In the Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: EA/05559/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 14 December 2018	**On 31 January 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

YOFFOUAKAN PACOME ALOHA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Miss F Clarke of counsel
For the Respondent: Mr E TUFAN, a senior Home Office presenting officer

DECISION AND REASONS

Introduction

1. The appellant is a citizen of the Ivory Coast who was born on 16th of November 1984.

The appellant's immigration application

2. The appellant applied for an EEA family permit on 28 March 2017. It is an unfortunate feature of this appeal that the parties appear unable to agree what

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version of the Immigration (European Economic Area) Regulations (EEA Regulations) apply. That application was considered by the Entry Clearance Officer (ECO) who, in a decision dated 12 May 2017, refused entry clearance to the UK. He referred to Regulations 7 and 8 of the 2016 EEA Regulations. It appears from Halsbury's Statute Citator that the 2016 EEA Regulations came into force on 1st February 2017 and therefore that the ECO correctly considered the application under the 2016 EEA Regulations. On 8 June 2017 the appellant appealed the ECO's refusal which triggered a review by the entry clearance manager (ECM) on 21 December 2017. The ECM considered whether the appellant qualified for an EEA family permit under the EEA Regulations 2006 (correctly referred to in the earlier ECO's decision as the 2016 EEA Regulations). The ECO having been furnished with additional evidence was not satisfied as to the appellant's relationship with the EEA national in question, his sister [OK], a French national who was born on 27th of July 1984 who lived in Beckenham, London (the sponsor). In addition, the ECM did not consider the appellant to be "wholly financially dependent" within the meaning of those regulations. The refusal was on the grounds that the appellant did not meet the requirements of regulation 8 (2) of the 2006 Regulations (fortunately, the same regulation numbers apply in relation to both sets of regulations) in that he was not a person who is dependent upon an EEA national or a member of his household the purposes of regulation 8 (2) (b). The refusal was under regulation 12 which requires the respondent to issue a family permit to a family member of an EEA national who is residing in the UK in accordance with the 2016 EEA Regulations. The ECM noted that insufficient evidence had been supplied to show the financial dependency for the purposes of the regulations, nor was he satisfied that the other conditions or regulation 12 were met. The respondent also considered the application under article 8 of the European Convention on Human Rights (ECHR) but noted that the EEA Regulations fully catered for the private or family life between members of the EEA and non-member family members.

The hearing

3. The appellant claims the decision of the FTT was not one reasonably open to it since dependency had been established by producing money remit remittance slips, call logs, email correspondence (admittedly in French) and details of visits by the sponsor to the Ivory Coast.

4. I heard submissions by both representatives. Both parties referred to the case of **Moneke [2011] UKUT 00341 and 00341 (IAC)**. Mr TUFAN farm also relied on the case of the **Lim [2011] EWCA CIV 1383**. It was pointed out at the hearing that the relationship between the appellant and the sponsor were now accepted and there have been DNA evidence to support this. Miss Clarke pointed out that although there was a reference to "parents" on the document page 252 in the appeal bundle used by the FTT this had been incorrect as one of the parents is referred to as "deceased" at page 158. This was the father. It was pointed out that the money that the sponsor sent back to Ivory Coast either went to the appellant or the father but since the father was no longer alive that was obviously impossible. It was pointed out that the sponsor was sending approximately £200 per month and this was

verified by the document at page 159 – a letter to me we may concern. She produced substantial evidence to verify the documents from Western Union. Ms Clarke complained the judge had not considered adequately dependency within the terms of the regulations and bearing in mind the numerous remittances via Western Union (for example at page 69 et seq) there was no reason to doubt the dependency here. I was also referred to pages 108, 112, 117, 163 (a bank statement confirming a payment to the Western Union), 165, 196, 197, 207, 228 – 229 and 231 – 232.

5. As far as the emails were concerned, this Clarke acknowledged that they were in French but said that they verified the close relationship between them and the frequent level of communication between brothers and sister.

6. The judge was specifically criticised in relation to his findings at paragraph 17 of the decision, where he referred to the lack of objective evidence to show any great difficulty in obtaining employment in the Ivory Coast and the immigration judge was also criticised for drawing attention to the sponsor's modest income as compared to her substantial expenditure alleged on the appellant. I was referred to paragraph 32 of the case of **Lim** where the Court of Appeal pointed out that it is clear beyond doubt that the fact that the sponsoring party is able to make substantial sacrifices did not mean there was no dependency the critical question was whether the claimant was in fact in a position to support himself and the dependent person.

7. Mr Tufan, on the other hand, relied on paragraph 5 of the headnote in **Moneke** where the President contrasted the "membership of a household" for the purposes of the Directive which gave rise to the EEA Regulations and "dependency" on the EEA national for the purposes of the EEA Regulation. The latter can be based on material remittances sent by the EEA national to the family member, who may live in another country. Mr Tufan said that the email correspondence was all in French and was rightly rejected by the judge. He also referred to page 341 and the headnote paragraph 21K. Overall he said that the decision of the FTT was sound.

8. Miss Clarke made lengthy submissions in reply later in the day, essentially arguing that it was permissible for a dependency to be based on historical events.

9. At the end of the hearing I reserved my decision.

Discussion

10. The key issue is whether the finding that the appellant had established on a balance of probabilities that he was dependent on the sponsor. The judge concluded that he was not. Was this conclusion justified on the evidence?

11. The respondent says that the reasons the judge gave for rejecting the appellant's evidence were cogent.

12. The appellant says the evidence was sufficient to show a dependency – the evidence being the form of money remittance slips, call logs, e mail correspondence and visits to the Ivory Coast by the sponsor. The judge was criticised for giving "jumbled

reasons" and it is now necessary to consider whether, in so far as that criticism is justified, the decision was nevertheless one that was open to him.

13. I find that the decision was open to him for the following reasons:

    (i) The judge did not find the sponsor to be credible for the clear reasons given. In particular:

    - He pointed to a number of inconsistencies in paragraph 16 of his decision. There is no trail to indicate that remittances by the appellant clearly ended up being paid to the appellant as opposed to the appellant's father.
    - He pointed to the lack of a clear reason why the sponsor would wish to pay for her adult brother.
    - There was inadequate documentation to support the fact that the payments had actually been made.
    - The financial circumstances of the sponsor and her husband did not warrant such expenditure. There was no way the Immigration Judge thought, such expenditure could have been afforded.

    (ii) The issue of what weight to give to one piece of evidence and what to another were matters for the judge having heard the evidence and weighed up the documents produced.

    (iii) The judge was not bound to attach any weight to untranslated documents and was entitled to reject them.

    (iv) The above findings led the judge to the conclusion that the appellant was not dependent on the sponsor as claimed.

14. There is no dispute that the sponsor is in the UK exercising treaty rights or that she is related as claimed to the appellant, but on the key finding of lack of dependency, the appeal failed for the proper reasons identified.

Conclusion

15. The decision of the FTT does not contain any material error of law. The decision of the FTT therefore stands.

Notice of Decision

The appeal is dismissed on under the EEA Regulations 2016.

No anonymity direction is made.

Signed Date 15 January 2019

Deputy Upper Tribunal Judge Hanbury

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed Date 15 January 2019

Deputy Upper Tribunal Judge Hanbury