



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

Appeal Number: UI-2021-001229
(EA/06274/2020)

THE IMMIGRATION ACTS

**Heard at: Manchester Civil Justice
Centre
On : 16 September 2022**

**Decision & Reasons Promulgated
On : 20 September 2022**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

**ABIKE FUNMILAYO ILUYOMADE
(no anonymity order made)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L Mensah, instructed by AJO Solicitors

For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Nigeria, born on 23 August 1958. She appeals, with permission, against the decision of the First-tier Tribunal dismissing her appeal against the respondent's decision to refuse to issue her with a residence card as an extended family member of an EEA national under the Immigration (European Economic Area) Regulations 2016.

2. The appellant was last admitted to the United Kingdom on 11 March 2020 on a UK entry clearance visit visa valid until 28 September 2024. On 2

September 2020 she applied for an EEA residence card as the extended family member of her sister, the sponsor, Kenny Agbeke Pala, an Irish national exercising Treaty rights in the UK. Her application was refused in a decision of 26 October 2020.

3. In the refusal decision the respondent accepted that the sponsor was exercising treaty rights in the UK and accepted that the appellant was the relative of her EEA national sponsor. The respondent noted that the appellant had provided two Monzo bank statements as evidence of being dependent on her EEA national sponsor, which showed her residing at the same address, but observed that she had not provided evidence that she was dependent upon and/or residing in Nigeria with the EEA sponsor prior to entering the UK. Her application accordingly fell for refusal on that basis.

4. The appellant appealed against that decision, requesting in her notice of appeal that her case be determined on the papers without an oral hearing.

5. The appeal came before First-tier Tribunal Judge French on 22 November 2021 for determination on the papers. Judge French noted from the papers before him that the sponsor had come to the UK on 1 September 2016 and it was stated that she had started working at Gee & Mal Consultancy on 1 August 2018. He considered that the documentation before him suggested that the sponsor had obtained her Irish citizenship on 18 August 2020 and that she had therefore relocated from the UK to Ireland shortly after arriving in the UK in 2016, but he found it unclear when the sponsor had gone to Ireland. He noted that the appellant had applied for residency on 2 September 2020, which seemed to be just two weeks after the sponsor had obtained her Irish citizenship, and further that the appellant had claimed that the sponsor had arrived in the UK on 11 September 2019 which was difficult to reconcile with the fact that she did not get her Irish citizenship until the end of August 2020. The judge noted that the sponsor's stated commencement date for her employment with Gee & Mal Consultancy of 1 August 2018 seemed to be in contradiction with the claim that the sponsor had returned to the UK from Ireland on 11 September 2019.

6. The judge commented that the documentary evidence was far from comprehensive. He referred to the documents which were before him and which included bank statements from Guaranty Trust Bank in Nigeria showing payments from the sponsor followed on some occasions by the money being paid straight out again, payments in from sources other than the sponsor and significant payments out of the account to other people including Lateef Idowu Iluyomade whom he presumed to be the appellant's husband. The judge also had regard to UK bank statements for the appellant showing payments into the account from various sources including the sponsor, but noted that the payments from the sponsor were not consistent with the appellant's claim to receive £100-£150 per month from the sponsor and that there were payments out of the account to Lateef Idowu Iluyomade amounting to more than she received from the sponsor. The judge noted that the respondent's case was that, in the absence of adequate evidence from the appellant, it was not

possible for him to conclude that the appellant was dependent on the sponsor for her essential needs and that he should therefore refuse the appeal.

7. The judge considered that he had only been provided with piecemeal details and he explained the shortcomings in the documentary evidence. He found there to be inconsistencies in the evidence which tended to undermine the appellant's credibility, such as the fact that the trading address of the sponsor's employer appeared to be the same as the appellant's address. He did not accept that the appellant had provided sufficient evidence of dependency upon the sponsor and found that the bank statements did not show that the monies received had been used for the appellant's essential needs. He concluded that the appellant did not meet the requirements of the EEA Regulations and he accordingly dismissed the appeal.

8. The appellant sought permission to appeal to the Upper Tribunal on six grounds. Firstly, that the judge had shown inadequate attention to the evidence as there was evidence showing that the sponsor had been issued with an Irish passport on 8 April 2013; secondly, that the judge had shown inadequate attention to the evidence by giving the wrong date for the refusal decision; thirdly, that the judge had taken irrelevant matters into consideration, had failed to recognise that the evidence showed that the sponsor had obtained her Irish citizenship in 2013 and had misconstrued the facts; fourthly, that it was not disputed that there were payments from the sponsor to the appellant and the appellant should have been given the benefit of the doubt as to why there were payments out of the appellant's account and payments into her account from people other than the sponsor; fifthly, that the inconsistencies relied upon by the judge came from his own misconstruction and misunderstanding of the documentary evidence; and sixthly, that the judge brought extraneous issues into the appeal such as the sponsor's employer's address and references to entry clearance and human rights.

9. Permission was refused by the First-tier Tribunal, but was granted upon a renewed application by the Upper Tribunal, with reference to the judge's arguable misunderstanding as to when the EEA sponsor acquired her Irish citizenship.

10. The matter came before me at a hearing, at which the appellant was represented by Ms Mensah. Further documentary evidence had been submitted prior to the appeal before me, which included statements from the appellant and the sponsor and copies of the sponsor's identity and residence documents.

11. Both parties made submissions.

12. Ms Mensah submitted that it was apparent from the refusal decision that the only aspect of the appellant's case which had not been accepted was the question of dependency upon the sponsor in Nigeria. The judge had gone beyond the issues in dispute. He had misunderstood the evidence about the sponsor's acquisition of Irish citizenship and that had fed into his consideration of dependency and his overall credibility assessment. He had considered the documentary evidence from a starting point of suspicion and had initiated

credibility issues which had not been raised by the respondent. The decision contained errors of law and needed to be set aside and re-made. Ms Mensah asked me to bear in mind that this was the appellant's only opportunity to make such an application and that, as a result of the changes to the EEA Regulations, she could not make a fresh application.

13. Mr McVeety submitted that the Upper Tribunal was not the place to correct mistakes previously made and it was irrelevant to the error of law issue that a fresh application could not be made. It had been the appellant's choice to have a papers hearing before the First-tier Tribunal. He submitted that there had been no concession in the refusal decision as to the issue of dependency in the UK. He accepted that the judge had made a mistake about the date the sponsor acquired her Irish citizenship but it could not be said that he would have then let suspicion affect the rest of the case. The judge had various concerns, such as the appellant's address being the same as the sponsor's employer's registered address and the bank accounts showing money coming into and out of the appellant's account which exceeded the money received from the sponsor. Had the appellant wanted to explain that, she ought to have done that before the First-tier Tribunal. This appeal in the Upper Tribunal was an attempt by the appellant to remedy the deficiencies in her evidence before the First-tier Tribunal and was a disagreement with the judge's decision.

14. In response, Ms Mensah submitted that the judge had failed to consider the caselaw relating to essential needs and therefore it was not possible to be satisfied that he was taking the correct approach. The appellant's inability to make a fresh claim was a relevant consideration, as found in Akter (appellate jurisdiction; E and R challenges) [2021] UKUT 272. There were obvious matters not considered by the First-tier Tribunal which needed to be addressed, such as the money coming in and out of the appellant's accounts and Judge French's decision did not provide sufficient analysis of the relevant issues.

Discussion

15. As Mr McVeety properly submitted, the appellant's grounds of appeal and the case put before me is essentially an attempt to correct mistakes made before the First-tier Tribunal and provide explanations for the evidence which should have been provided at that stage. The appellant had the choice to attend an oral hearing of her appeal but she specifically requested a papers determination and cannot now seek to provide the explanations which she had every opportunity to provide before the First-tier Tribunal, had she attended a hearing. The judge had significant concerns about the evidence before him, which was very limited, and it was not his role to seek out an explanation from the appellant when she had chosen not to appear before the Tribunal. It was clear from the refusal decision that the respondent was not satisfied that the appellant had demonstrated dependency upon the sponsor. I reject Ms Mensah's suggestion that any such concession had been made in the refusal decision or indeed that it could be inferred from the respondent simply referring to the bank statements giving the same address as the sponsor. The appellant was therefore on notice that there were concerns to be addressed

and an appeal to the Upper Tribunal is not the correct forum to do so. I do not agree with Ms Mensah that the appellant's inability to make a fresh application as an extended family member is reason for the Upper Tribunal to set aside the decision of the First-tier Tribunal and provide her with a further opportunity to argue her case and I do not consider that the case of Akter provides authority for such a proposition in these circumstances.

16. In assessing whether the evidence demonstrated the appellant's dependency upon the sponsor, Judge French expressed various concerns. Those included the fact that the appellant's address was the trading address for the sponsor's employer, that the evidence of payments made by the sponsor to the appellant in the bank statements was inconsistent with the amounts claimed by the appellant in her application form, that payments into the appellant's account were immediately followed by payments out of the account, that there were payments into the appellant's account exceeding the payments made by the sponsor and that there were also payments out of the appellant's account which far exceeded the payments from the sponsor. The appellant's grounds to the First-tier Tribunal, in ground 4, seek to provide an explanation for the latter points, and the statements produced by the appellant in her bundle of evidence submitted with and subsequent to her permission application to the Upper Tribunal include statements which seek to support that explanation. However that was not evidence before Judge French and cannot be relied upon to demonstrate an error of law in his decision. Judge French was perfectly entitled to be concerned by such matters and to conclude that that undermined the appellant's claim to be dependent upon her sponsor.

17. In addition, Judge French, at [6], gave various other reasons why he could not be satisfied that the issue of dependency had been adequately demonstrated by the limited evidence before him and he gave details of the kind of evidence which would have assisted but which had not been provided. The appellant and her sponsor had not provided witness statements and there was no evidence or details provided of the parties' financial circumstances other than the limited bank statements, there was no explanation of the appellant's family, financial and other circumstances in Nigeria and there was no explanation of whether her husband contributed to the household or what his expenses were. All of these were matters which the judge was perfectly entitled to conclude prevented him from making an assessment of the appellant's essential needs and her dependency upon the sponsor for those essential needs. Ms Mensah relied upon the judge's failure to cite relevant caselaw and refer to relevant principles in considering the matter of "essential needs", but it was not necessary for the judge to make such specific references when it is clear that that was a matter which he considered and which he properly found not to have been addressed by the evidence.

18. As to the claim that the judge's misunderstanding about the sponsor's acquisition of Irish citizenship tainted his findings overall, I do not accept that to be the case. Mr McVeety accepted that the judge had made a mistake and there is now (subsequent to the appeal before the First-tier Tribunal) clear evidence of the sponsor's Irish passport having been issued on 8 April 2013. It seems that that document was copied in the Home Office bundle at page 56,

but was barely legible and was overlooked by the judge, and the judge appears to have taken the date of 18 August 2020 from the date provided by the appellant in her EEA residence document application form of when the sponsor's Nigerian citizenship ended (page 15 of the Home Office bundle). It is also the case that that error led the judge to be mistaken about the chronology of the sponsor's residence in the UK. I reject the assertion in the grounds that that error, or the judge's confusion about the chronology, demonstrated inadequate attention to the evidence before him. On the contrary, the judge clearly gave full and detailed consideration to the evidence, which was far from clear. Neither do I agree that that error in the chronology of the sponsor's acquisition of Irish citizenship and residence in Ireland and the UK was material in any way to the judge's conclusions on the issue of dependency and I find no proper basis for the assertion that that led him in any way into the realms of adverse credibility findings and suspicion taking him beyond the remit of the respondent's refusal reasons. The judge's concerns in regard to the issue of dependency were premised upon the lack of adequate documentary evidence and the inconsistencies in the financial evidence and I reject the suggestion that those concerns were tainted by a generalised suspicion of the appellant.

19. As for the other matters raised in the grounds, namely the judge's reference to entry clearance and to human rights, I reject the suggestion in the grounds that that reflected a requirement by the judge of a higher standard of scrutiny or a higher standard of proof. I find those matters to have no material bearing on the judge's properly made findings on dependency.

20. In the circumstances I consider that Judge French reached a decision which was fully and properly open to him on the limited evidence before him. I find no merit in the grounds of challenge and I find no errors of law in the judge's decision.

DECISION

21. 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.

Anonymity

The First-tier Tribunal Judge made an anonymity order, but that order is hereby discharged.

Signed: S Kebede
Upper Tribunal Judge Kebede
2022

Dated: 16 September