



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: EA/05335/2016

THE IMMIGRATION ACTS

Heard at Field House  
On 11<sup>th</sup> November 2019

Decision & Reasons Promulgated  
On 27<sup>th</sup> November 2019

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

OLASEWA [E]  
(NO ANONYMITY DIRECTION IS MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms H Gore, instructed by R Spio & Co Solicitors  
For the Respondent: Mr P Singh, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Nigeria born on 18 January 1984. She appeals against the decision of First-tier Tribunal Judge Greasley promulgated on 31 January 2019 dismissing her appeal against the refusal of a residence card as an extended family member.

2. On 10 June 2019, I found an error of law and set aside the decision of the First-tier Tribunal. The appeal was adjourned for rehearing before the Upper Tribunal and the Appellant was directed to serve any further evidence at least seven days before the hearing. No further evidence has been served. The Appellant relied on a bundle of documents containing 34 pages, which was before the First-tier Tribunal, including witness statements, birth certificates, numerous letters, payslips and photographs.

### Oral Evidence

3. The Appellant relied on a witness statement dated 18 December 2018, which she signed in court. She told me she had changed address since she made that statement and her new address was recorded on the court file. There were no further questions.
4. In cross-examination, the Appellant confirmed she applied for a visa to visit the UK in 2012 which was refused. She then made a second application to come to the UK with her husband for a holiday and was granted a six-month visit visa. The Appellant did not travel to the UK with her husband because she had an argument with him. Since coming to the UK, the Appellant had little contact with her husband and had been living with her auntie, the Sponsor. Her husband had abused her and she had a miscarriage. She called his parents and he was angry with her. He sent a letter about getting divorced in 2013.
5. The Appellant was unable to give the name of her husband when first asked. She said that he had three names, but she mostly called him [F]. She could not remember his second name, even though they had been married for two years. He was not called [F] when she married him and he also had a nickname. Since the divorce she had not spoken to him and he had never visited her in the UK. She started a relationship with [EK] at the end of 2012 but stopped communicating with him two months ago. Their son was born in January 2016.
6. The Appellant was convicted after a guilty plea of assault occasioning actual bodily harm when she went to Mr [EK]'s home and got into a fight. The Appellant stated that prior to this separation she would stay with [EK] at his home for about a week in every month. He worked as a cleaner and a musician. He did not provide maintenance for their son. She had not married him. He had not seen her son since the incident leading to her conviction.
7. When she first came to the UK, she lived in [~], Southchurch Court, [~]. She had lived there for about two or three years before she moved to [~] Romford Road. She stayed there for a year then moved to McEwen Way, [~]. All three were council accommodation. The Sponsor had been living with two other tenants in East Ham and one had moved out. They had lived in Romford Road when the Appellant was pregnant and then they moved to McEwen Way where the baby was born.

8. The Appellant stated that she finished secondary school in Nigeria and learned how to do hair. She did not work. Her husband worked doing marketing for a company. He lived with his parents and she lived with them. They had a room in his parents' house. The Appellant would go back to her grandma's house on occasion. Her husband's father was working, but she did not know what he did. In Nigeria, she was maintained by her husband and his parents and she lived in their house. She remained in contact with the Sponsor who had maintained her and paid her school fees when she lived with her grandma. When she found someone she wanted to marry, she wanted to make things easier for the Sponsor, so she married and lived with her husband, whom she had first known as [O], for two years. However, during the first three months of the marriage she found out that her husband would get drunk and was abusive. He caused her to have a miscarriage and she had gone back to her grandma's. When the Appellant went to Lagos, she found out her husband's name was [F]. The Appellant had been living with her husband and his family before coming to the UK.
9. The Sponsor would send £100 every month via Western Union to the Appellant's grandma, who would give the money to the Appellant and her siblings. The Sponsor was still sending money to her grandma. The Sponsor never sent money directly to the Appellant in Nigeria. It was always sent to her grandma.
10. The Appellant did not work in the UK and never had. The rent from the three properties in which she had lived was £1,100, £1,300 and £1,200 respectively and the bills were about £200. The Sponsor worked for a cleaning agency. Her income was not really stable and she also wanted to study so she cleaned part-time. Her average income was £1,500 per month, sometimes it was £800 or £900, and then when she started working for the agency it went up to £1,200. The Sponsor gave the Appellant £100 or £150 every week. Sometimes the Appellant saved some money and helped pay the bills. She also received £20 child benefit a week. The Sponsor was able to afford to run the household from the money she earned doing cleaning with an agency and some other jobs.
11. When asked about why her name was on the water bill at McEwen Way, the Appellant said that when she had made an application to the Home Office they had refused it, so she needed proof of address to confirm where she was living. The Sponsor had asked for a bill and for the Appellant's name to be on it. The Sponsor had said she wanted to put the Appellant's name on one bill.
12. When asked questions about proof of her relationship with the Sponsor, the Appellant stated that they had been for a DNA test but it did not show anything. The Sponsor and the Appellant's mother had the same mother but not the same father. The DNA test took place in 2017 but she could not remember the date and no copy of the test was produced.

13. The Appellant was still in contact with her grandma and younger sister. She did not know she needed to obtain witness statements from them but she had asked about a birth certificate. She had been born at home and did not have one, that is why she had obtained attestations of birth. Her sister had in fact gone back to the council and done a declaration. An affidavit was produced dated 8 October 2019.
14. In answer to questions from me, the Appellant stated that the credit in the bank statement from Joan Egbe in March 2014 was her. She had been given money by the Sponsor and had paid it into her grandma's account. She said there were no deposits directly from the Sponsor into grandma's account because most of the time the Sponsor used Western Union or asked some other family members to take money to Nigeria. In order to transfer from a UK account it had to be by Western Union. I asked the Appellant about another payment in September 2011 in the name of Joan Omoregbe. She said that too was her. If she was given money she would send it to her grandma. She had used 'Ria' to send the money from the UK.
15. In re-examination, she explained that she did not know why the Sponsor did not use 'Ria'. She stated: "Ria is closer to me. If I don't take her there she does not know."
16. The Sponsor, [JO], gave evidence and confirmed her new address. Her witness statement was read out to her because she could not remember having read it before the previous hearing. She confirmed the content of the statement and signed it in court. She relied on her statement as evidence-in-chief.
17. In cross-examination, the Sponsor could not remember when she became an Italian citizen but confirmed that she came to the UK in 2006. She had contact with the Appellant all the time before she came to the UK providing maintenance in Nigeria. She sent money through friends who would give the money to her mum, the Appellant's grandma. She did transfer money by Western Union ten years ago but had not done so since 2009 and had only sent money through friends. She was asked if she had used 'Ria' and she said she had. She used it every month since 2009. When asked if the Appellant had sent money on her behalf, she said: "No, she does not have any." She confirmed that the Appellant had not sent money on her behalf and she did not know if the Appellant had used 'Ria'. The Sponsor then stated: "If I had to send money, I would give her [the Appellant] money to send using my name." I asked if she and the Appellant ever went to send money together, she said "Yes, sometimes, sometimes no".
18. The Sponsor confirmed that the Appellant was married in Nigeria and would come home to Benin from Lagos to grandma's house to get money that the Sponsor had sent. There was no record of any transfers from the Sponsor to the Appellant's grandma via 'Ria' because the Sponsor transferred money into her own account in Nigeria and then it was transferred to grandma's account. The process changed four or five years ago and she now transferred money directly. When asked why the Appellant had transferred money to grandma's account, the Sponsor stated that

maybe when she sent money the Appellant had given it to grandma and also because the Appellant's sister was there as well.

19. The Appellant did not work in the UK. The Sponsor was the only person working. She earned about £1,000 a month, on average £1,200. Sometimes friends would give her money if she was broke. She had received £400 from a friend in the last six months.
20. Since 2012, the Sponsor had lived at Southchurch Court, Romford Road, McEwen Way, Gresbrook Road and now Newport Avenue. When asked how she could afford to maintain herself she said she had help from friends who would also do some shopping as well. The friend who had supported her had not come to court because he was working and she had not obtained a witness statement from him because he did not put money in the bank, he gave it to her by hand.
21. The Sponsor had met the Appellant's partner, [EK], who lived in the UK, but she had not seen him since the Appellant's son's birthday in January. She had spoken to him last month on the phone. She did not think he saw his son and did not think he provided money for his son. The Sponsor confirmed that she gave the Appellant £30 to £40 per week from her own pocket. She explained that the Appellant's name was on the water bill because she wanted her to have proof of address so she put her name on the bill to show that she lived in the same place. She just told the water company that the Appellant lived with her. When asked if the Appellant had any other income she said, "I think she has child benefit". There was no re-examination.

### **Respondent's Submissions**

22. Mr Singh relied on the refusal letter and said that there were two issues: the claimed relationship and dependency prior to the UK and thereafter. There was no further corroborative evidence of the relationship. It could be assumed that the DNA test taken in 2017 was negative because the report had not been produced. The affidavit from the Appellant's sister, explaining the lack of a birth certificate, should be given little weight as it had been produced late in the day and the Appellant had not complied with directions.
23. There was a lack of documentation of any transfers to the Appellant in Nigeria. Mr Singh submitted that I should not accept the oral evidence of the Appellant and the Sponsor because the water bill was fabricated to enable the Appellant to remain in the UK; the timelines for the addresses given by the Appellant and Sponsor were inconsistent; and the amount of rent was inconsistent. The Sponsor did not know of any maintenance payments or provisions for the Appellant's child. The differences in rent and outgoings were significant. The discrepancies in maintenance and cost of living meant that, on the balance of probabilities, the Appellant and Sponsor did not live together. Further, there were many discrepancies in relation to the remittances

sent to Nigeria. The Appellant said the Sponsor always used Western Union, not 'Ria', and the Sponsor said she stopped using Western Union five to six years ago.

24. Mr Singh submitted that there was a lack of documentary evidence in this case because the claim was fabricated. The Appellant said that she had paid money into her grandma's account in 2014 on behalf of the Sponsor, but the Sponsor was not able to identify when she had asked the Appellant to send any money. Even if it was accepted that the Sponsor sent money, it was sent to grandma. There was no evidence, oral or documentary, to show that the money was transferred to the Appellant. The Appellant could not show dependency prior to coming to the UK. Further, two years prior to coming to the UK, the Appellant was married and maintained by her husband and his family. Even though her marriage was turbulent it continued until the Appellant came to the UK.
25. Mr Singh submitted it was not credible that the Sponsor supported the Appellant in the UK because her earnings were only sufficient to cover the rent without any provision for the payment of bills. It was not possible for the Sponsor to provide any money to the Appellant. The Appellant was not financially dependent on the Sponsor because she received child benefit.
26. Mr Singh invited me to dismiss the appeal because the Appellant was not related to the Sponsor as claimed and there was no dependency in Nigeria or in the UK. There was insufficient evidence to show that the Appellant and Sponsor were members of the same household.

### **Appellant's Submissions**

27. Miss Gore submitted that there was a child in the family and the Appellant's child and Sponsor were all living together. The birth certificate gave the child's address as [~] McEwen Way which showed that the Appellant and Sponsor were living together when the child was born. The address was the same on the PNC and on various other documents in the Appellant's bundle. The Appellant had given credible evidence because she had pleaded guilty to the offence and had given evidence in relation to DNA testing, which did not assist her case. The fact that there were some discrepancies in dates and addresses was not relevant. The Appellant also gave significant evidence that the Sponsor was not educated and required help with reading. This was borne out when the Sponsor's statement had to be read to her at the outset of the hearing. This indicated a closeness in the relationship and therefore explained why the Sponsor needed the Appellant's help to send money to Nigeria. The Sponsor had given money to friends to take to Nigeria and she also sent money via Western Union. She had been paying into her own account which was then forwarded to grandma's account. Any discrepancies were insignificant.
28. When the Appellant's mother died the Sponsor was living in Italy. However, the Sponsor continued to fund everybody in the family. Although there was little

documentary evidence of this, there was sufficient evidence given at the hearing that the Sponsor was funding the Appellant's education. There may well have been some confusion about the money transfers, but the Appellant and Sponsor had given consistent evidence about money being sent through friends. The fact that the Appellant was receiving money from the Sponsor was sufficient and how the money was sent was irrelevant. The Appellant had been in an abusive relationship and was still supported by the Sponsor because she kept returning to grandma's house. If I found the Appellant and Sponsor to be credible, the method of money transfers was not crucial.

29. Ms Gore submitted this case turned on credibility and it was unfortunate that there was insufficient documentary evidence in support. There were, however, sufficient documents in addition to the water bill to show that the Appellant and Sponsor lived at the same address in the UK and receipt of child benefit was not relevant to the assessment of dependency. The affidavit from the Appellant's sister did not add anything to the other documents. Miss Gore invited me to allow the appeal.

### **Conclusions and Reasons**

30. The burden is on the Appellant to show that she was a member of the Sponsor's household prior to coming to the UK, or she was dependent on the Sponsor prior to coming to the UK, and she is a member of the Sponsor's household in the UK, or dependent on the Sponsor in the UK.
31. I do not find the Appellant to be a credible witness because her account was inconsistent with the account given by the Sponsor and was not supported by documentary evidence which the Appellant ought to have been able to produce if her account was true. There were significant discrepancies in the Appellant's account in relation to how money was sent to Nigeria, how much money the Sponsor gave the Appellant and the properties in which they lived in the UK.
32. I do not find the Sponsor to be a credible witness because her account was inconsistent with the Appellant's in relation to where they lived and for how long, the amount of rent, the method of money transfer and how the Sponsor was able to afford to support the Appellant, given that her claimed income was only sufficient to cover the rent. Further, there was no documentary evidence to support the Sponsor's claim that she transferred money into her own account in Nigeria.
33. I find that the Appellant is unable to show that she was a member of the Sponsor's household prior to coming to the UK. Her evidence, taken at its highest, was that two years before she came to the UK she lived with her husband and his family in Lagos and she returned to Benin on occasion to visit her grandma and escape from her abusive husband. She accepted in oral evidence that she lived and was maintained by her husband and his family for two years prior to coming to the UK in 2012. The

Sponsor came to the UK in 2006. On the evidence before me, the Appellant has failed to establish membership of the Sponsor's household prior to coming to the UK.

34. The Appellant has also failed to show dependency on the Sponsor prior to coming to the UK because she has accepted that she was maintained by her husband and his parents. While she may well have gone back to her grandma's house on occasion, there was very little evidence to support her claim that she was given money sent by the Sponsor. The Appellant's evidence was that the Sponsor would send money by Western Union. The Sponsor's evidence was that she had not sent money by Western Union for the last ten years and that she would send money to her bank account in Nigeria and it would be transferred into grandma's bank account. The bank statement of the Appellant's grandma showed no transfers from the Sponsor.
35. The explanation for the two payments made by the Appellant to her grandma was not credible. The Sponsor initially stated that the Appellant had not sent money on her behalf, but later stated that the Appellant would send money in the Sponsor's name. The Appellant said that she was given money by the Sponsor to pay into grandma's account and she had transferred the money using 'Ria'. The Sponsor used Western Union not 'Ria'. The Sponsor's evidence was that she had not used Western Union for ten years and had started using 'Ria' five or six years ago. She sometimes made the payments with the Appellant and sometimes on her own. The Sponsor now made payments directly. The Appellant's evidence was that the Sponsor needed help to make such payments.
36. There was no documentary evidence to show that the Sponsor transferred money into her own account in Nigeria and then it was transferred to grandma's account. This lack of evidence undermines the Sponsor's claim to be supporting the Appellant in Nigeria prior to her arrival in the UK. This is evidence the Sponsor ought to be able to produce if her account was true. The Sponsor's credibility is further undermined by the significant discrepancies in the account she gave as to how she transferred money to Nigeria and the account the Appellant gave in oral evidence.
37. I do not find the Appellant's claim to have been dependent on the Sponsor prior to coming to the UK to be credible. The two accounts were entirely inconsistent and were not supported by documentary evidence. The failure to prove this element of the Appellant's claim is fatal to the application and the appeal is dismissed on that basis.
38. In relation to the other matters, it may well be that there is sufficient documentary evidence to support the oral evidence that the Sponsor and the Appellant lived at [~] McEwen Way with the Appellant's child. However, there was insufficient documentary evidence to show that they had lived at the other addresses claimed and their oral evidence was inconsistent in relation to the time spent at each address. If the Appellant was a member of the Sponsor's household it was for a brief period whilst they lived at McEwen Way.



39. Further the Appellant cannot show dependency on the Sponsor in the UK. Her evidence was that she received £100 to £150 per week. The Sponsor's evidence was that she gave her £30 to £40 a week. It is clear from the Sponsor's income and outgoings that she could not afford either of those amounts. The Appellant has failed to show dependency in the UK.
40. In relation to the claimed relationship there were no birth certificates but attestations of birth dated 2015. Whilst I accept that it was rare for births to be registered, I attach little weight to the attestations of birth produced many years later. Further, there was no DNA evidence to show the relationship claimed. The Appellant disclosed that she had obtained a DNA test in 2017 but said the result was not conclusive, therefore she had not produced it. I infer from the failure to produce such evidence that it did not support the claimed relationship. I am not satisfied on the totality of the evidence, including the Appellant's oral evidence, that she is related to the Sponsor as claimed. I find that the Appellant and Sponsor have fabricated their accounts to support this application. Accordingly, I dismiss the Appellant's appeal.

**Notice of Decision**

**Appeal dismissed**

**No anonymity direction is made.**

*J Frances*

Signed

Date: 25 November 2019

Upper Tribunal Judge Frances

**TO THE RESPONDENT**  
**FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

*J Frances*

Signed

Date: 25 November 2019

Upper Tribunal Judge Frances