is also inevitably the end point. If there was no new evidence before the First-tier Tribunal to consider in this particular case, then there were no further findings of fact that could be made in accordance with the principles in Devaseelan. There are no further findings because there is no further evidence to be considered.

6. Counsel for the appellant has not been able to point to anything specific in the written statement or the oral evidence given which would add to or change the position from the previous appeal decisions, such as to require separate consideration by the First-tier Tribunal. In these circumstances, it is inevitable that the previous findings would not only be relevant as the starting point, but also upheld applying the principles in Devaseelan. For these reasons, there is no error of law in the decision of the First-tier Tribunal, as no further findings or reasoning were required in the decision of Judge Cassel. I make no specific findings on the lack of any evidence of deception in the entry clearance application, as this is immaterial in the absence of the appellant being unable to establish dependency in Nigeria.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of a material error of law. As such it is not necessary to set aside the decision.

The decision to dismiss the appeal is therefore confirmed.

No anonymity direction is made.

Signed
2019



Date 14th January

Upper Tribunal Judge Jackson