



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

Appeal Number: EA/01373/2020

THE IMMIGRATION ACTS

Heard at Field House

On 10 January 2022

**Decision & Reasons
Promulgated
On 26 January 2022**

Before

UPPER TRIBUNAL JUDGE LANE

Between

ENTRY CLEARANCE OFFICER

and

**SAMUEL JEMIRIFO
(ANONYMITY DIRECTION NOT MADE)**

Appellant

Respondent

Representation:

For the Appellant: Mr Whitwell, Senior Home Office Presenting Officer

For the Respondent: Mr Walsh, instructed by Universe Solicitors Ltd

DECISION AND REASONS

1. I shall refer to the appellant as the 'respondent' and the respondent as the 'appellant', as they appeared respectively before the First-tier Tribunal. The appellant was born on 14 April 1997 and is a male citizen of Nigeria. By a decision dated 13 January 2020, the Entry Clearance Officer refused the appellant's application for a family permit to join the sponsor in the United Kingdom. The First-tier Tribunal, in a decision promulgated on 28 May 2021, allowed the appeal. The respondent now appeals, with permission, to the Upper Tribunal.

2. The EEA national sponsor is Aleksandra Jemirifo (hereafter the sponsor), a citizen of Poland and the wife of the appellant's brother, Adeoye Jemirifo. The couple have been married since 2012 and live in Chatham with their four children and the sponsor's mother. The sponsor runs a small business and Adeoye Jemirifo works in the NHS.
3. Ground 1 is without merit. The respondent argues that the failed to apply *RK (OFM - membership of household - dependency) India* [2010] UKUT 421 (IAC) at [8] because the 'Upper Tribunal [had] held that the house-in-question (*sic*) should be that of the Union Citizen but in this case the house in Nigeria is not in the name of [the sponsor].' Paragraphs [7] and [8] of *RK* read as follows:

7. Regulation 8(2) requires that the relative of a EEA national:

- i. is residing in an EEA State and
- ii. the EEA national resides in the same state and
- iii. is dependent upon the EEA national or
- iv. is a member of his household.

8. If these words are to be applied literally to the appellant she clearly cannot comply with them. She is residing and has at all the material time resided in India which is neither an EEA state nor the country of residence of her husband or parents in law at the time she became a family member. She could not therefore meet i. and ii. above.

The relevance of this passage to the facts in the instant appeal is not clear. The version of Regulation 8 with which the appellant is required to comply is that which appears in the 2016 Regulations:

8.- (1) In these Regulations "extended family member" means a person who is not a family member of an EEA national under regulation 7(1) (a), (b) or (c) and who satisfies a condition in paragraph (2), (3), (4) or (5).

(2) The condition in this paragraph is that the person is—

- (a) a relative of an EEA national; and
- (b) residing in a country other than the United Kingdom and is dependent upon the EEA national or is a member of the EEA national's household; and either—
 - (i) is accompanying the EEA national to the United Kingdom or wants to join the EEA national in the United Kingdom; or
 - (ii) has joined the EEA national in the United Kingdom and continues to be dependent upon the EEA national, or to be a member of the EEA national's household.

4. The appellant is 'a relative of an EEA national' who 'wants to join the EEA national in the United Kingdom.' The only issue in the appeal is whether the appellant is dependent upon the EEA sponsor. The problem identified in *RK* at [8] does not arise. Indeed, the advocates agreed before the First-

tier Tribunal that dependency was the only issue; see the judge's decision at [6].

5. Ground 2 challenges the adequacy of the judge's reasoning. The judge accepted that the sponsor and Adeoye Jemirifo operate a common purse which receives both their incomes and from which all payments concerning the family are made. The judge recognised that there was little detailed evidence of the sponsor's income from her business but considered it correct to consider how the family finances are organised 'in a broad sense' it being 'too artificial to concentrate on whose name is on the remittance advice.' [27] Mr Whitwell, who appeared for the respondent at the Upper Tribunal initial hearing, submitted that the sponsor herself had not given evidence (the only oral evidence was that of Adeoye Jemirifo), that there was virtually nothing in the evidence to show her contribution to the common family purse and that the witness statement of Adeoye Jemirifo made no reference at all to the financial contribution of the sponsor. In response to questions which I put to Mr Whitwell, he did not deny that contributions to an extended family member could, in principle, be paid from an account which a sponsor maintains with a non-sponsor or that a sponsor's contribution to such a common purse did not need to equal or exceed any contribution to the purse by another. His main complaint in the instant appeal was that the judge had accepted the fact of dependency on the EEA national despite a serious paucity of evidence of any kind from the sponsor.
6. I agree with Mr Whitwell that there is a surprising lack of evidence from the sponsor. However, I agree also that (i) payments can legitimately (in terms of Regulation 8) be made from a joint account and (ii) an EEA sponsor's does not need to be shown to make the majority of the contributions to such a joint account. There is nothing in the wording of the Regulation to indicate that such conditions have to be met. Having accepted that an equality of contribution to the common purse is not necessary, then the relevance of detailed evidence concerning the sponsor's income falls away; it is enough that the sponsor makes a contribution, not the size of that contribution. It was, therefore, open to the judge to accept the evidence of Adeoye Jemirifo regarding his wife's business and the absence of detailed evidence concerning that business was not inevitably fatal to the appeal, as Mr Whitwell argues it should be. The findings of the judge at [26-27] were properly available to him on the evidence.
7. Mr Walsh submitted that Regulation 8 does not require appellant to be dependent on the EEA national only but that the requirement could also be satisfied if appellant was dependent on the spouse or member of the household of the EEA national. That argument, in my opinion, represents a misreading of the Regulation which does not provide that the applicant should be '...dependent upon the EEA national **or a** member of the EEA national's household' but rather '... **or is a member** of the EEA national's household [my emphasis].

8. Mr Whitwell also submitted that the judge had ignored the fact that Adeoye Jemirifo and the sponsor support, in addition to the appellant, the sponsor's mother and their four children. Moreover, the judge had acknowledged that the appellant lives rent-free in the house of Adeoye Jemirifo in Nigeria. In both instances, the judge had failed to give reasons for allowing the appeal in the absence of satisfactory evidence addressing these matters.
9. As regards the first submission, I find that the burden on the family finances of supporting six individuals including the appellant was never raised by the Entry Clearance Officer or by counsel before the First-tier Tribunal. The judge was well aware of the family circumstances (her refers to the children at [26]) and there is no reason to consider that he failed to have regard to all relevant matters in reaching his decision. There is also nothing wrong in law concerning the judge's n
10. In conclusion, having found, as he was entitled to do, that the sponsor and Adeoye Jemirifo contributed to the appellant from a joint account, he did not err in law by finding that the appellant was dependent upon the EEA sponsor notwithstanding the paucity of evidence of her own personal finances. Likewise, there was nothing in the evidence concerning the appellant's occupation rent-free of Adeoye Jemirifo's house in Nigeria which compelled the judge to dismiss the appeal. Accordingly, I can identify no reason to interfere with the findings and conclusions of the First-tier Tribunal. The respondent's appeal is dismissed.

Notice of Decision

The Entry Clearance Officer's appeal is dismissed.

Signed

Date 10 January 2022

Upper Tribunal Judge Lane