



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

Appeal Number: IA/35587/2015

THE IMMIGRATION ACTS

Heard at North Shields
On 13 May 2015
Prepared on 14 May 2015

Decision & Reasons Promulgated
On 27 May 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE HOLMES

Between

**ERNEST NJOKU UKPABI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Marfat, Newcastle Law Centre
For the Respondent: Ms Rackstraw, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Nigeria, and the sister of the EEA national sponsor (a citizen of Belgium and Nigeria).
2. The sponsor left Nigeria for Belgium in 2002, and she remained living there until 15 December 2013 when she entered the UK as an EEA national seeking work. She had acquired Belgian citizenship on 5 September 2012.

3. The Appellant left Nigeria on 26 September 2012, travelling to the UK by air on his own passport, and with a valid grant of entry clearance as a student.
4. On 23 June 2013 the Appellant applied for a residence card asserting by reference to Regulation 8 of the Immigration (European Economic Area) Regulations 2006 ["EEA Regulations"] that he was an extended family member of the sponsor ["EFM"]. That application was refused on 21 May 2014 because;
 - i) the Respondent was not satisfied that the sponsor was a "qualified person"; there was no evidence that she had obtained employment in the UK, and thus it was concluded that she had been seeking work for more than six months.
 - ii) the Respondent was not satisfied that the Appellant had been a member of the sponsor's household, or dependent upon her, either when he lived in Nigeria, or when living in the UK.
5. The Appellant appealed to the First Tier Tribunal against that refusal, and his appeal was heard and dismissed by Immigration Judge Clough in a decision promulgated on 3 December 2014.
6. The Appellant sought permission to appeal that decision to the Upper Tribunal. Permission was refused by the First Tier Tribunal by way of decision of Judge Foudy of 3 February 2015 on the basis that although there had been an incorrect reference to regulation 4 in the course of the decision, the text of that decision showed that the correct regulations had been under consideration. The findings of fact made by the Judge were open to her on the evidence and were adequately reasoned, albeit briefly. The application was therefore, at best, no more than a disagreement with the Judge's findings.
7. Undeterred, the application for permission to appeal was renewed by the Appellant to the Upper Tribunal on essentially the same grounds. Permission was granted by Upper Tribunal Judge Taylor on 10 March 2015 on the basis it was arguable that Judge Clough had not applied the relevant regulations, and, that she had failed to analyse a body of evidence relied upon by the Appellant in the course of her rather brief decision.
8. The Respondent served a Rule 24 response to the grounds of appeal dated 1 April 2015 in which she asserted that there was no material error of law, and that the findings of fact made in paragraphs 9, 10 and 14 of the decision were sufficient to dispose of the appeal.
9. Thus the matter comes before me.

The unchallenged findings

10. There has been, and could be, no challenge to the Judge's finding upon her own evidence that the Appellant's sister had left Nigeria for Belgium in 2002, and that she had only acquired Belgian citizenship on 5 September 2012.

Regulation 4

11. Before me Mr Marfat confirmed that he accepted that the Judge's reference to regulation 4 in the course of her decision, whilst a regrettable slip, was an error of no consequence at all. It was plain from the decision that her focus had been upon regulation 8.

Regulation 8

12. Given the date of acquisition of Belgian citizenship the Appellant could not hope to establish that he was ever a member of the sponsor's household outside the UK, at a time when she was an EEA national. She had left Nigeria for Belgium in 2002. He had travelled direct from Nigeria to the UK in September 2012 a mere twenty days after she had acquired Belgian citizenship, and he did not assert that he had travelled via Belgium to do so, or indeed that he had ever visited her in Belgium, or lived in Belgium with her prior to travelling to the UK.
13. Before there needed to be any consideration of the Appellant's position once he arrived in the UK, the Appellant's ability to satisfy the requirements of regulation 8(2) therefore rested upon his ability to demonstrate that he had been dependent upon the sponsor, during the short period in which he had continued to live in Nigeria after she had acquired Belgian citizenship; ie 5 September 2012 to 25 September 2012; Dauhoo (EEA Regulations - Reg 8(2)) [2012] UKUT 79. He was then twenty years old. He says he was not studying, and does not admit to working.
14. The Judge was not satisfied that the Appellant had been dependent upon the sponsor whilst living in Nigeria during this short period. She found that even if monies had been provided to the Appellant in Nigeria by the sponsor by way of gift to allow him to make payment of visa application fees, or college fees in advance, that these were advances that had been provided to him before the sponsor had become a Belgian citizen.

Evidence overlooked?

15. The Judge was undoubtedly not assisted by the poor preparation of the appeal by the Appellant's representative. She was faced with a bundle of documents filed on 19 November 2014 that were in no apparent order, that was unindexed, and to which the witness statements of the Appellant and the sponsor made no reference. There was no schedule of the payments, or advances of monies that were relied upon. No evidence was led by Mr Marfat in examination in chief; the Appellant and his sister were simply tendered for cross-examination. Nor was any skeleton argument prepared that sought to identify what those documents were, or how their content was relevant to the issues in dispute.
16. In the sense that there is still no index, no schedule of the payments, or advances of monies that were relied upon, and no skeleton argument, the position is no different today.
17. The grounds of appeal do not identify the documents or the entries therein that are said to be relevant, and to have been overlooked by the Judge.
18. In the circumstances I required Mr Marfat to go through that bundle with me in order that he might identify precisely what within it was the relevant evidence, that he had asserted when drafting the grounds of appeal the Judge had failed to deal with. That exercise was illuminating, not least because it became perfectly clear that Mr Marfat was not entirely familiar with the documents. There were for example statements from four bank accounts within the bundle; not one. Some of those statements were duplicated.

19. At the conclusion of this exercise Mr Marfat had drawn my attention to the following;
- p75, said to be a statement for a euro account with GT Bank held by the sponsor
 - p72 (duplicate of p70), said to be a statement for a US\$ account with GT Bank held by the sponsor
 - p61, said to be a statement for a euro account with KBC Bank held by the sponsor
20. Mr Marfat formally conceded that there was no express reference to either of these documents in the witness statement, and no express reference to any of the individual transactions recorded therein. He had led no evidence either in relation to the documents themselves, or to the entries they contained, from either the Appellant or the sponsor.
21. The high point of the evidence from the Appellant and the sponsor was therefore;
- i) the claim that the Appellant and the sponsor had a *“joint account in Nigeria where she has sent money from Belgium. I withdraw funds from there for our needs according to her opinion and agreement.”* [Apt WS #7, SpWS #13]
 - ii) the claim that the sponsor had supported the Appellant and his siblings for many years prior to becoming an EEA national, and that she had continued to do so afterwards [SpWS #13 #17]
 - iii) the claim that the sponsor had paid for all the expenses of the Appellant’s study in Malaysia, including his flights and his tuition fees
 - iv) the claim that the sponsor had paid for the Appellant’s tuition fees in the UK, and had placed funds into the bank account in advance of that payment in order to demonstrate that those funds were available for the 28 day period required by the Immigration Rules
22. The Judge’s approach to the issue of dependency prior to entry to the UK was simply to find that she could not consider any support the sponsor had given to the Appellant before she became an EEA national [9]. I am satisfied that this was too simplistic an approach.

The decision remade

23. I heard oral evidence from the Appellant and the sponsor upon the issue of whether the Appellant was in truth dependent upon the sponsor prior to entry to the UK.
24. With the benefit of that oral evidence I am not satisfied that I have been told the truth about the financial circumstances of either the Appellant, or the sponsor. It is quite clear that there has not been a full disclosure of the financial circumstances of either of them, for any relevant period. I note that the sponsor claims to have been a student in Belgium throughout the period 2002 to February 2014. Whilst she says that she worked from time to time part time, and accepts that she was financially supported by her religious community in her studies, she has entirely failed to give a detailed or acceptable explanation of her income and how she supported herself, let alone how she could have supported both the Appellant and his siblings, as she

- claims to have done. There is no evidence from the religious institution that is said to have supported her, and none from Mr Okwuru to whom I will refer below.
25. The bank statements produced for the "Compact Account" with KBC Bank that the sponsor says she maintained in Belgium cover only the period 3.9.12 – 29.9.12 [p58-62]. The credit balance on the account on 1.9.12 is said to have been only Eu5,13, and on 29.9.12 only Eu16,51. The transactions recorded in that period are generally modest sums transferred between bank accounts that are not explained, and that are generally of less than Eu50. The clear exception is the transaction recorded on p60, dated 19.9.12, which records a cash deposit of Eu6220,00 into her account by Christian Okwuru. I note that in her witness statement the sponsor had said that she had given money to Christian Okwuru in cash to take to Nigeria to give to the Appellant [WS #16]. The sponsor was asked for an explanation of this, and her reply was in my judgement illuminating. She said that Okwuru had given her Eu6200,00 to send to the Appellant, and that this money belonged to Okwuru. I note that she went on to say that she had duly sent this money to the Appellant, and indeed p60 records a debit by way of European transfer of Eu3010,00 on 19.9.12 and p61 records a debit of Eu3210,00 on 26.9.12.
 26. Although the sponsor said that she only ever had one bank account in Belgium the bundle contains bank statements for a second bank account held with KBC Bank, a "Savings Account". Curiously the statements produced for this account cover only the period 4.7.07-29.9.08. Thus there are no statements for the two KBC accounts for the same period in evidence. It is however plain that during both the period 3.9.12 – 29.9.12 and the period 4.7.07 - 29.9.08 that the statements disclose a number of transactions between the two KBC accounts. They are unexplained.
 27. Having heard the evidence of the sponsor it is now patently clear that the large sum that is relied upon by the Appellant as having been given to him by the sponsor in September 2012 for the payment of his visa application fees, college tuition fees and flight to the UK, was actually money that was provided to him by a third party, Mr Okwuru, which for whatever reason the Appellant and sponsor decided should pass through one of her Belgian bank accounts on its way to one of her Nigerian bank accounts.
 28. The statements said to have been issued by the GT Bank disclose five different accounts held by the sponsor with that bank, a Naira savings account, a Naira current account, a sterling account a US\$ account, and a euro account. There was not one bank account as Mr Marfat had initially asserted, or three accounts as the sponsor claimed.
 29. The GT Bank Naira current account is covered by pages 63-4 for the period 16.7.12 – 28.3.14. It records the receipt into that account of 2.6mNaira on 16.7.12 from the savings account, and then the immediate transfer out of 2.58mNaira to a joint account held by the sponsor and the Appellant on the same day. That is the only transaction on this account that is relied upon. That sum appears as a credit to a First Bank account held in the sponsor's name on 17 July 2012 p 77, when there is a further credit of 2.2mNaira on the same day from "Halidu Sumalia". In the next couple of days nearly 2mNaira is withdrawn from that First Bank account, with 1.2mNaira being transferred to "Okoli Ugo Prince".

30. The GT Bank Naira savings account is covered by pages 66-69 for the period 27.6.12 – 31.3.14. This records a withdrawal by the Appellant of 200,000Naira on 19.7.12, and a deposit of 100,000Naira by him on 22.8.12. The other transactions are unexplained, although on 30.7.12 payments were being made from this account to the Canadian High Commission. On whose behalf, and why, is unexplained, although it is not suggested that this was to the benefit of either the Appellant or the sponsor.
31. The GT Bank US\$ account is covered by page 70 for only the period 5.9.12 – 18.9.12 (p72 is merely a duplicate). This records a series of four withdrawals by the sponsor in the intervening fortnight totalling \$600. The purpose of these transactions is unexplained.
32. The GT Bank sterling account is covered by p71 for only the period 19.7.12 – 23.7.12 (p73 is a duplicate). This records five withdrawals by way of transfer in favour of the Newcastle Academy of Business and Tech, totalling over £2,500.
33. The GT Bank euro account is covered by p74-5 for only the period 20.7.12 – 14.9.12. Eu4,000 is deposited into that account on 2 August 2012, which is recorded as having been withdrawn by the sponsor by way of five transactions over the following fortnight.
34. The only statements disclosed for the sponsor's own Nigerian bank account held with FirstBank cover the period 30.6.12 – 30.5.14 [p76-79]. The only deposits into that account recorded prior to 30.9.12 is the sum of 2.58mNaira noted above from the sponsor's account, the sum of 2.2mNaira from Halidu Sumaila, and the sum of 40,000Naira from Felicia Okorie.
35. In summary there is no adequate explanation or evidence of these money movements. I am not satisfied that the Appellant has demonstrated a genuine dependency upon the sponsor at the relevant period of time to any degree, nor that he was dependent upon her earlier in 2012. I am not satisfied that there has been a complete and truthful disclosure of the Appellant's financial circumstances. The overwhelming impression given by these documents, which the evidence of the Appellant and the sponsor did nothing to dispel, is that sums of money were being deliberately moved around between bank accounts, and between third parties, in order to give a false impression of the Appellant being financially reliant upon the sponsor.

Conclusion

36. Even if the Appellant had been dependent upon the sponsor when he was studying in Malaysia, which I do not accept, that was a period of study in September 2008.
37. I accept that the Appellant may at some point have been dependent upon Mr Okwuru, or received advances of money from him, but that is not the same thing as financial dependency upon the sponsor, and it is of course not his case.
38. On the limited evidence produced I am not satisfied that the Appellant has demonstrated on the balance of probabilities that he was in truth genuinely financially dependent upon the sponsor in September 2012, or indeed prior to that at any date during 2012. It is possible that the Appellant may be able to demonstrate the financial dependency he asserts if he and the sponsor make a complete and truthful disclosure of their financial circumstances for the relevant

- periods, but I am not satisfied that this has yet occurred. I can only make a decision upon the evidence that has been produced to the Tribunal; Reyes [2013] UKUT 314.
39. The Appellant has not demonstrated on the evidence a situation akin to that in the decision of Reyes [2014] QB 1140. The Appellant has not demonstrated a longstanding financial dependency upon the sponsor predating the acquisition by the sponsor of Belgian citizenship on 5 September 2012 that would allow me to infer that it continued thereafter until 26 September 2012, and, he has not demonstrated actual financial dependency during the period that he lived in Nigeria between 5 September and 26 September 2012 when he entered the UK.
40. The Appellant has not demonstrated that he is the EFM of the sponsor pursuant to regulation 8 of the EEA Regulations 2006 (as amended).

Decision

The decision promulgated on 3 December 2014 did involve the making of an error of law in the approach taken by the Judge to the evidence relied upon by the Appellant. I set aside that decision and remake it so as to dismiss the appeal.

Direction regarding anonymity – Rule 14 Tribunal Procedure (Upper Tribunal) Rules 2008

No anonymity direction is required, or was sought in the First Tier Tribunal. I decline to make such a direction of my own motion since there would appear to be no need for one, and it would serve no useful purpose.

Deputy Judge of the Upper Tribunal JM Holmes

Dated 14 May 2015