**Upper Tribunal**
**(Immigration and Asylum Chamber Number: EA/06649/2019**

**Appeal**

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**THE IMMIGRATION ACTS**

| **Heard remotely via Skype for Business** | **Decision & Reasons Promulgated** |
|---|---|
| **On 7 April 2021** | **On 19 April 2021** |

**Before**

**UPPER TRIBUNAL JUDGE LANE**

**Between**

**APPOLONIA OBI**
**MIRIAM OBI**
**TREASURE OBI**
**(ANONYMITY DIRECTION NOT MADE)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**
For the Appellants: Mr Ahmed
For the Respondent: Mr Diwnycz, Senior Presenting Officer

**DECISION AND REASONS**

1. The appellants are citizens of Nigeria. The first appellant (Appolonia Obi) has now been granted a family permit and no longer seeks to take an active part in this appeal. The remaining appellants are the sister and niece of the United Kingdom sponsor, Blessing Obi. They also seek family permits to join the sponsor but were refused by a decision of the

Secretary of State dated 5 November 2019. They appealed to the First-tier Tribunal which in a decision promulgated on 9 November 2020, dismissed the appeals. The appellants now appeal, with permission, to the Upper Tribunal.

2. The appellants challenge the First-tier Tribunal decision on the ground that the judge has applied an incorrect test for determining the application under Regulation 8 of Immigration (EEA) Regulations 2016. The appellants rely, *inter alia*, on *SM (India)* [2009] EWCA Civ 1426. They submit that at [24] the judge erroneously considered whether the sponsor was 'able to *maintain*' the appellants [my emphasis] whereas the correct test is whether the sponsor can meet the essential needs of the appellants in the state from which they have come (see *SM* at [22]).

3. The respondent has filed a statement under Rule 24 which argues that the grounds amount to nothing more than a disagreement with findings which were available to the judge on the evidence.

4. I have considered the decision of the judge very carefully. It is certainly true that at [24] the judge, having analysed the income of the sponsor and her husband and having attached significant weight to the fact that the sponsor is in receipt of state benefits and faces deductions from those benefits to repay and considerable overpayment of tax credits, is unable 'to maintain' the appellants if they lived with her in the United Kingdom. However, I find that the judge was well aware of the correct test of 'essential needs'; she uses the expression at [6] in her discussion of the terms of the Secretary of State's refusal and in what is a summary of her findings at [25]. The question is whether, in between these two statements of the correct test which the judge was required to apply, she has, at [24], applied a different and wrong test ('ability to maintain'). My reading of the decision leads me to conclude that the judge has remained aware of and has applied the correct test throughout and that her use of the verb 'maintain' at [24] should be understood in the context of the test of meeting 'essential needs.' Its use does not represent the application of a different and more stringent test.

5. Further, whilst it is clear that the judge's finding that the appellants may become 'a burden on public funds' at [24] must refer to the United Kingdom rather than Nigeria, at [25] she is unequivocally (and in the present tense so referring to Nigeria where the appellants are living) 'not satisfied that the [appellants are] dependent on the sponsor to meet [their] essential needs…' That is, in all respects, an application of the correct test reached after a careful examination of all the evidence; the Upper Tribunal, which has not had the benefit of hearing oral evidence, should hesitate before interfering with the judge's findings. Moreover, whilst the sponsor was not cross examined at the First-tier Tribunal hearing, the judge clearly had a problem accepting all the sponsor's evidence, in particular regarding remittances into the

appellant's sister's bank account [25]. The judge's conclusion on essential needs at [25] plainly arises in part at least from that problem with the evidence; ultimately, the judge concluded that the appellants had not discharged the burden of proving that their essential needs in Nigeria are met by the sponsor. That conclusion was not perverse and was available to the Tribunal on the evidence. Accordingly, I am not satisfied that the judge has erred in law for the reasons advanced in the grounds of appeal.

6. In the circumstances, the appeal is dismissed.

**Notice of Decision**

The appeal is dismissed.

Signed Date 7 April 2021

Upper Tribunal Judge Lane