



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

**Appeal No:
UI-2022-001721 (EA-01097-2021)
UI-2022-001723 (EA-01099-2021)**

THE IMMIGRATION ACTS

**Heard at Field House
On the 1st December 2022**

**Decision & Reasons Promulgated
On the 3rd January 2023**

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

**ISAAC MONTFORD
GRACE GARDINER
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss D Ofei-Kwatia, counsel instructed by NN Solicitors

For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge CH Bennett, promulgated on 22 December 2021
2. Permission to appeal was granted by on First-tier Tribunal Judge Pickering on 31 March 2022.

Anonymity

3. No direction has been made previously, and there is no reason for one now.

Background

4. The appellants are adult nationals of Ghana. On 10 December 2020, the first appellant applied for an EEA family permit to join his half-brother, Ahmed Hassan in the United Kingdom as a dependent extended family member of an EEA national. On 16 November 2020, the second appellant applied for an EEA family permit to join her brother-in-law, the same Ahmed Hassan and his wife, Esther Gardiner who is the second appellant's half-sister.
5. The applications for family permits were both refused on 29 December 2020. In short, the Entry Clearance Officer (ECO) did not accept that the appellants were related as claimed to Mr Hassan, that they were dependent upon the sponsor, nor that they amounted to an extended family member of the sponsors within the meaning of Regulation 8(2) of the 2016 Regulations.

The decision of the First-tier Tribunal

6. At the hearing before the First-tier Tribunal, DNA evidence was produced which the judge accepted as reliable proof of the claimed relationships in the absence of any challenge on behalf of the respondent. The judge further accepted that the appellants were dependent upon the sponsor by virtue of his provision of accommodation for them but did not accept that this amounted to being members of his household. The judge concluded that as at the date of the hearing there was no evidence of financial dependency on the sponsor for their essential living needs.

The grounds of appeal

7. The grounds of appeal argued, inter alia, that the judge considered the future circumstances of the appellants rather than those pertaining at the date of the hearing; the judge considered irrelevant matters; failed to assess all relevant matters and provided inadequate reasoning.
8. Permission to appeal was granted on the basis sought, with the judge granting permission making the following comment.

It is arguable that the Judge has not reconciled findings of fact in respect of dependency [§28, 32 (a), 33, 34, 25]

9. In the respondent's Rule 24 response, received on 26 April 2022, the appeal was opposed. It being said that the judge directed himself appropriately and gave adequate reasons for finding that the appellants had not established dependency.

The hearing

10. It suffices to say that the representatives were rightly in agreement that the decision of the First-tier Tribunal contained multiple material errors of law and that the fair outcome would be the for the decision of Judge Bennett to be set aside and the appeals remitted for a de novo hearing before the First-tier Tribunal.
11. I was of a similar mind. At the end of the hearing, I announced that the decision of the First-tier Tribunal contained material errors of law and set it aside, in its entirety.

Decision on error of law

12. The thirty-five-page decision and reasons of Judge Bennett was particularly detailed. Nonetheless that decision was inherently flawed. The judge failed to provide a consistent finding on the material question before him, that is whether the appellants were dependent upon the EEA sponsor as at the date of the hearing.
13. The material errors in this case include but are not limited to the following.
14. The judge erred in dwelling on the circumstances in the past as well as speculating as to the circumstances in the future should the appellants be granted Family Permits. Furthermore, the judge introduced new issues in his decision which had not been canvassed at the hearing, such as his concerns as to the witness statements and reliance on uncited policy guidance. In addition, the judge failed to engage with the authorities on the assessment of dependency, including *Jia v Migrationsverket* C-1/05 and recognise that the issue of dependency is nuanced and in doing so overlooked relevant evidence which went to support the case that the appellants were dependent upon the sponsor within the scope of the Regulations.
15. I find that without the material errors summarised above, there is a real prospect that these appeals could have been decided differently.

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error of on a point of law.

The decision of the First-tier Tribunal is set aside, with no findings preserved.

The appeal is remitted, de novo, to the First-tier Tribunal to be reheard at Taylor House, with a time estimate of 3 hours by any judge except First-tier Tribunal Judge CH Bennett.

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No anonymity direction is made.

Signed: T Kamara
Upper Tribunal Judge Kamara

Date: 2 December 2022