



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/04822/2019

THE IMMIGRATION ACTS

Heard at Field House
On 10 February 2021

Decision & Reasons Promulgated
On 4 March 2021

Before

UPPER TRIBUNAL JUDGE PITT

Between

EMMA NDU EMERENINI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr L Yossefin, Counsel, instructed by DJ Webb & Co Solicitors

For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision issued on 10 February 2020 of First-tier Tribunal Judge Bowler which dismissed the appellant's appeal against the respondent's decision of 29 August 2019 to refuse him an EEA residence card as the extended family member of his brother.
2. The appellant is a Nigerian national, born on 1 January 1964. His immigration history is that he came to the UK on 12 November 2010 with leave to remain until 11 November 2012. That leave was granted on the basis of his employment at the

Nigerian High Commission in London. On 8 August 2012, the appellant applied for an EEA residence card but this was refused on 14 February 2013. The appellant applied on the same basis on 17 June 2019 leading to the refusal of 29 August 2019 and these proceedings.

3. The appellant's claim before the First-tier Tribunal was that before coming to the UK he had been financially dependent on his brother, a French national, and had also been a member of his brother's household. The appellant also maintained that he had been dependant on his brother throughout his time in the UK and was also a member of his brother's household here.
4. The First-tier Tribunal did not accept that the appellant could show that he was dependent on his brother or a member of his brother's household either before or after he came to the UK.
5. In paragraph 26 the judge found that the appellant could not be said to have been living in his brother's household prior to coming to the UK. That finding is not challenged here.
6. The judge also found that the appellant had not shown that he was dependent financially on his brother whilst he remained in Nigeria. The judge considered that the evidence of money being sent from the brother to the appellant in Nigeria was unclear; see paragraphs 28 to 33. The judge therefore proceeded to assess it against the a whole in order to see if this could clarify the evidence on prior dependence. The judge found that the evidence of the appellant and his brother about dependence and membership of the brother's household in the UK was not credible and undermined the evidence on prior dependency.
7. There were a number of reasons that the judge reached this conclusion. Firstly, the appellant's evidence was that he had worked in the Nigerian High Commission from 2010 to 2012 and then as a cleaner for three months in 2012, stopping work in early 2013. The judge found that this was not consistent with bank statements in the appellant's bundle showing that as late as January 2014 the appellant continued to receive payments which appeared to be earnings from work; see paragraph 35 of the decision.
8. Secondly, the appellant's brother maintained that only he had supported the appellant in the UK. This was not consistent with the appellant's bank accounts which showed significant amounts of money being transferred to the appellant from someone in Nigeria from January 2014 until March 2015. As the judge sets out in paragraph 36 of the decision, these were large amounts of between £300 and over £1,200.
9. The judge concluded in paragraph 37 that the evidence of both the appellant and his brother on the appellant's finances in the UK was not consistent with the documentary evidence.

10. The grounds of appeal maintain that the judge failed to assess the evidence on financial support from the appellant's brother in the UK correctly. The grounds do not dispute, however, that the appellant's bank accounts show earnings at a time when the appellant's evidence was that he was not working. They do not dispute that the bank accounts show income from Nigeria at a time when the appellant and his brother maintain he was only supported by the brother. The judge was clearly entitled to find that the evidence was inconsistent and draw an adverse credibility finding. The ground arguing that the judge failed to make a proper assessment of how much money the appellant was receiving from these different sources is without merit. Such an assessment was not required where the evidence on the appellant's financial situation was unreliable.
11. In paragraphs 38 to 40 the First-tier Tribunal found that the evidence of the appellant and his brother on the appellant living in the brother's household in the UK was also not consistent. The appellant's evidence, recorded in paragraph 38 and set out in his witness statement in paragraph 6, was that he lived with his brother from 2012 until 2015. He then went to live with a partner and moved back to his brother's home in 2019.
12. The brother's oral evidence, recorded by the judge in paragraph 38, was that the appellant "only started to live with him last year and that previously he would simply visit". The brother's witness statement set out:
 - "7. When Emma arrived in the UK in November 2010, he was staying at the Nigerian High Commission but would come and stay with me as and when. I have been providing financial assistance to Emma since his arrival in the UK and he has continued living with me since last year"and:
 - "9. I confirm that I provided Emma with financial support before he entered the UK, that before I left Nigeria he was living with me, and that he has resided with me since last year and that I have been financially supporting him."
13. First-tier Tribunal Judge Bowler found in paragraph 39 that these accounts were inconsistent, amounting to a "significant difference, not one of detail". The appellant's account was of cohabitation in 2012-2014 and from 2019 onwards. The brother's evidence referred to cohabitation since 2019.
14. The grounds maintain that the judge misread the evidence when finding an inconsistency in the evidence of the appellant and his brother on when they lived together. The statement of the brother that the appellant "has continued living with me since last year" should not have been interpreted as meaning that cohabitation had only started in 2019. It should have been understood as meaning that cohabitation recommenced in 2018 after the earlier period of living together from 2012 to 2015. The statement that the appellant "has continued living with me since last year" was not inconsistent with the appellant's evidence.

15. The grounds also maintained that even had there had been an inconsistency, the First-tier Tribunal should have put the point to the appellant and his brother so that they had an opportunity to address it.
16. It is not my judgment that the First-tier Tribunal erred in the assessment of the evidence of the appellant and his brother on when they lived together in the UK. The judge had the benefit of the oral evidence of the appellant and his brother. The brother's witness statement indicated that the appellant had lived with him since "last year" and "that previously he would simply visit". The judge was entitled to find that this evidence was not consistent with that of the appellant who referred to cohabitation from 2012 to 2015.
17. The appellant maintains that an unfairness arose where the point was not one that was raised specifically in the respondent's decision or by the HOPO at the hearing and that he should have been given an opportunity to address the judge's concerns. However, the question of whether the appellant was a member of his brother's household in the UK was clearly one of the issues that the parties knew they had to address; see paragraph 18 for example, setting out the submissions made for the appellant at the First-tier Tribunal hearing which refer to this point. There is no requirement for a judge to put all potential inconsistencies that arise from the evidence to an appellant. If, as here, an appellant is represented by specialist immigration advisors, those advisors can be expected to deal with any potential adverse inferences that arise, in re-examination and in submissions. In the context of this appeal, the First-tier Tribunal was not required to highlight the inconsistency and seek further evidence or submissions on the point.
18. For these reasons, I did not find that the First-tier Tribunal erred in finding that the evidence of the appellant and his brother on cohabitation in the UK was inconsistent. The judge was entitled to find that this evidence undermined the claim that the appellant had been dependent on his brother prior to coming to the UK. The judge was also entitled to find the appellant's claim to have been dependent whilst in Nigeria was undermined by the inconsistent evidence on his financial situation in the UK and the inconsistent evidence on cohabitation.
19. For these reasons I do not find that the decision of the First-tier Tribunal discloses an error on a point of law.

Notice of Decision

The decision of the First-tier Tribunal does not disclose an error on a point of law and shall stand.

Signed: *S Pitt*
Upper Tribunal Judge Pitt

Date: 1 March 2020