



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001313

First-tier Tribunal No: EA/07391/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 8th of March 2024

Before

UPPER TRIBUNAL JUDGE HANSON

Between

ALBERT ANKRAH
(NO ANONYMITY ORDER MADE)

Appellant

and

AN ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: No appearance.

For the Respondent: Ms Young, a Senior Home Office Presenting Officer.

Heard at Phoenix House (Bradford) on 1 March 2024

DECISION AND REASONS

1. In a decision promulgated on 7 December 2023 Upper Tribunal Judge Jackson found an error of law in the decision of a judge of the First-tier Tribunal and set that decision aside. Judge Jackson found there was no cross-appeal challenge by the Entry Clearance Officer (ECO) to the finding of the First-tier Tribunal that the appellant and his sponsor, his father Tetey Ankrah ('the sponsor'), are related has claimed. That finding was therefore preserved.
2. There has been much discussion prior to this point in the case about the scope of the refusal of the appellant's application for an EUSS Family Permit under Appendix EU(FP) dated 26 July 2022.
3. The appellant's argument has always been that the text of the ECO's refusal only raised the issue of the relationship which, for the reasons set out in the refusal notice, was not accepted. The appellant claims that as the First-tier Tribunal had found in his favour on that point the appeal should be allowed outright.
4. The scope of this hearing, and the answer to this issue, has been resolved in [12] of Judge Jackson's determination where she writes:
 12. In my view there does however need to be a further hearing to determine the issue of dependency and therefore whether the requirement in Appendix EU(FP) that the

Appellant is a 'family member of a relevant EEA Citizen' is met as a whole. The appeal can not be allowed outright on the basis that the Appellant meets all of the relevant requirements of the Immigration Rules because there has only been a finding on one part of the primary requirement. The issue of dependency has now been squarely raised and the Appellant can submit evidence and respond to it. In circumstances where the Respondent now clearly relies on this as an issue, there would be no benefit to the Appellant in allowing the appeal now on the basis only of the preserved findings of fact, which form only part of the relevant requirement. Inevitably the Respondent would simply refuse the application again for failure to establish dependency, upon which there are no positive findings in the Appellant's favour that the Respondent would be bound by. In the interests of justice, it would be better for both parties for there to be a final determination on all issues relevant to the application within the context of this appeal. The primary issue is whether the Appellant is a 'family member of a relevant EEA Citizen' for which the only remaining matter is whether he is dependent on the Sponsor, as defined in Annex 1 to Appendix EU(FP).

5. Having set the decision of the First-tier Tribunal aside Judge Jackson gave a number of case management directions, one of which was for the appeal to be listed for hearing on the first available date for a face-to-face hearing before UTJ Jackson, and for any further evidence on which the appellant wished to rely to be filed and served no later than 21 days before the relisted hearing.
6. As a result of the sponsor's residential address being in Leeds the case was transferred to the Bradford Hearing Centre and a transfer order made enabling me to hear the appeal today.
7. Notices specifying the date, time, and place of hearing, were sent out on 7 February 2024 to the appellant's representative and the Home Office Presenting Offices Unit by email with a hard copy being posted to the appellant.
8. On 13 February 2024 the Upper Tribunal received an email from the solicitors stating they were no longer instructed by the appellant and to contact the appellant directly if needed, for which contact details were provided.
9. I am satisfied there has been valid service of the notice of hearing upon the appellant, both through his representative and directly, informing him of the date, time, and place, of the hearing.
10. Despite this there was no attendant on the appellant's behalf. I appreciate the appellant himself cannot attend as he is in Ghana but his father, the sponsor, lives in the United Kingdom.
11. There is no explanation for the absence, no application to adjourn, or anything of sheds any light upon this situation. I appreciate on the last occasion Judge Jackson determined the error of law question on the papers, but her directions clearly state the current hearing will be a face-to-face hearing.
12. When considering the interests of justice and fairness, I consider there is nothing before me to suggest that proceeding to hear the appeal in sponsor's absence will offend either principle. I take into account the overriding objective. I do not find it is made out it would not be fair for the matter be determined on the basis of the evidence to hand.
13. In relation to the question of evidence; the other issue that has arisen is that notwithstanding having been given the opportunity to have filed additional evidence dealing with the question of dependency, no such evidence was provided. Indeed, the only material in the appeal bundle is that which was before the First-tier Tribunal file to counter the statement by the ECO that there was insufficient evidence to establish that the relationship is as claimed.
14. I accept that in his application form the appellant claims he is dependent upon his father and states that he is a student in Ghana whose needs are met by his father, but I do not find that is enough.

15. Even if the appellant's father is covering the cost of the appellant's education in Ghana that, per se, is not sufficient. There is actually no evidence available to show the sponsors making any payments to the appellant let alone establish what those payments are being made for or to show that without such payments the appellant would not be able to meet his essential needs.
16. I agree with the submission of Miss Young that there is no evidence showing the appellant is dependent upon the sponsor, so far as that term is understood in law.
17. The ECO relies upon the EU Settlement Scheme Family Permit and Travel Permit guidance version 16.0 (published on 9 th August 2023), which states at pp.62-63:

Child aged 21 or over You must be satisfied, including by the required evidence of family relationship, that, where they are aged 21 or over, the applicant is:

- the direct descendant of the relevant EEA citizen (or, as the case may be, of the qualifying British citizen) or of their spouse or civil partner (see Family member of a relevant EEA citizen and Family member of a qualifying British citizen) and this includes a grandchild or great-grandchild

And either:

- dependent on the relevant EEA citizen or on their spouse or civil partner, either:
 - o where the date of application is after the specified date and the applicant is not a joining family member, at the specified date
 - o otherwise, at the date of application
- dependent on the qualifying British citizen or on their spouse or civil partner, either:
 - o where the date of application is after the specified date, at the specified date
 - o otherwise, at the date of application 'Dependent' means that, as demonstrated by relevant financial, medical or other documentary evidence:
 - having regard to their financial and social conditions, or health, the applicant cannot meet their essential living needs (in whole or in part) without the financial or other material support of the relevant EEA citizen (or, as the case may be, of the qualifying British citizen) or of the spouse or civil partner
 - such support is being provided to the applicant by the relevant EEA citizen (or, as the case may be, by the qualifying British citizen) or by the spouse or civil partner
 - there is no need to determine the reasons for that dependence or for the recourse to that support The required evidence of family relationship is either:
 - a relevant document issued on the basis of the relevant family relationship
 - the full birth certificate or certificates (a birth certificate recognised in the UK or the Islands which records the name of the mother and (where registered) the father) or other document or documents, which you are satisfied evidences that the applicant is the direct descendant of (or otherwise a child of) the relevant EEA citizen (or, as the case may be, of the qualifying British citizen) or of their spouse or civil partner

...

The required evidence of family relationship must also include evidence which satisfies you that the applicant is dependent on the relevant EEA citizen (or, as the case may be, on the qualifying British citizen) or on the spouse or civil partner. This evidence might take the form of for example:

- evidence of financial dependency, such as bank statements or money transfers to the applicant from the relevant EEA citizen (or, as the case may be, from the qualifying British citizen) or the spouse or civil partner
- evidence that the applicant needs and receives the personal care of the relevant EEA citizen (or, as the case may be, of the qualifying British citizen), or of their spouse or civil partner, on serious health grounds, such as a letter from a hospital consultant.

18. The burden is upon the appellant to establish on the balance of probabilities that he is able to satisfy these requirements. In light of the lack of evidence I find that so far as the issue of dependency is concerned the appellant has failed to discharge that burden. As a result I dismiss the appeal.

Notice of Decision

20. Appeal dismissed.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

1 March 2024