



Upper Tribunal
Immigration and Asylum Chamber

Appeal Number OA.16451.2012

THE IMMIGRATION ACTS

Heard at: North Shields

On: Tuesday 20th August 2013 On: Wednesday 3rd September 2013

Before

Judge Aitken
Deputy Chamber President (HESC)

Between

Mrs Bona N Ufomadu

Appellant

and

Entry Clearance Officer Nigeria

Respondent

For the Appellant: Ms C Soltani

For the Respondent: Mr C Dewison (Home Office Presenting Officer)

Decision

1. This matter appears before me following a grant of permission to appeal by First Tier Tribunal judge Landes on 16th April 2013 in which he recorded the following:

1. This is an in-time application by the appellant, a citizen of Nigeria, for permission to appeal against the determination of Judge of the First-Tier Tribunal Duff, dismissing her appeal against the entry clearance officer's refusal to grant her a family permit.

2. It is arguable as set out at ground 6 that the judge did not give adequate reasons for his finding at paragraph 12 of the determination that although there had been money transfers from the sponsor the appellant was not dependent upon those transfers and they were simply to raise the standard of living of the appellant's mother and

father. The judge did not give explicit reasons for that finding in that paragraph. It is right that the judge also found the sponsor not to be a satisfactory witness but the judge's findings as to dependency are arguably based on his finding that the appellant was living with her husband (see paragraph 11 determination). The statement made with the application indicated that the appellant's husband, the sponsor's father was retired and the sponsor had said that he was supporting them both (see paragraph 7 determination). It does not therefore follow automatically that because the couple were living as a family unit there was no dependency.

3. It is also arguable as set out at ground 8 that the judge at paragraph 13 made an assumption not warranted by the evidence that the fact the appellant had obtained visit visas on two occasions fitted in with the picture that the appellant was supported by her husband. Given that the appellant had to show intention to return, she will have had to have shown ties to Nigeria but it does not follow that her main financial support would have had to have come from Nigeria.

4. I consider the other grounds to be thinner although for the avoidance of doubt all are arguable. Although the judge made reference to the reason for the appellant coming to the UK, nothing is pointed to at grounds 4 or 5 to indicate where it is said the judge confused himself about the reason for the dependency and the judge's reference to necessity appears only to be in the context that to be dependent the monies supplied would have to fund basic needs which seem unobjectionable. Given that it was agreed between the representatives that the only consideration was financial dependency (paragraph 5 determination) I do not see how it can be said that emotional support needed to be assessed. It may be that is a reference to the judge's assessment under Article 8 ECHR but if so that is not specified.

2. The Home Office made the following submissions under Rule 24 of the procedure rules:

1. The respondent to this appeal is the Secretary of State for the Home Department. Documents relating to this appeal should be sent to the Secretary of State for the Home Department, at the above address.

2. The respondent opposes the appellant's appeal. In summary, the respondent will submit inter alia that the judge of the First-tier Tribunal directed himself appropriately.

3. The judge makes a series of clear and unambiguous findings as to the reliability of the sponsor and the situation of the sponsor's mother in Nigeria.

4. *It was open to the judge to conclude that there was attempt to mislead the respondent and that the intention was to obtain the appellant's mother's services as a provider of child care.*
 5. *There as clear evidence that suggested that the appellant and her husband were not separated as claimed and even the representative acknowledged these inconsistencies.*
 6. *The respondent requests an oral hearing.*
3. Ms Soltani's main submission was that whilst at paragraph 12 the First Tier Tribunal at the first hearing had recorded the following:
- "Whilst I accept that those transfers have been made I do not accept that the appellant has been dependant upon such transfers and I find that they have been made for the benefit of the appellant's mother and father to raise their standards of living in Nigeria but not on the basis of necessity to fund the basics of life."*
4. There was no restriction upon the nature of the dependency such as the First Tier Tribunal Judge had described when considering the EEA regulations. She relied for that proposition upon the case of ***SM India Entry Clearance Officer (Mumbai) [2009] EWCA Civ 1426***. Her submission was to the effect that a dependency having been established and accepted the reasons for it, given by the judge i.e. to provide more than the basics was an error of law.
 5. ***SM (India)*** at paragraph 21 Sullivan LJ noted the following in commenting upon the ECJ case of ***Jia (Free movement of persons) [2007] EUECJ C-105***

"Having expressly endorsed Lebon in paragraphs 35 and 36, there is no reason, in my judgment, to read the discussion in paragraph 37 of the extent or the degree of need that has to be established, "having regard to their financial and social conditions they are not able to support themselves ... in the State of origin", as qualifying, much less as conflicting with, the proposition in Lebon that, if there is recourse to support to meet what are described as "essential needs in the state of origin" in paragraph 43, there is no need to determine why or to ask whether the person so supported would be able to support themselves by taking up paid employment."
 6. It is clear from that paragraph that whilst the reasons for the dependency, in the sense that a choice is exercised as to who or what provides the support are matters of choice, the actual need for dependency is not. There must first be "essential needs". The First Tier Tribunal judge found that there was no such need, rather that the sponsor supplied money over and above that essential need.

7. The First Tier Tribunal judge was entitled to take into account inconsistencies, such as the sponsor suggesting in his statement that his parents still lived together and that he was their main source of income, rather than his mother having been abandoned, and other features in coming to the conclusions that he did, and he gave clear reasons for that, no one can be in any doubt as to why he found as he did and upon what evidence, which is the requirement.
8. As to the previous visit visa applications the First Tier Tribunal did not make them the main part of his reasoning, he accepted an inference, that they were much more likely to be granted if evidence of support from within Nigeria was produced and the appellant has not in fact suggested otherwise, simply pointing to an absence of hard evidence that this is so. In those circumstances I find that there is no error of law within the decision of the First Tier Tribunal.

Decision

There is no material error of law within the decision of the First Tier Tribunal



Judge John Aitken
Deputy Chamber President
Health Education and Social Care Chamber
Monday, 2 September 2013