



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: UI-2022-003635
EA/15151/2021**

THE IMMIGRATION ACTS

**Heard at Field House
On the 22nd November 2022**

**Decision & Reasons Promulgated
On the 01st December 2022**

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

**GADO AKOBADEK SHARIFF
(ANONYMITY ORDER NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Ms E Rutherford, of Counsel, instructed by M&K Solicitors

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Ghana born on 5th January 1983. He applied under the 2016 Immigration (EEA) Regulations for a family permit to come to the UK as the dependent brother of Mr Adams Shariff a citizen of Germany on 10th August 2020. His appeal against the decision of the entry clearance officer refusing this application was dismissed by First-tier Tribunal Judge Parkes in a determination promulgated on the 29th June 2022.
2. Permission to appeal was granted by Judge of the First-tier Tribunal Cartin on 20th July 2022 on the basis that it was arguable that the First-tier Judge had erred in law in failing to consider material evidence, namely that of a shared bank account and evidence of remittances to the appellant. Permission was granted to argue all grounds.
3. The matter came before me to determine whether the First-tier Tribunal had erred in law, and if so to decide if any error was material and whether the decision needed to be remade.

Submissions – Error of Law

4. In the grounds of appeal and in oral submissions from Ms Rutherford it is argued firstly that the First-tier Tribunal Judge erred in law by ignoring material evidence with respect to remittances – at paragraph 12 the judge says there is no evidence of remittances between 2014 and 2019 whereas in the bundle there were remittances for 2015, 2016, 2017 and 2018. The judge also says that there were only two remittances for 2014 when there are more than that in the bundle.
5. Secondly, it is argued, that the First-tier Tribunal Judge failed to engage with the evidence that the appellant was dependent on his brother because he lived in property he owns in the form of evidence of rates paid to the government and of utility bills, and witness evidence going to this issue. This again was an error of law by way of a failure to consider material evidence.
6. Thirdly, it is argued, the First-tier Tribunal erred in law in failing to consider the material evidence in the bundle before the judge of a joint bank account into which the sponsor pays money for the appellant.
7. Fourthly, it is argued, that the First-tier Tribunal erred in law in failing to consider the explanation for why the word “trader” or “trading” was written on the remittance collection receipts given by the sponsor, namely that it was something put there erroneously by the bank.
8. Ms Everett accepted that material documentary evidence of financial remittances, evidence relating to the appellant’s home, indicating it was provided by the sponsor, and the joint bank statement had been overlooked by the First-tier Tribunal. She argued that there were sustainable findings made by the First-tier Tribunal that the appellant

had not shown a clear picture of his financial circumstances due to the lack of clarity in the medical evidence when looked at as a whole and the lack of a credible explanation as to why trader or trading was written on some of the remittance slips. She accepted however that she was not in a position to submit that the outcome of the appeal would inevitably be the same if the error of fact amounting to an error of law/ failure to consider material evidence had not taken place.

9. I informed the parties that I found that the First-tier Tribunal had erred materially in law. Both parties argued that the appeal should be remitted to the First-tier Tribunal to be remade afresh with no findings preserved. Whilst the normal course is to remake the appeal in the Upper Tribunal I accepted that given there was a 390 page bundle of evidence that the extent of remaking meant that it was right that this appeal should be remitted to the First-tier Tribunal.

Conclusions – Error of Law

10. At paragraph 3 of the decision of the First-tier Tribunal seems to acknowledge that there are remittance slips for the period 2008 to 2020. However in the conclusions section at paragraph 12 the First-tier Tribunal falls into factual error when finding that there are only two slips for 2014 and then none until 2019. The compiled bundle provided to me has 2014 remittances at page 94 and 2019 remittance slips at page 95. My electronic bundle then skips to page 351 and the papers are then not in order after this point. There are further remittance slips for 2014 & 2015 at pages 135-150, but pages 101 to 135 are missing entirely from this version of the bundle. However, when section 4 of the bundle as emailed by the appellant's solicitors to the First-tier Tribunal, as downloaded onto our systems from the First-tier CCD system, is looked at the "missing" transfer slips are to be found. I find therefore that this material evidence was not considered by the First-tier Tribunal Judge, although he was not assisted by the way in which the bundle was downloaded on to the computer systems from the material provided by email by the representatives.
11. At paragraph 13 of the decision the First-tier Tribunal also fails to consider the documentary evidence of the joint bank account and of the leasehold property in the bundle when finding that there was no other evidence of the sponsor providing financially for the appellant, when in fact there was evidence before the First-tier Tribunal in the form of joint bank statements, and relating to the sponsor's provision of the appellant's home and of the payment of electricity bills and rates bills for the property by the sponsor. As a result I find that the First-tier Tribunal has fallen into error again in failing to take into account material evidence.
12. I find that the First-tier Tribunal did consider all of the medical evidence, including that which concluded that the appellant was not fit for all

types of work, and did consider the explanation that the word trader or trading (as the appellant's profession) was written on the remittance slips just because the transfer company required something to be entered (which clearly was not a good explanation as some of the slips do not have a profession entered).

13. However I cannot be certain that the outcome of the appeal would have been the same if the errors of law identified had not taken place. It is possible that it could have been concluded that even if the appellant had intermittent work as a trader, as reflected in the remittance slips, and thus was not unfit for all work, that he had shown he was materially dependent on the sponsor for his essential living needs on a holistic consideration of all factors, including the appellant's medical disabilities, given the evidence of continual financial support for many years by the sponsor and the evidence that the sponsor provides the appellant with a home with utilities and payment of related bills. As a result I conclude that the errors of law identified are material and the decision and findings of the First-tier Tribunal should be set aside, and the decision remade afresh with no findings preserved.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. I set aside the decision of the First-tier Tribunal dismissing the appeal and all of the findings.
3. In light of the extent of the remaking I remit the appeal to the First-tier Tribunal to be remade.

Signed: Fiona Lindsley
2022
Upper Tribunal Judge Lindsley

Date: 22nd November