



IAC-FH-CK-V1

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

Appeal Number: EA/06283/2019

THE IMMIGRATION ACTS

**Heard at Field House
Remote hearing by Skype
On 13 May 2021**

**Decision & Reasons Promulgated
On 28 May 2021**

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

**ANTHONY DUBEM ASOMUGHA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation

For the Appellant: Mr O. Ngwuocha, Solicitor, Carl Martin Solicitors
For the Respondent: Mr E. Tufan, Senior Home Office Presenting Officer

This has been a remote hearing to which both parties have consented. The form of remote hearing was video by Skype (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. I did not experience any difficulties, and neither party expressed any concern, with the process.

DECISION AND REASONS

1. The appellant is appealing against a decision of Judge of the First-tier Tribunal Kaler (“the judge”) promulgated on 23 November 2020.
2. The appellant is a citizen of Nigeria born on 23 May 1990. His father (“the sponsor”) is a national of Austria living in the UK.
3. On 19 September 2019 the appellant applied for an EEA family permit to join the sponsor in the UK under the Immigration (EEA) Regulations 2016 (“the 2016 Regulations”) on the basis that he is the sponsor’s family member as defined in regulation 7(1)(b)(ii) (the sponsor’s dependent direct descendant).
4. On 14 October 2019 the respondent refused the application on the basis that the evidence submitted by the appellant did not establish that he was dependent on the sponsor.
5. The appellant appealed to the First-tier Tribunal. In a decision promulgated on 23 November 2020, the judge dismissed the appeal.

Decision of the First-tier Tribunal

6. The judge found that the appellant is a single man with no dependents and that the sponsor has been sending him money regularly and pays his rent. The judge was not satisfied, however, that there was dependency for the purposes of the 2016 Regulations.
7. The judge’s findings on this are set out in paragraphs 15 – 18 of the decision, where he stated:

“15. Applying *Reyes* [*Reyes (EEA Regs: dependency)*] [2013] UKUT 00314 (IAC), it is not enough to show that financial support is provided by an EU citizen to a family member; the family member must need that support in order to meet his basic needs; there needed to exist a situation of real dependence. It is necessary to determine that the family member is dependent in the sense of being in need of assistance. If the family member can support himself, there is no dependency even though he is given financial support from the EU citizen.

16. I note that the appellant has not provided his own bank statements or set out what his regular outgoings are. This would have assisted in establishing the state of his finances. I am unable to assess whether there is any money available to him from other sources.

17. The appellant is now aged 31, he was a student until 2017 and he was doing military service after that. He says he is unemployed, and the sponsor says he has been unable to find work. I accept he has been reliant on his father to pay his rent but there is little evidence about why he needs to live in rented property paid for by his father. He was living with relatives when he was a student and before he went for his military service. No evidence was adduced about other family members who are in Nigeria and with whom he lived in the past, and why he cannot stay with them. He is a fit young man, but the test is not whether he can support himself but whether

he needs his father's assistance to provide for his basic needs. Providing him with a flat where he lives on his own is what the sponsor has chosen to do.

18. Thus, whilst I accept that the sponsor has been sending money to his son, I am not satisfied that the appellant is reliant on this to pay for his basic needs. The appellant has not shown that he is dependent on the EU citizen and so is not entitled to an EEA residence card."

Grounds of appeal

8. The grounds argue that the judge erred by requiring the appellant to demonstrate that he needed the sponsor's support. It is asserted in the grounds that the 2016 Regulations do not require an applicant to produce evidence of his own personal circumstances in his country or explain the reasons for his recourse to support from the sponsor.
9. It is also argued in the grounds that the judge was incorrect to state that there had been an absence of evidence of the appellant's circumstances in Nigeria given the evidence submitted to the respondent about his full-time education and receipt of maintenance payments from his father.
10. The grounds refer to, and rely upon, the following two cases: *Jia v Migrationsverket* (KC/1/05), [2007] QB 545 and *RK (India) v Secretary of State for the Home Department* [2010] UKUT 421 (IAC).

Submissions

11. I drew to Mr Ngwuocha's attention a more recent authority not referred to in the grounds *Lim v Entry Clearance Officer Manila* [2015] EWCA Civ 1383, and gave him an opportunity to consider it.
12. Mr Ngwuocha argued that the evidence established that the sponsor provided support to the appellant and that this support was for his basic needs, including accommodation and maintenance. He submitted that *Lim* was distinguishable because in that case the appellant was financially independent and could support herself whereas in this case the appellant was genuinely reliant on his father.
13. Mr Tufan expressed surprise that *Lim* had not been raised or considered previously. He argued that *Lim* makes clear that it is not enough for the appellant to show he receives financial support: he must also show that the support is needed. He argued that the limited evidence submitted by the appellant was insufficient to establish this.

Analysis

14. It is not sufficient, in order to establish the appellant's dependency on the sponsor under regulation 7(1)(b)(ii) of the 2016 Regulations, that the sponsor provides financial material support to the appellant. It must also be shown that

the appellant needs that support for his subsistence in the county of origin (although the reason for the dependence is irrelevant). This was made clear in *Reyes v Migrationsverket* 2014/C-423/12, [2014] QB 1140, where at [69(1)] it is stated:

“[A]ny member of the family of a Union citizen who, for whatever reason, **proves unable to support himself in his country of origin** and in fact finds himself in such a situation of dependence that **the material support provided by the Union citizen is necessary for his subsistence**, is to be considered to be a ‘dependant’.” [emphasis added]

15. This interpretation of dependency was confirmed by Elias LJ in *Lim*. At [32] he stated:

“[T]he critical question is whether the claimant is in fact in a position to support himself or not, and *Reyes* now makes that clear beyond doubt, in my view. That is a simple matter of fact. If he can support himself, there is no dependency, even if he is given financial material support by the EU citizen. Those additional resources are not necessary to enable him to meet his basic needs. If, on the other hand, he cannot support himself from his own resources, the court will not ask why that is the case, save perhaps where there is an abuse of rights. The fact that he chooses not to get a job and become self-supporting is irrelevant.”

16. I agree with Mr Tufan that the judge’s approach was consistent with *Reyes* and *Lim*. Having found that the sponsor provided material financial support to the appellant (in particular, by paying his rent) the judge went on to consider whether the appellant needed that support for his subsistence. The judge noted that the appellant had not provided evidence about his income and outgoings; or evidence from family members in Nigeria to explain why he was no longer able to live with them and therefore needed the appellant to pay his rent. In the absence of such evidence, the judge was entitled to find that the appellant had not established that he needed support from the sponsor.

17. The grounds submit that the appellant was not required to produce evidence about his personal circumstances in Nigeria. I disagree, as the burden was on the appellant to establish his case. Moreover, *Reyes* makes it clear that the onus was on the appellant to provide such evidence. In [69(1)] of *Reyes* it is said:

“As regards members of the nuclear family deemed to be dependants, such a situation must really exist and may be proved by any means. The applicant may thus provide the authorities of the host Member State with both subjective evidence connected with his own economic and social situation and any other relevant item of evidence that may illustrate, in a manner helpful to those authorities, the objective background to the application.”

18. Accordingly, I am satisfied that the grounds of appeal do not identify an error of law. The decision therefore stands.

Decision

19. The appeal is dismissed. The decision of the First-tier Tribunal did not involve the making of an error of law and stands.

Signed

D. Sheridan

Upper Tribunal Judge Sheridan

Dated: 14 May 2021