Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: UI-2022-001741
EA/13974/2021

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 10th August 2022	**On 3rd October 2022**

Before

UPPER TRIBUNAL JUDGE KEITH

Between

PROSPER NERO EHIOSU
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE ENTRY CLEARANCE OFFICER

Respondent

Representation:
For the appellant: Mr E Ajala, Solicitor, Emmanuel Solicitors
For the respondent: Ms A Nolan, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. These are the approved record of the decision and reasons which I gave orally at the end of the hearing on 10th August 2022.

2. This is an appeal by the appellant against the decision of First-tier Tribunal Judge Taylor, (the 'FtT'), promulgated on 15th February 2022, by which he dismissed the appellant's appeal against the respondent's decision on 30th March 2021 to refuse the appellant an EEA family permit as the extended family member (a nephew) of his sponsor, a Spanish national, Mr Fred

Ogieva, the half-brother of his father, Monday Ogieva. The appellant claimed to rely, at least in part, on the sponsor for his essential needs or to be a member of his household in the appellant's country of origin, Nigeria.

3. In essence, in the refusal decision, the respondent had no issue with the nature of the familial relationship. Instead, the respondent was not satisfied that the appellant was dependent on the sponsor for his basic needs. The respondent considered various large unexplained bank deposits in the appellant's bank account from people other than the sponsor and only limited remittances, in comparison, by the claimed sponsor. Whilst the appellant asserted that friends and family members had deposited money in his account to run errands, the appellant had provided no evidence of what the respondent regarded as a generalised assertion. The appellant appealed against the respondent's decision.

The FtT's decision

4. The FtT noted at §3, the respondent's position, which included concerns about the large unexplained deposits and the limited remittances from the sponsor. The FtT considered the sponsor's oral evidence at §7, which included discussion of the claim that the appellant lived in a house with the sponsor's mother, which was owned by the sponsor (§9). The FtT also considered, at §8, the evidence that the sponsor had submitted DNA evidence to demonstrate the relationship, as claimed.

5. The FtT went on to reach his findings at §12 onwards. The FtT stated in the same paragraph that he had examined a DNA report which made no mention of the appellant and confirmed only that to a high degree of probability, the sponsor and Monday Ogieva are half-siblings. Whilst the FtT acknowledged that the respondent had not disputed the familial relationship as claimed, the FtT could not be satisfied that the relationship between the sponsor and the appellant had been demonstrated. At §13, the FtT noted that the appellant lived with the sponsor's mother in accommodation provided by the sponsor but the FtT was not satisfied that the appellant was never less dependent on the sponsor either whilst the appellant had been working before 2020, or afterwards when he was no longer working, from February 2020. In particular, the FtT noted at §14 the lack of a full explanation for the payments into the appellant's account. The appellant's claim that his mother may have made deposits into his account for the purposes of her business was not sustainable when she herself appeared to have her own bank statement. Moreover, at §15, the FtT noted that it appeared the appellant had another bank account which had not been disclosed. The FtT was not satisfied that the submitted documents provided a total picture of the appellant's financial position, nor that the deposits into his account were not for another purpose.

6. At §16, the FtT cited the authority of Bigia v ECO [2009] EWCA Civ 79, and the need for close relationship to have existed in the country from which the sponsor came immediately before the sponsor arrived in the UK or was joined in the UK by the appellant. The parties must have lived in the same

household or the dependency must have been very recent to the appellant accompanying or joining the sponsor in the UK.

7. Whilst the appellant claimed to have been dependent on the sponsor before January 2020, the FtT was not satisfied that this was accurate. In addition, the sponsor was a Spanish national and there was no supporting evidence of the appellant having been dependent on the sponsor while the sponsor was in Spain, during the period before he came to the UK.

8. Having considered the evidence as a whole, the FtT dismissed the appellant's appeal.

The grounds of appeal and grant of permission

9. The appellant lodged grounds of appeal which are essentially that the FtT had erred in concluding at §12 that the DNA report did not establish the relationship, as claimed. There were two separate reports, at pages [40] to [46] of the appellant's bundle which clearly showed first that the appellant was a biological son of Monday and second that Monday was the half-brother of the sponsor, namely that the appellant was the sponsor's nephew. Moreover this had never been contested by the respondent. Second, the FtT had erred in a number of respects with regard to his analysis of the explanations for deposits into the appellant's bank account, failing to refer to or consider specific pieces of evidence and the appellant's expenditure. The FtT's conclusion that the appellant had a separate bank account was speculative.

10. Moreover, the FtT had erred in referring to the authority of Bigia and should instead have applied the authority of Dauhoo (EEA Regulations – reg 8(2) [2012] UKUT 79 (IAC). The FtT had accepted that the appellant lived in accommodation owned by the sponsor, which was part of the appellant's essential living needs. The appellant did not need to be wholly dependent on the sponsor.

11. First-tier Tribunal Judge Oxlade granted permission on 13th April 2022. Whilst he regarded the second and third grounds, relating to evidence of remittances and the legal test that had been applied had less merit, he did not limit the grant of permission.

The hearing before me

Ground (1) – error of law conceded

12. The preliminary point, which Ms Nolan accepts, is that the FtT did err in identifying an issue that had not been in dispute but also missing evidence as to the familial relationship as claimed. The appellant and the sponsor are uncle and nephew and the FtT's reasoning was in error. However, as Ms Nolan went on to submit, this was not in her view a material error, where there was an absence of dependency or household membership.

Grounds (2) and (3)

13. I turn to the remainder of the grounds. I deal first with the appellant's submissions. Mr Ajala reiterated §§7 to 12 of the grounds of appeal. The FtT had overstated the appellant's case that witnesses with their own bank accounts would have chosen to use the appellant's bank account for their business affairs. The witnesses had merely deposited money as 'one-off' instances, to run "errands", rather than run their businesses. The FtT had also misinterpreted the evidence.

14. In relation to §8 of the grounds of appeal, the appellant relied upon specific deposits and withdrawals which the FtT had failed to consider. I do not, for the purpose of brevity, recite the specific dates and the specific purchases. The headline point in relation to these is that it is stated the FtT failed to consider this corroborative evidence to determine if it was consistent with the appellant's claims.

15. At §9, the grounds continue that a family friend or acquaintance, Mr China, had transferred some money to the appellant's account, to which the FtT had referred at §14. Although there was no note of the evidence on to which Mr Ajala relied, the FtT had misunderstood the oral evidence. The evidence had been given that deposits into the appellant's account to run errands were used up immediately, most times within days or at the most weeks after the initial deposit, and this had been corroborated by oral evidence which the FtT had failed to consider. In any event, even if the money had been in the appellant's account for a longer period it was not inconsistent with his evidence that the funds were used, as claimed, for errands and that the appellant remained dependent on the sponsor.

16. At §10, the grounds add that the appellant's mother had transferred to the appellant monies to help her in her trading. The FtT had been concerned as to whether this was likely in circumstances where it appeared that the mother had her own bank account. The appellant submitted that the FtT could not make such an assessment simply by looking at the name of the person making the deposit, as this did not mean that she had a bank account.

17. At §11 of the grounds there is a further reference to the mother's transfer, saying that even if the monies were transferred by the appellant's mother to him, this would not be enough to meet the appellant's living needs. In essence, he would still need the support of his sponsor.

18. At §12 of the grounds, the appellant challenges the FtT's conclusion that the appellant appears to have another bank account. There was not sufficient evidence of an additional bank account, as to which the FtT had no relevant expertise and had engaged in speculation.

19. Mr Ajala added that there were other factual errors, such as a description of a deposit in relation to a car when it should have been a generator and a reference to a general fear of kidnapping, which had been misinterpreted in the context of the appellant's desire to leave Nigeria.

20. At this stage I canvassed with Mr Ajala the well-known authority of Volpi v Volpi [2022] EWCA Civ 464 and in particular whether, in the context of the

FtT's finding at §15, that she was not satisfied that the submitted documents provided a total picture of the appellant's financial position, and that the deposits into his account were for another purpose and not for the benefit of the appellant, even if Mr Ajala's points were correct this was, as the Court in Volpi had used the phrase, a question of "island-hopping" and mere disagreement with specific findings? Mr Ajala said, in response, that the errors that he has identified effectively led up to the FtT's overall conclusion as to the appellant's credibility. He also submitted that the FtT had recognised that dependency did not need to be as a whole but could be at least in part, which was consistent with the respondent's own guidance, and the authority of Latayan v SSHD [2020] EWCA Civ 191. Where, as here, it was specifically accepted that the appellant lived in the accommodation owned by the sponsor and that there was a pattern of remittances at least from 2020, it was not open to the FtT to have reached the conclusion that the appellant was at least not in part dependent upon the sponsor. Accommodation was such a basic need and even if part of the remittances from the mother met those needs, it mattered not, where accommodation was an essential living need.

21. In the alternative, the sponsor had given clear evidence that the appellant was a member of his household notwithstanding the fact that the sponsor had come to Italy before buying the house in Nigeria. He had made regular visits to Nigeria and the appellant remained a member of his household.

22. Moreover, the FtT had applied the incorrect law at §16. The case law had developed beyond the well-known authority of Metock and others v Minister for Justice, Equality and Law Reform (C-127/08) and the FtT should instead have focussed on the authority of Dauhoo (EEA Regulations - reg 8(2)) [2012] UKUT 79 (IAC)). There was no need for the appellant to be dependent upon the sponsor when the sponsor lived in Spain. Dependency from 2020 onwards (when the sponsor was in the UK) was sufficient, as per the authorities of Moneke (EEA – OFMs) Nigeria [2011] UKUT 00341 (IAC) and Dauhoo.

The respondent's response

23. In response, Ms Nolan says that this is a classic case of a disagreement with the FtT's findings. To the extent that there is a suggestion that the oral evidence has been misunderstood, there has been no reliance on any note of evidence or record of proceedings. Second, the FtT's reasoning at §§13 to 15 was detailed. By way of specific example, the suggestion that the appellant was a member of the sponsor's household had been specifically identified and addressed at §13 and the FtT was entitled to conclude that mere occasional visits by the sponsor to a property that he owned and in which the appellant lived did not constitute the appellant's membership of the sponsor's household. The FtT had identified his concerns around the financial deposits and had explained, why in his view, there had been inadequate disclosure of the appellant's full financial circumstances.

24. The appellant had simply failed to disclose sufficient evidence, so as to discharge the burden on him. Notwithstanding that only partial dependency was needed, this was a case where there was a potentially far broader picture of the appellant's financial means, which had not been disclosed. The FtT noted the fact of the appellant living in a property owned by the sponsor and of some remittances, but was entitled to conclude that there was not dependency or common household membership and there was no perversity in the FtT's reasons.

My judgment and conclusions

25. The question of the first ground has already been resolved by the representatives. In relation to the third ground, namely the judge's reference at §16 to Bigia, I am satisfied that the legal test applied by reference to that authority was not correct. This is specifically where the FtT states at §16 that the close relationship between the sponsor and appellant "*must have existed in the country from which the sponsor came immediately before the sponsor arrived in the UK*" i.e. in Spain. It is at least possible that the appellant could be dependent upon the sponsor notwithstanding the fact that he was not dependent before the sponsor came from Spain to the UK. The question, as per the well-known authority of Dauhoo, is either of pre-entry dependency or household membership; and post-entry continuing household membership or financial dependency.

26. One question then remains whether the FtT nevertheless made sufficient findings and reached conclusions in relation to dependency and household membership or, as Mr Ajala suggests, there was a gap in the analysis, or it is undermined because of assessment of the appellant's credibility. I remind myself that I have not had the benefit of analysing the evidence in the same way that the FtT did and also it is certainly not for me to substitute my view for what I would have decided. By reference to the authority of Volpi, which I have already cited, I accept Ms Nolan's submission that large parts of the challenge are to isolated elements of the evidence or challenges to the correct understanding of oral evidence, where the record of proceeding or a note of the evidence has not been relied on. I am satisfied that the even if I take many of the appellant's submissions at their highest, the fact that, for example, the FtT may or may not have misunderstood the precise timings of remittances that were received from people other than the sponsor and then were subsequently withdrawn, or whether they were spent on a car or a generator, are not material. The crucial point is that the FtT had serious concerns as to why those potentially with bank accounts would have regularly made large deposits into the appellant's bank account, coupled with the potential evidence that the appellant has a separate bank account, about which he has made no disclosure. Both of those concerns were open to the FtT on the evidence before her and do not amount to impermissible speculation.

27. However, I am conscious that that is only part of the appellant's challenge. The other core part of the challenge is in relation to the FtT's reasoning about the appellant's accommodation. The accommodation is relevant in two respects. The first is whether there is household membership. The

second is, as Mr Ajala succinctly puts it, whether the sponsor's provision of the accommodation, together with some remittances, means that it was perverse for the FtT to have concluded that there was not even partial dependency.

28. In relation to the issue of household membership, I accept Ms Nolan's submission as per the recent guidance given by this Tribunal in Sohrab and Others (continued household membership) Pakistan [2022] UKUT 00157 (IAC), there has to be a sufficiently close physical or other connection. It is simply not sufficient for someone to live in particular accommodation owned by the sponsor. It was in that context that the FtT expressly addressed that issue at §13, concluding that the fact that the sponsor may make visits to the property lived in by the appellant was not sufficient to constitute household membership. That was a conclusion that I am satisfied that was unarguably open to the FtT to reach and discloses no error of law.

29. The second aspect of the challenge is whether by living in the house owned by the sponsor, together with receipt of some remittances from him, this meant that it was perverse for the FtT to reach any conclusion other than of dependency. I do not accept that this aspect of the challenge has merit. Ultimately, in order to evaluate a claim of even partial dependency, the FtT was entitled to consider (and it was not perverse for him to consider) the fact that he only had an incomplete picture of the appellant's circumstances. In practical terms, the fact of living in a property owned by the sponsor, with some remittances, was not sufficient, in the FtT's view, where the appellant may have substantial additional resources at his disposal. The FtT's reasoning was not perverse.

30. I then therefore return to the overall conclusions in this case. There is an acknowledged error, namely the specific finding that the appellant and the sponsor were not related as claimed. The FtT also did not apply correctly certain aspects of the legal test. However, in light of the FtT's findings about the absence of the full picture in relation to the appellant's circumstances, these errors are not such that the FtT's decision is not safe and cannot stand. I do not accept that these errors undermine the FtT's central conclusion about the absence of the full picture, including another bank account. Ultimately, the FtT's findings were open to him and his reasons were sufficient, that it has not been shown that there is current household membership or partial dependency. They were not perverse reasons or conclusions.

Decision on error of law

31. I conclude that there are not errors of law in the FtT's decision, such that the FtT's decision should be set aside.

32. Therefore the appellant's challenge fails and the FtT's decision shall stand.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law such that it should be set aside.

Signed J Keith Date: 22nd August 2022

Upper Tribunal Judge Keith