



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: EA/03995/2020**

THE IMMIGRATION ACTS

**Heard at Manchester CJC
On 25 January 2022**

**Decision & Reasons
Promulgated
On 8 February 2022**

Before

**UPPER TRIBUNAL JUDGE LANE
DEPUTY UPPER TRIBUNAL JUDGE ALIS**

Between

**MS OLASUMBO OLUSOLA AJE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr Greer, Counsel

For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant (date of birth 25 February 1980), a Nigerian national, had applied on 2 June 2020 for a family permit with reference to Regulation 8 of the Immigration (EEA) Regulations 2016. She claimed she was financially dependant on her sister, Ms Oluwatosin Oluwakemi Adejo, who is a French national exercising treaty rights in the United Kingdom. The respondent refused her application on 12 August 2020.

2. On 3 February 2021 the Appellant lodged her notice of appeal and that appeal was listed for a substantive hearing before Judge of the First-tier Tribunal Nazir as a paper case on 19 April 2021. The Judge rejected her claim that she was financially dependent on her sister.
3. The Appellant appealed that decision and permission to appeal was granted by Judge of the First-tier Tribunal Judge Adio who found it arguable there may have been procedural unfairness as the Judge may not have considered evidence that had been submitted by email on 1 April 2021 which was prior to when the decision was made.
4. Following a discussion between Mr Greer and Mr McVeety there was agreement that the sponsor had sent an email on 1 April 2021 containing a covering letter and attaching the Appellant's current account bank statements covering the period 1 February to 23 March 2021 and her savings account covering the period 1 October 2020 to 23 March 2021. Those bank statements appeared on the Tribunal's file. The Tribunal was therefore not concerned with the question of whether the documents had been sent by the sponsor.

SUBMISSIONS ON ERROR IN LAW

5. Mr Greer adopted the grounds of appeal prepared by the sponsor and submitted that there had been a procedural irregularity which amounted to an error in law. He submitted that either the Judge had not seen the aforementioned bank statements or they had been placed on the Tribunal file after the Judge had promulgated his decision.
6. In either scenario he submitted that this amounted to procedural unfairness following the decisions in Wagner [2015] UKUT 655 and other case law.
7. Mr Greer submitted the failure to consider the bank statements amounted to a procedural irregularity and that such a failure was material because the bank statements demonstrated the sponsor's financial support, the totality of the Appellant's income and how much she spent. By failing to consider the bank statements there was procedural unfairness as those bank statements answered the important questions that the Judge needed to consider.
8. Mr Greer accepted that the statements were not conclusive evidence of the Appellant's financial circumstances and conceded that the case could have been better presented at the First-tier appeal hearing, but he reminded us that the sponsor was unrepresented before the First-Tier Tribunal. He submitted that if the Judge had considered the bank statements then the outcome may have been different.
9. Finally, Mr Greer argued the Judge should not have concerned himself with whether the Appellant's husband contributed to the family budget or was

even living with the Appellant as it was not something raised in either the respondent's decision letter or review document.

10. Mr McVeety opposed the appeal. He did not adopt his colleague's Rule 24 letter submitting the missing bank statements failed to address the Judge's findings in paragraph [18] of the original decision. He argued the bank statements did not show how the Appellant lived or what she spent her money on but simply showed she received money from one or more sources. The Judge had not been provided with any tangible evidence of the Appellant's personal circumstances and both her witness statement and that of the sponsor failed to address the issue highlighted by the Judge in paragraph [18] of the original decision. If anything, he submitted, the bank statements raised more questions than answers and he invited the Tribunal to uphold the decision of the First-tier Tribunal.
11. Following these submissions we reserved our decision on the question of whether there had been an error in law.

DISCUSSION AND FINDINGS

12. Whether or not specifically identified herein, we confirm that all the relevant documents available to us on the court file, together with the oral submissions have been carefully taken into account in the determination of this application.
13. Permission to appeal had been granted because the Judge had not considered the evidence attached to the 1 April 2021 email. In short, Mr Greer submitted the failure by the Judge to consider the bank statements, which may or may not have been before him, meant the decision was unsafe and should be set aside. Mr McVeety argued that whilst a failure to have regard to evidence was capable of amounting to procedural unfairness this was not the case in this application because the bank statements were not material to the Judge's conclusion.
14. As the Judge did not refer to the email or bank statements in paragraph [11] of his decision we have assumed they were not brought to his attention prior to the making of his decision. The issue for us is whether that failure amounted to a material error given the Judge's findings in paragraph [18] of his decision.
15. Mr Greer, in submissions, accepted the bank statements were not conclusive evidence of the Appellant's circumstances and did not show what the Appellant had spent those monies on. All the bank statements showed was monies being paid into the Appellant's account and thereafter being withdrawn.
16. Mr Greer had conceded during the hearing that there was no schedule of the Appellant's expenses before the First-tier Judge, but submitted that an allowance should be made for the fact the Appellant was unrepresented. The appeal was being dealt with on the papers and whilst the Judge had a

bundle of documents before him there was limited evidence to assist him in assessing the Appellant's circumstances. The Judge had to consider the appeal on the papers provided.

17. Neither the Appellant's nor the sponsor's statements provided any details of what the Appellant spent the monies on save the Appellant claimed that the sponsor sent her money to cover "mostly our maintenance and sometimes accommodation".
18. The Judge was not provided with any evidence of her accommodation expenses utility, medical or educational bills. In fact, there was no documentary evidence in the bundle about the Appellant's lifestyle.
19. Also absent from the bundle was any information about the Appellant's husband/partner. The Appellant had described herself as a full-time housewife in her witness statement but failed to mention her husband's/partner's financial circumstances. Her original application form made it clear she had been living with her partner since 23 July 2016. We find the Judge was entitled to make a finding in paragraph [18] that there was no evidence presented to him as to whether the Appellant's husband worked or what his financial situation was.
20. Whilst Mr Greer argued this was not something raised in either the decision or review letters we were satisfied the Judge was entitled to make the finding he did in paragraph [18] as it was essential to any assessment of whether the monies sent were for the Appellant's essential needs.
21. In light of the deficiencies highlighted above, we concluded that, although the Judge had not considered the bank statements, this did not, in our opinion, undermine or bring into question the reliability of the Judge's finding in paragraph [18] because the bank statements did not address the issues set out above and the failure to have regard to the statements was not material to the Judge's finding that the Appellant had failed to discharge the burden of proof on her to show that she was reliant on the sponsor for her essential needs.
22. Both Mr Greer and Mr McVeety also addressed us on paragraph [16] of the original decision. Whilst Mr McVeety submitted the Appellant had failed to demonstrate that she had been continuously supported financially by the sponsor and had failed to explain how she survived when that financial support was not available we agreed with Mr Greer's interpretation of the 2016 Regulations namely the Judge was only required to consider the position at the date of hearing. However, this does not impact on our finding above and we find that neither the permission nor the grounds identified a material error in law.

NOTICE OF DECISION

23. We uphold the original decision of the First-tier Tribunal and dismiss the appeal.

Signed

Dated

A handwritten signature in black ink, appearing to read 'SPALIS', with a horizontal line underneath.

Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT
FEE AWARD

No fee award made as the appeal has been dismissed.

Signed

Dated

A handwritten signature in black ink, appearing to read 'SPALIS', with a horizontal line underneath.

Deputy Upper Tribunal Judge Alis