



**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: EA/04541/2020**

**THE IMMIGRATION ACTS**

**Heard at: Field House  
On the 3 February 2022**

**Decision & Reasons Promulgated  
On the 22 March 2022**

**Before**

**UPPER TRIBUNAL JUDGE KEBEDE**

**Between**

**JUAN LUIS VASQUEZ GONZALEZ**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant:      No appearance

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a national of the Dominican Republic born on 13 April 1975. He appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse to issue him with an EEA family permit to enter the UK as an extended family member of an EEA national under the Immigration (European Economic Area) Regulations 2016.

2. The appellant applied for an EEA family permit on 10 July 2020 to join his sister, Carmen Eloisa Vasquez Gonzalez, a Spanish national, who was living and working in the UK. It was claimed that the sponsor, the appellant's sister, had

been supporting him financially since 2016 and that the appellant had been unemployed for several years and could not provide for himself.

3. The respondent refused the appellant's application on 9 September 2020 as it was not accepted that he was an extended family member in accordance with regulation 8(2) of the EEA Regulations. The respondent did not accept that the appellant was dependent upon his sponsor as the Home Office records showed that the sponsor had a husband and at least one dependent child and had a net income of only £852 a month as well as being in receipt of universal credit. The respondent did not consider it sustainable for the sponsor to financially support the appellant as well as her own family in the UK.

4. The appellant appealed against that decision, electing for a determination on the papers without an oral hearing. The appeal came before First-tier Tribunal Judge Samimi on 5 February 2021. The judge noted the assertion in the appellant's grounds that the sponsor's husband had his own income and did not rely upon the sponsor. It was further asserted before the judge that the sponsor was separated from her husband. The judge had before her money transfer receipts, payslips and bank statements as evidence of financial support and noted that a statement from Ria Financial Services Ltd confirmed money remittances from the sponsor to the appellant from 2 May 2016 to 6 November 2020. The judge noted that the remittances were sent to Nicaragua initially, but then from 1 February 2020 to 6 November 2020 they were sent to the Dominican Republic, with no explanation as to the appellant's circumstances leading to his travels to Nicaragua. The judge also had before her a declaration of the appellant's essential needs.

5. The judge considered that there was insufficient information before her to demonstrate the appellant's personal and family circumstances which led to him becoming financially dependent upon the sponsor. She considered it relevant that there was no information about the appellant's reasons for being unemployed since 2016 and the circumstances leading to his dependence on the sponsor, and she had regard to the fact that he may well have other relatives who could provide him with support. The judge also noted that the appellant's application form referred to his marital status as married or in a civil partnership with two dependent children and considered that his statement did not provide sufficient details as to his family, personal and educational circumstances. She considered that, since the appellant's children were dependent upon him, there was insufficient evidence to show that he had been financially dependent upon the sponsor as claimed and noted that his declaration of essential needs did not make any reference to his financial support for his partner and children. The judge did not accept that the evidence before her supported the appellant's claim that he was previously or currently dependent upon the sponsor and she also noted a lack of evidence of emotional dependency. She accordingly found that the requirements of the EEA Regulations were not met, and she dismissed the appeal.

6. The appellant sought, and was granted, permission to appeal to the Upper Tribunal on the grounds that the judge had arguably erred in seeking to import

additional requirements into the 2016 regulations when considering the question of dependency, such as a requirement for the appellant to show why he was not living the country of his nationality and to show the reason for his dependency, and further a requirement that any dependency was not as a result of him choosing not to work. It was also considered to be arguable that the judge had failed to provide adequate reasons for rejecting the evidence of the appellant and sponsor.

7. The respondent filed a rule 24 response resisting the appeal.

8. The matter was then listed for hearing and came before me. There was no appearance on behalf of the appellant by the sponsor or anyone else and there was no explanation why the sponsor was not in attendance. The notice of hearing had been properly served and I saw no reason for the appeal not to proceed, particularly since the original appeal before the First-tier Tribunal Judge had been a papers hearing, at the appellant's own election.

9. Mr Melvin accepted that Judge Samimi may have imported some additional requirements, but he submitted that that was not material as she was not satisfied that there was satisfactory evidence in any event for a proper assessment of the dependency issue. She was entitled to conclude as she did.

## **Discussion**

10. As Mr Melvin acknowledged, Judge Samimi wrongly sought to import additional requirements into the EEA Regulations when considering the issue of dependency, such as requiring the appellant to provide an explanation as to why he was living in Nicaragua, why he was not working and why he was dependent upon his sister, none of which were relevant. She clearly erred in doing so. However, I am in agreement with Mr Melvin that that was not material to the outcome of the appeal since the judge's other reasons for concluding that dependency had not been demonstrated for the purposes of the EEA Regulations were sufficient in any event. There was a notable lack of adequate evidence which, even without the additional factors raised by the judge, properly entitled her to conclude that the appellant had not demonstrated an ability to meet the requirements so as to be considered an extended family member under the EEA Regulations.

11. As Judge Samimi found, the information and evidence before her left unanswered many questions in assessing whether the appellant was dependent upon the sponsor for his essential needs. Although there was evidence to show that the sponsor had been remitting funds to the appellant for several years, the judge properly found that that was not in itself sufficient to establish dependency for the purposes of the EEA Regulations. The judge observed that the appellant's application form referred to him being married or in a civil partnership with two dependent children – in fact the form refers to three dependent children. The appellant's declaration of essential needs made no reference to support for his partner and children and it was therefore not clear who was supporting them and whether his partner was

providing some support or whether there was other support from sources aside from the sponsor. Had the appellant elected for an oral hearing at which the sponsor could attend, this could have been clarified, but as it was the judge had only the documentary evidence before her and was entitled to have concerns about the adequacy of that evidence. Likewise, the appellant was not assisted by the absence of the sponsor at the hearing before me.

12. In the circumstances the grounds do not establish that the judge materially erred in law in her decision. She was entitled to conclude that the required dependency had not been demonstrated and that the requirements of Regulations 8 and 12 were not met and she was entitled to dismiss the appeal on the basis that she did.

### **DECISION**

13. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Signed: S Kebede  
Upper Tribunal Judge Kebede  
2022

Dated: 3 February