



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

Appeal Number: EA/05018/2020

THE IMMIGRATION ACTS

**Heard at Phoenix House, Bradford
On the 22nd September 2022**

**Decision and Reasons
Promulgated
On the 6th November 2022**

Before

**UPPER TRIBUNAL JUDGE LANE
DEPUTY UPPER TRIBUNAL JUDGE KELLY**

Between

THE ENTRY CLEARANCE OFFICER

Appellant

and

**MICHCELINE TOKO MANYA
(ANONYMITY NOT DIRECTED)**

Respondent

DECISION AND REASONS

Representation:

For the Appellant: Mr J Greer, Counsel instructed by MyUKVisas Limited
For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

Introduction

- 1.** This is an appeal by the Entry Clearance Officer (ECO) against a decision made by the First-tier Tribunal, promulgated on the 5th August 2021, to allow the appeal of Mrs Micheline Toko Manya against refusal of her application for an EEA Family Permit in order to join her daughter, Christelle Tokendrake, in the United Kingdom. For ease of reference, we shall refer to the parties in

accordance with their status in the First-tier Tribunal (Ms Toko Many, “the appellant”; the ECO, “the respondent”) and to Ms Tokendrake as “the sponsor”,

The issues before the First-tier Tribunal

- 2.** The background to this appeal does not appear to have been in dispute. It may be conveniently summarised by saying that the appellant is a citizen of the Democratic Republic of Congo (DRC) where she was born in 1961. She received financial support in the DRC from the sponsor, who in 2002 moved to Italy where she acquired an Italian passport. The appellant followed her daughter to Italy in 2011, where they lived together in the same household until the sponsor moved to the UK in 2016.
- 3.** The principal issue before the First-tier Tribunal was whether the sponsor had continued to support the appellant in Italy after she (the sponsor) had moved to the United Kingdom. It was the appellant’s case that the sponsor had granted her mother direct access to a significant sum of money that was deposited in an Italian bank account from which the latter had made withdrawals in order to meet her essential living costs amounting to around 770 euros a month. The respondent, on the other hand, argued that the appellant had not demonstrated that she was financially dependent on the Sponsor, noting in particular that three of the receipts for money transfers produced by the appellant (covering the period from December 2016 to July 2020) were not payable to her, the payments were made at irregular intervals, and the evidence did not in any event demonstrate that these payments were used to meet the appellant’s essential living needs. The respondent moreover noted that the sponsor was in receipt of Tax Credits, which are a means-tested benefit intended to cover the essential outgoings of her own household without taking into consideration any additional family members outside of the UK. The respondent was not therefore satisfied that it would be sustainable for the sponsor financially to support the appellant along with her own family in the United Kingdom.

Ground of appeal

- 4.** The relevant parts of the grounds of appeal read as follows -

At [2] it is the appellant's evidence that the sponsor did not need regular payments as she relied on the balance already in the bank account. However, after considering the sponsor's bank account the Judge finds that 'the figures do not add up' at [22], 'the appellant's evidence about the sponsor's bank account is incomplete and does not provide a full explanation' [23], and yet the appellant is still found to be dependent upon the sponsor. It is respectfully submitted that there is inadequate reasoning for this finding.

....

Furthermore, at [4] the Judge notes the reason for refusal with reference to public funds and accommodation under Regulation 13(3) public funds, An EEA national or the family member of an EEA national who is an unreasonable

burden on the social assistance system of the United Kingdom does not have a right to reside under this regulation; and 12(4)(c), in all the circumstances, it appears to the entry clearance officer appropriate to issue the EEA family permit. The SSHD's refusal point centres on the sustainability of the sponsor's continued financial support when she is in receipt of benefits and the risk that the appellant become a burden on the UK's public funds system. It is respectfully submitted that the Judge fails to make a finding on this refusal point and the point remains outstanding

5. We take the grounds in turn.

Ground 1

6. The inconsistency in the reasoning of the First-tier Tribunal is said to occur within the final two paragraphs of its decision:

22. I asked the Sponsor how much was in the account when she left Italy in 2016 and she said that it was about €24,000 or €25,000. She was unable to tell me how much is in the account now because she had not checked. At first, she said that it was about €10,000 and then said that it could be much less. The cost of meeting the Appellant's essential needs has been averaged at €769 per month. That equates to €9,228 per year. Over 4 years that would amount to in excess of €36,912 which exceeds the amount that the Sponsor says was in the account in 2016. The balance in July 2020 was €21,969.98. On the evidence before me, the money deposited in the account between January 2018 and Appeal Number: EA/05018/2020 7 October 2018 is €5,783. Ms Charles is correct when she says that the figures do not add up.

23. The burden of proof is on the Appellant, on the balance of probabilities. On the evidence before me, I find that it is likely that the Appellant was dependent on the Sponsor when she joined her in Italy in 2011 and that she was living with her daughter in 2016 when the Sponsor came to the UK. I find that the Appellant had access to the Sponsor's Italian bank account and that she drew on the account to meet her monthly expenses of about €765. There was no challenge to the Appellant's claim that she had no income of her own. Dependency does not have to be whole or main or necessary but there has merely to be economic dependency in fact (Lebon [1987] ECR 2811). The Appellant's evidence about the Sponsor's bank account is incomplete and does not provide a full explanation but I find as fact that the Appellant was dependent on the Sponsor when she made her application. Therefore, I allow the appeal.

7. However, the claimed contradiction between the sponsor's evidence, summarised at paragraph 23, and the Tribunals' findings within paragraph 24 of the decision, is one that is premised upon the former having been intended to represent a precise description of the balance of the account when the sponsor left Italy for the United Kingdom in 2016. It is however clear from the Tribunals summary of the evidence, that the sponsor had in fact been providing nothing more than an approximation of that balance when saying that it had been, "about €24,000 or €25,000" [emphasis added]. When viewed in this context, the judge's remark that, "the figures do not add up", should in our judgement be treated as nothing more than an observation that the sponsor's recollection of the balance of her account,

some five years earlier, cannot be considered to be an entirely *reliable* one. Such a finding did not however preclude the Tribunal from nevertheless concluding that, when viewed within the context of the evidence as a whole, the sponsor had given *honest and truthful* account of her mother having relied upon withdrawals from that account in order to meet her essential living costs during the period in question. We thus find that there is no substance to the first ground of appeal.

8. However, even had we found the Tribunal to be in error in this regard, we are satisfied that any such error would not have been material given that, as Mr Greer correctly pointed out, the appellant was in any event bound to succeed upon the basis of the uncontested fact that she had previously lived in the same Italian household as the sponsor and thus qualified under the alternative limb of the definition of an 'extended family member' under regulation 8 of the Immigration (European Economic Area) Regulations 2016.

Ground 2

9. Mr Greer, who appeared at the hearing in the First-tier Tribunal, says that he noted that the respondent's representative had stated that he was, "not interested", in the question of sponsor's ability to support the appellant following her arrival in the United Kingdom. If this is correct, then it would have been better had the First-tier Tribunal noted this in its decision. For his part, Mr Diwnycz, told us that that there was nothing in the Presenting Officer's notes to indicate whether or not the point had been argued. Whilst Mr Greer told us that his instructing solicitor was in the process of obtaining a transcript of the proceedings, he did not invite us to adjourn the hearing of the appeal in order to await its production. We do however acknowledge the duty of counsel not to mislead the Tribunal. We therefore accept what he says about the matter. In any event, we accept Mr Greer's alternative submission (not contradicted by Mr Diwnycz,) that the requirement not to be an unreasonable burden upon the social assistance system applies only to an initial right to reside for a period of three months following admission under Regulation 11 of the Immigration (European Economic Area) Regulation 2016. It does not have any relevance to the issue of an EEA family permit under Regulation 12.

Notice of Decision

The appeal is dismissed.

Signed: David Kelly

Date: 25th September 2022

Deputy Judge of the Upper Tribunal