



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal number: EA/05265/2019 (V)

THE IMMIGRATION ACTS

Heard Remotely at Manchester CJC

Decision & Reasons Promulgated

On 7 May 2021

On 18 May 2021

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

FATMATA JOSIE

(ANONYMITY ORDER NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS (V)

For the appellant: Mr O Atuegbe, of R & A Solicitors

For the Respondent: Mr A McVeety, Senior Presenting Officer

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing. At the conclusion of the hearing, I indicated my decision but reserved my reasons, which I now give. The order made is described at the end of these reasons.

1. The appellant, who is a national of Sierra Leone, with date of birth given as 10.2.65, has appealed with permission to the Upper Tribunal against the decision of the First-tier Tribunal promulgated 22.12.20 (Judge Jepson), dismissing on all grounds her appeal against the decision of the Secretary of State, dated 6.9.19, to refuse her application for an EEA Entry Permit to join her sponsoring EEA national daughter resident in the UK, pursuant to Regulation 7 of the Immigration (EEA) Regulations 2016, as amended.
2. The First-tier Tribunal concluded that the appellant was not dependent on the EEA sponsor as claimed and as required by the Regulations. Whilst the judge accepted the mother-daughter relationship between appellant and sponsor and that monies had been sent to the appellant on a regular basis since November 2017, and that this outlay was within the sponsor's financial grasp, the judge was concerned that the evidence appeared to be that the appellant under some constraint to support her other children, the sponsor's three half-brothers, from the monies received from the sponsor. Two of them were unemployed and the evidence suggested that they declined to work. In her statement the appellant said that "the pressure is too much having to still support my sons from the support I get from my daughter. They are old enough to look after themselves and I am hope they do so soon." At [66] of the decision, the judge concluded that "Any dependency which exists in this case arises from a desire on the appellant's part to support her sons. It does not relate to a situation of real dependency."
3. Permission to appeal was granted by the First-tier Tribunal on 29.1.21, the judge considering it arguable that "in view of the consistency in which the Sponsor has sent money over the years that the Applicant is dependent on the Sponsor as a matter of necessity and whatever is given to the children does not detract from that dependency."
4. For some unexplained reason, the grounds refer to the Upper Tribunal decision in Papajorgi (EEA spouse - marriage of convenience) Greece [2012]. This has no bearing on the issues in the present case. In summary, the remainder of the grounds argue that the documentary and oral evidence was sufficient to demonstrate dependency.
5. The brief Rule 24 reply, dated 5.2.21, submits that "the grounds are simply a disagreement. The FTT Judge did not, as claimed, expect a breakdown of

income and expenditure. The findings on dependence related to difficulties with the evidence given by the sponsor which were found to have altered in order to fill an evidential difficulty.”

6. I have carefully considered the decision of the First-tier Tribunal in the light of the submissions and the grounds of application for permission to appeal to the Upper Tribunal.
7. The grounds overlook and ignore the inconsistency in the evidence as highlighted by the First-tier Tribunal. This, and the observation in the Rule 24 reply about evidential difficulty in the appellant’s case, relates to the judge’s findings at [60], that the appellant’s case was hampered by a lack of detail, “something the sponsor could only remedy in part through her verbal evidence.” At [61] the judge stated that “any verbal evidence given maked (sic) an attempt to shore up an obvious, evidential hole.” However, the judge made clear at [61] that “the greater problem comes from the inconsistency between the witness statements and what I was told in court. I am inclined to conclude that said in the former is the true position.”
8. Reading the decision as a whole, the inconsistencies and change in evidence is amply demonstrated by the judge. At [53] the judge referred to the inherent inconsistency between the sponsor’s oral evidence that her brothers were unable to find work, whereas her witness statement was that “my brothers have refused to do anything meaningful with their lives and have continued to live there (the appellant’s home)”. The judge was entitled to conclude that the sponsor’s brothers were unwilling to work, and that this inconsistency undermined the claim to dependency. As analysed by the judge, the appellant only needed financial assistance from the sponsor because she had to support her non-working children.
9. Whilst evidence of money transfers from the sponsor to the appellant over a considerable time is support of the appellant’s claim to dependency, it is not determinative. In *Lim (EEA - dependency)* [2013] UKUT 00437 (IAC), the Upper Tribunal pointed out that the jurisprudence of the Court of Justice “clearly emphasises that assessment of dependency must take into account the personal situation of the applicant, which might be thought to entail that dependency cannot simply be deduced from the mere fact of receipt of financial support by an EEA national or spouse. This aspect of the jurisprudence might be said to be reinforced by the formulation given by the Court of Justice in *Jia* when it says (in the context of predecessor EU legislation, Directive 73/148) that dependency “... must be interpreted as meaning that proof of the need for material support” is required: see [37], [43] and [44(2)] (emphasis added).” It was the absence of proof of the need for material support that concerned the First-tier Tribunal Judge.

10. The evidence adduced on behalf of the appellant was inadequate and, the judge concluded, insufficient to support the claim of dependency. In particular, it is clear from [51] and [52] of the decision that the judge was left in the dark as to what the appellant had to pay out, although the sponsor tried to fill this evidential gap by her oral evidence. It was open to the judge on the limited evidence to conclude that the appellant had failed to demonstrate that she was dependent on the sponsor, rather than sponsor supporting the wider household. As the judge pointed out at [56] at no point in her statement did the appellant claim she was unable to support herself, "Rather, the above suggests the issue here is having to support sons who will not find work."
11. At [57] the judge asked the correct question, "whether the appellant has a real dependency on her daughter, such that support is needed to provide essential support." Unfortunately, the poor, inadequate, and inconsistent evidence adduced on behalf of the appellant failed to demonstrate that such support was in fact needed. I accept Mr Atuegbe's point that even though the appellant supports her sons, that does not necessarily mean she does not need support herself. However, it was for the appellant to prove her case and that she clearly failed to do on the evidence. In *Lim*, the Upper Tribunal held that even though it seemed clear that not all of the money sent in remittances was for the claimant (some was intended to help support her mother and the 10 year old grandchild), "for dependency to arise it is not necessary that a person be wholly or even mainly dependent. If a person requires material support for essential needs in part, that is sufficient."
12. It was the absence of adequate evidence that the appellant needed such material support for herself that led to the failure of the appeal. At [58] the judge stated that "given the absence of any clear assertion by the appellant she is unable to support herself, I am drawn to the conclusion any financial shortfall is caused through supporting her sons rather than anything else." I am satisfied that was a conclusion entirely open to the judge on the evidence and for the cogent reasons outlined in the decision. No error of law is disclosed by the grounds.
13. In the circumstances and for the reasons set out above, I find no material error of law in the decision of the First-tier Tribunal.

Decision

The appeal of the appellant to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal stands and the appeal remains dismissed.

I make no order for costs.

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 7 May 2021