



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: EA/06945/2019

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 20 January 2022**

**Decision & Reasons Promulgated  
On 7 February 2022**

**Before**

**UPPER TRIBUNAL JUDGE KAMARA  
DEPUTY UPPER TRIBUNAL JUDGE JARVIS**

**Between**

**EM**  
(ANONYMITY DIRECTION MADE)

Appellant

**and**

**THE ENTRY CLEARANCE OFFICER**

Respondent

**Representation:**

For the Appellant: Mrs K Reid, counsel instructed by J McCarthy Solicitors  
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

**DECISION AND REASONS**

Introduction

1. This is the remaking of an appeal against the decision of an Entry Clearance Officer (ECO) dated 26 November 2019, refusing to issue the appellant with a family permit as the extended family member of an EEA national under Regulation 8 of the Immigration (European Economic Area) Regulations 2016.

Anonymity

2. An anonymity direction is made as the appellant is a minor child who was aged 13 at the date of the entry clearance application and is now aged 15.

### Background

3. On 24 October 2019, the applicant and his great aunt, BA (EA/06944/2019) sought EEA Family Permits to join the EEA sponsor and her husband in the UK. The EEA sponsor (IA) is married to the appellant's uncle. The appellant's great aunt, BA, is the mother-in-law of the EEA sponsor, who is a Polish national exercising Treaty rights in the UK. The appeal of the appellant's great aunt has been withdrawn as she has recently been granted leave to remain in the UK under the EU Settlement Scheme.
4. The reasons for refusal were as follows. The ECO did not accept that the appellant and sponsors were related as claimed nor that the appellant was dependent upon the sponsors. Prior to the hearing before the First-tier Tribunal, the respondent accepted the relationship between the appellant's great aunt and the sponsors but not that of the appellant and sponsors. At the hearing before the First-tier Tribunal, DNA evidence having been provided, the judge accepted that the appellant was related as claimed to the sponsors.
5. The reasons provided by the ECO on the remaining issue of dependency were as follows. The ECO noted that as evidence of dependency, emails from Sendwave had been provided which confirmed that funds had been deposited in an account in the name of BA, the name of the appellant's great-aunt in Ghana. The ECO commented that BA's name was incorrectly spelled on these emails, there was no bank statements to show that the funds sent by the sponsors were ever received and that the transfers were recent in that they were dated with the preceding 8 months. It was considered that the evidence was limited and did not prove that the appellant was financially dependent upon the sponsor, the ECO expecting to see substantial evidence over a prolonged period. It was also noted that the appellant had not provided any evidence regarding his own financial situation such as bank statements or other documents indicating income and outgoings. The respondent concluded that it was not possible to establish if the appellant needed the financial support from the EEA national to meet his essential needs.
6. After the appellant appealed, the decision of the ECO was reviewed by an Entry Clearance Manager (ECM) on 21 February 2020. The initial decision to refuse entry clearance was maintained for the same reasons.
7. The applicant's appeal was dismissed by the First-tier Tribunal as it was not accepted that he was dependent on the sponsor. Following an error of law 12 November 2021, the decision of the First-tier Tribunal was set aside in its entirety for the reasons set out in the decision dated 16 November 2021.

8. In advance of the hearing, those representing the appellant submitted a small supplementary bundle of evidence. Skeleton arguments were also provided by both parties.

### The hearing

9. At the remaking hearing, Ms Reid confirmed that the appellant's aunt wished to withdraw her appeal. The panel proceeded to hear evidence from the EEA sponsor IA as well as from her husband, DA, the appellant's uncle. While we do not repeat the evidence here, we have carefully considered it in reaching our decision.
10. In terms of submissions, Mr Melvin relied on the decisions of the ECO and ECM. He submitted that the evidence of DA regarding whether the appellant was financially dependent upon the sponsors was vague. He argued that there was a contradiction in the evidence in that it made no sense for DA to have asked the appellant's father to pay for his plane ticket to attend the sponsors' wedding in 2018, given what was said about the appellant's father being an alcoholic who had never provided any financial support. Mr Melvin asserted that the appellant's father was alive and well, living in Accra and that he had supported the appellant through school. We were not referred to any evidence in support of that submission. As for the evidence of dependency, Mr Melvin drew the panel's attention to the gaps in the school fees' records, stating that it would have been easy for the school to be approached for further records. There was also a lack of evidence from the appellant which addressed his emotional state, aspirations and education. While accepting that child welfare concerns were not a part of the EEA Regulations, he asked us to note that the appellant was a minor who had been passed from family member to family member and that there had been no attempt to regularise the transfer of guardianship with the Ghanaian authorities. We were urged to refuse the appeal.
11. For the appellant, Ms Reid argued that there was adequate evidence before the panel to satisfy us that the appellant was dependent upon the sponsors. She submitted that it was hardly surprising that DA's evidence regarding the appellant's father was vague, him never having played an active role in the appellant's life. The evidence was that there had been no reply to the request for money and in any event the visa application was unsuccessful. There was evidence of dependency in the form of a letter from the appellant's school which treated DA as a guardian regarding fees and other matters. There was no evidence that fees were paid by anyone else. The school fees also covered the appellant's other expenses, as set out in the fees schedule for the current academic year. As for the issue of guardianship, this was evidently a foreign concept to DA, who had explained that the family had taken responsibility for the appellant after the appellant's mother died. The appellant was at boarding school and continued to live in the same compound when not at school, with DA sending funds to a distant relative who also resided there. As for the child welfare point, any doubts about the relationship had been addressed by

the DNA evidence which had been accepted. The appellant had been brought up by his great-aunt, BA, for a significant period of time since his mother died, the sponsor had been providing support and now BA was in the UK. It was only natural that the appellant would follow her to the UK. The current arrangements in Ghana were of a makeshift nature, involving no proper supervision. Dependency was established. It was a matter for the Ghanaian authorities whether the appellant could depart for the UK without a biological parent.

## Discussion

12. In determining this appeal, we have taken into consideration all the evidence before us both oral and written as well as the oral and written submissions of the representatives.
13. The discrete issue before us is whether the appellant is dependent upon his EEA sponsor as set out in Regulation 8 of the 2016 Regulations, the relevant part of which we set out here.

### **“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 a condition in paragraph (2), (3), (4) or (5).
  - (2) The condition in this paragraph is that the person is—
    - (a) a relative of an EEA national; and
    - (b) residing in a country other than the United Kingdom and is dependent upon the EEA national or is a member of the EEA national's household; and either—
      - (i) is accompanying the EEA national to the United Kingdom or wants to join the EEA national in the United Kingdom; or
      - (ii) has joined the EEA national in the United Kingdom and continues to be dependent upon the EEA national, or to be a member of the EEA national's household.
14. The case law on what is meant by dependency is fairly settled and uncontroversial. In *Jia Migrationsverket* (Case C -1/05) the European Court said that dependency meant that members of the family of an EU national needed the material support of that EU national, or his or her spouse, in order to meet their essential needs. In addition, the Directive was to be interpreted as meaning that proof of the need for material support might be adduced by any appropriate means, other than a mere undertaking. In *Bigia & Others* [2009] EWCA Civ 79, the definition in *Jia* was upheld, in that it was found that the family members of a Union citizen needed the material support of that Union citizen or his or her spouse in order to meet their essential needs. Whereas in *Moneke (EEA - OFMs) (Nigeria)* [2011] UKUT 00341(IAC) at [41] the Tribunal found, *inter alia*, that provided a person would not be able to meet their essential living needs without the support of the EEA national or their spouse, they should be considered dependent upon that sponsor.

15. We have carefully considered the evidence we heard. The witness IA merely relied upon her statement dated 22 October 2020 which was prepared for the hearing before the First-tier Tribunal.
16. In her statement, IA states that she and her husband, DA, have been supporting her mother-in-law and the appellant financially since September 2014. Mr Melvin did not cross-examine IA nor challenge her evidence and we could see no reason not to accept her account.
17. The sole criticism of DA's evidence was that his account was vague and contradictory in respect of the request he made in 2018 for the appellant's father to pay for the appellant's flight to the UK in order to attend DA's wedding. We disagree and accept that while DA's request may have been optimistic, he has credibly clarified that he had a lot of expenses and was already paying for his mother's ticket. Considering DA's evidence as a whole, it was the case that he appeared somewhat bewildered by the questions posed during cross-examination however, we found that he was an honest, albeit nervous, witness who answered questions put to the best of his ability. We therefore accept that the account set out in DA's three witness statements as well as his oral evidence is a truthful one.
18. In short, DA has been supporting the appellant financially since he came to the UK in 2014. The appellant's parents were never married, his mother is deceased, and his father has had little to no involvement in his life since his birth and has never provided financial support.
19. Considering the evidence before us including that as at the date of the hearing, we are satisfied that the appellant is dependent upon the sponsors for the following reasons. We accept that the appellant's father has played no role in his life since his birth, specifically, he is not and has never provided any financial support. The sponsor, DA, has provided reliable evidence that he has been sending funds for a considerable period of time, firstly to his mother, BA for the benefit of herself and the appellant, and to the appellant alone since BA came to the UK in May 2021. Since May 2021, those funds have been sent to the distant relative (V) who resides in a different house in the same family compound as the appellant when he is home from boarding school. The appellant stays in BA's former home. We note that the ECO considered the evidence of support to be recent when the application was made in 2019. All we need say on that point is that there is no requirement in the regulations for a particular length of dependency and in any event, the evidence going to dependency before the ECO is now close to three years in age and has been supplemented by further evidence, none of which has been challenged.
20. The sponsor explained in his recent witness statement that he sends the funds to V as the appellant is too young to receive the money himself. The larger sums transferred are for the appellant's school fees. That DA is known to the school as the appellant's guardian and is the contact in relation to school fees and related issues is confirmed in the letter from

the director of the school in question. We are prepared to accept that DA has been paying for the school fees throughout, notwithstanding that the evidence contained in the appellant's bundle does not cover every year since 2014.

21. According to the fees schedule for the current academic year, which was attached to the most recent school letter, the school fees are broken down into categories which include tuition, books, boarding, food and extra-curricular activities. We consider these categories to cover the vast majority of the appellant's needs with any other needs catered for by the smaller sums sent by the sponsor to V for the appellant's benefit.
22. We have carefully considered the fact that there is no witness statement from the appellant nor bank statements nor a schedule of his outgoing. It would have been helpful if those representing him could have drafted a statement. As for the appellant's financial circumstances, given that he remains a minor who is not living an independent life, it is not surprising that he has no financial records of his own. Ultimately, there is no evidence that the appellant receives funds from any other source other than the sponsors. We further accept that the funds sent by the sponsors cover the appellant's essential living needs and that the appellant would not be able to meet them without their support.
23. Turning to the child welfare point, we note that this is not an issue covered in the Regulations. On the evidence before us, the appellant is currently not being supervised when he is not at boarding school and is residing alone in his great-aunt's house. His great-aunt has cared for the appellant since his mother died but has been in the UK for the last 8 months. Given that DNA evidence has been provided as well as ample evidence of the involvement of DA in the appellant's life including providing financial support, we have no concerns as to the appellant's welfare should he join the sponsors and BA in the UK.

### **Notice of Decision**

The appeal is allowed.

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed: T Kamara

Date: 25 January 2022

Upper Tribunal Judge Kamara

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

No fee is paid or payable and therefore there can be no fee award.

Signed: T Kamara

Date: 25 January 2022

Upper Tribunal Judge Kamara

**NOTIFICATION OF APPEAL RIGHTS**

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.

3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.

**5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.**

**6. The date when the decision is "sent" is that appearing on the covering letter or covering email**