



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA143962014

THE IMMIGRATION ACTS

Heard at Stoke
On 14 April 2016

Decision & Reasons Promulgated
On 24 May 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

MR ABIDEMI DANJUMA AFOLABI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Adewoye, instructed by Prime Solicitors
For the Respondent: Ms C Johnstone, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, a citizen of Nigeria, appealed to the First-tier Tribunal against a decision of the Secretary of State dated 13 March 2014 to refuse his application for a residence card as confirmation of a right of residence under the Immigration (European Economic Area) Regulations 2006 (the 2006 Regulations). First-tier Tribunal Judge Rowlands dismissed the appeal in a decision promulgated on 25 February 2015. The appellant appeals with permission to this Tribunal.

2. The relevant provisions of the 2006 Regulations for the purposes of this appeal are as follows:

“Extended family member”

8. (1) In these Regulations “extended family member” means a person who is not a family member of an EEA national under regulation 7(1)(a), (b) or (c) and who satisfies the conditions in paragraph (2), (3), (4) or (5).

(2) A person satisfies the condition in this paragraph if the person is a relative of an EEA national, his spouse or his civil partner and –

(a) the person is residing in a country other than the United Kingdom and is dependent upon the EEA national or is a member of his household;

(b) the person satisfied the condition in paragraph (a) and is accompanying the EEA national to the United Kingdom or wishes to join him there; or

(c) the person satisfied the condition in paragraph (a), has joined the EEA national in the United Kingdom and continues to be dependent upon him or to be a member of his household.

...

3. The evidence put forward by the appellant to the First-tier Tribunal Judge was that he lived in Nigeria with his parents and five brothers and that his EEA national brother (the sponsor) relocated from Nigeria to Germany in 1991, moved to France in 1995 and came to the UK in December 2007. The appellant says that the sponsor returned to Nigeria to visit a few times a year and that he supported the family for long periods as the appellant's father and mother did not get on well and his father was in the Army and was away from home for long periods. The appellant says that after his father retired from the army in 1996 the appellant was solely dependant on the sponsor as his mother was a petty trader and had three other children and could not support them all. The appellant said that the sponsor sent money to his mother to support them through agencies and through friends. His mother used the money for the appellant's upkeep and education and for the rest of the family. The appellant's case is that the sponsor sponsored his secondary and University education in Nigeria and sent money for his uniforms and upkeep. He claims that the sponsor sent his flight ticket money in 2009. The appellant says that he lived with the sponsor when he first came to the UK and that when he went to City University in London he stayed with a friend and the sponsor contributed towards the rent and paid £100-200 into his account on a monthly basis. The evidence before the First-tier Tribunal was that the appellant was unemployed and the sponsor continued to support him through payments of cash and paying money into his account.
4. The appellant claims to have entered the UK in 2009 as a student. On 21 January 2011 he was granted a Tier 1 (Post-study work) visa valid until 21 January 2013. On 1 October 2013 he applied for an EEA residence card as the extended family member of his half brother, James Odia, a French national (the sponsor). The Secretary of State refused the application on the basis that the DNA test submitted was not from an approved laboratory and was not accepted as evidence that the appellant and the sponsor are related as claimed; that the receipts submitted as evidence of money transfers in 2008 and 2009 looked as though they had been issued very recently; and that there was no evidence that the appellant had been residing with or had been

dependant on the sponsor since entering the UK. The application was therefore refused under Regulation 8 of the 2006 Regulations.

5. The First-tier Tribunal Judge accepted that the new DNA evidence, which was not challenged, demonstrated that the appellant and the sponsor are related as claimed. In considering the issue of dependency the Judge considered that the appellant and the sponsor were not credible witnesses finding that the appellant was particularly evasive in his answers and that he was clearly making up some of his evidence as he was going along. The Judge gave examples of the evidence he found not to be credible including the appellant's evidence about the weekly payments of £80 from his friend in December 2014 which the Judge considered were rent payments and not money for Christmas presents as claimed by the appellant. A further example was the evidence about the appellant's purchase of a Mercedes car which the appellant and the sponsor claimed was purchased from the appellant's savings at a time when he was being supported by the sponsor. The Judge concluded that there is insufficient evidence that the appellant was ever being supported by the sponsor in Nigeria. The Judge noted that there had been no explanation as to why the appellant was being supported by the sponsor there given that his father, a retired army officer, presumably had a pension.
6. The appellant relies on three main grounds in his grounds of appeal to the Upper Tribunal. Firstly the appellant contends that the Judge erred in that he failed to take account of the sworn affidavit from the appellant's father stating that the sponsor had sent funds for the upkeep of the appellant. Secondly it is contended that the Judge erred in failing to make definite findings on the admissibility of the receipts from 2008 and 2009 which the respondent had considered looked 'new'. Although it is contended that the Judge erred in stating that the sponsor is no blood relative of the appellant's father whereas he is the appellant's father's son this is not supported by the evidence which indicates that the appellant and sponsor share the same mother but have different fathers. The third main ground is that that the Judge failed to take account of the evidence that the appellant's parents did not have a good relationship in considering why the appellant's father could not look after the children. In granting permission on the basis that the first and second grounds are arguable First-tier Tribunal Judge Ransley indicated that the third ground has little merit.
7. At the hearing before me Mr Adewoye submitted that the Judge did not fully engage with the evidence before him in particular the appellant's father's affidavit and the two receipts. He submitted that the Judge attached too much weight to one or two aspects of credibility.
8. Ms Johnstone submitted that the findings were open to the First-tier Tribunal Judge based on the oral and documentary evidence submitted.

Error of Law

9. In order to establish that he is an extended family member under regulation 8 (2) (c) the appellant had to demonstrate that he was dependant on the sponsor when in

Nigeria and that he continues to be dependant on him or is a member of his household in the UK.

10. The first and second grounds are interlinked, the first contends that the Judge erred in failing to consider the appellant's father's affidavits and the second that the Judge did not fully engage with the two receipts submitted. I accept that the Judge did not specifically refer to the affidavits. The affidavit dated 29 August 2013 states that the sponsor was responsible for the education and upkeep of the appellant and that funds were sent through the appellant's late mother and that, since her death, receipts could not be located.
11. In light of the lack of documentary evidence the determination of this appeal was largely down to the assessment of the oral evidence from the appellant and the sponsor. The Judge found that the appellant and sponsor were not 'at all compelling or credible' [24] and that the appellant had been evasive, he also concluded that the appellant and sponsor lied to him [25]. The Judge clearly attached little weight to the oral evidence of the appellant and sponsor. The Judge made significant adverse credibility findings which were open to him, on the basis of the oral evidence he heard and the issues highlighted in the decision.
12. In these circumstances the Judge would have required strong documentary evidence to establish dependency in Nigeria. The Judge said that insufficient evidence had been presented to satisfy him that the sponsor was ever in reality financing the appellant in Nigeria [26]. This clearly also refers to the lack of documentary evidence.
13. One of the few pieces of documentary evidence he had was the appellant's father's affidavits. The affidavits add little to the accounts given by the appellant and the sponsor which were subject to cross-examination and were not accepted by the Judge.
14. So, whilst the Judge did not specifically refer to this piece of evidence his general assessment as to the insufficiency of the evidence must have covered this piece of evidence. I do not see how the affidavit could have been considered to be sufficient evidence of dependency in Nigeria on its own. It had to be considered in the round on the basis of all the evidence and this is what the Judge did at paragraph 26.
15. The Judge also had before him the receipts from November 2008 and July 2009. The Secretary of State had noted that these appeared new and doubted whether these transactions had taken place. Contrary to the assertion in the grounds of appeal the Judge did not have to make a definitive finding as to whether the receipts looked new or were admissible. The Judge had to make findings based on all of the evidence. That's what he did at paragraph 26, having concluded that the appellant and the sponsor were not credible. In light of that finding the Judge would have struggled to reach a finding that dependency had been established in light of the lack of documentary evidence.
16. The third ground contends that the Judge failed to take account of the evidence that the appellant's father and mother did not have a good relationship as an explanation

for the fact that he did not support the family. However again this ground ignores the dearth of evidence to show that the appellant was dependant on the sponsor whilst he was in Nigeria. The appellant claims that the sponsor supported him from 1991 until 2009 including paying for his education at secondary and university level. Had this been the case then the appellant should have been able to submit documentary evidence to prove that regardless of the role of the appellant's father.

17. In my view the Judge gave adequate reasons at paragraph 26 for finding that there was a lack of explanation why the appellant's father would be unable to finance his children without the financial support of the sponsor. The third ground has not been made out.
18. The Judge made findings open to him as to the credibility of the witnesses and the inadequacy of the evidence. Accordingly there is no material error of law in the decision of the First-tier Tribunal.

Conclusion

19. The making of the decision of the First-tier Tribunal did not involve the making of a material error on a point of law.
20. The decision of the First-tier Tribunal shall stand.
21. I make no anonymity direction.

Signed

Date: 23 May 2016

Deputy Upper Tribunal Judge Grimes

TO THE RESPONDENT
FEE AWARD

The appeal is dismissed therefore there can be no fee award.

Signed

Date: 23 May 2016

Deputy Upper Tribunal Judge Grimes