



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-002019
UI-2022-002020

First-tier Tribunal No:
EA/03507/2021
EA/03510/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 21 August 2023

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

(1) Lesley Gyasi
(2) Eugene Gyasi
(NO ANONYMITY DIRECTION MADE)

Appellants

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr M Azmi, Counsel instructed by Stillwaters Solicitors
For the Respondent: Mr C Williams, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 16 February 2023

DECISION AND REASONS

1. The appellants are nationals of Ghana. They are siblings. On 19 December 2020 they each made an application for an EEA Family permit to join their aunt, Gladys Opong in the UK, as 'extended family members' under Regulation 8 of the Immigration (European Economic Area) Regulations 2016 ("the EEA Regulations 2016"). Their applications were refused by the respondent for reasons set out in decisions dated 22 February 2021. In respect of both appellants the respondent was not

satisfied that the appellants are financially dependent on their sponsor as claimed. In addition, as far as the second appellant is concerned, the respondent noted that he had provided a birth certificate registered on 13 January 2006. The respondent said that according to information provided by the Ghanaian competent authorities, certain security features were added to the Ghanaian birth certificate in 2009. As the second appellant's birth certificate was registered on 13 January 2006 and includes some of those features, that cast doubt upon the authenticity of the document submitted as evidence of relationship. As far as the second appellant is concerned the respondent was therefore not satisfied that his relationship with the sponsor, is as claimed.

2. The appellants appeals were dismissed by First-tier Tribunal Judge Chana for reasons set out in a decision promulgated on 31 December 2021.
3. The appellants claim the decision of Judge Chana is vitiated by material errors of law. In summary the appellants make the following criticisms:
 - a. At paragraph [17] of her decision Judge Chana said the respondent has taken issue with the relationship of the appellants to their sponsor, whereas the respondent had only challenged the evidence concerning the relationship between the second appellant and sponsor. The appellants claim that in any event, Judge Chana recorded, at paragraph [19] of her decision, the position of the Presenting Officer. The Presenting Officer accepted the explanation given in the appellant's skeleton argument but was unable to concede the point as she had no authority to do so. Furthermore, the respondent had not provided any evidence to support the assertion in the decision that according to information provided by the Ghanaian competent authorities, certain security features were added to the Ghanaian birth certificate in 2009.
 - b. Judge Chana states at paragraph [23]; *"..The information provided by the Canadian Competent Authority states that if a birth certificate is issued later after the birth, the new birth certificate is given without much evidence being provided and therefore cannot be relied upon."* That did not form any part of the respondent's reasons for doubting the second appellant's relationship and in any event the Judge refers to information that was not disclosed to the appellants so that they had an opportunity to address it.
 - c. At paragraph [25] Judge Chana said the burden of proof is on the appellant to provide documents to show that he is related to the sponsor. The second appellant had provided prima facie evidence in the form of a birth certificate. The burden shifted to the respondent to establish the birth certificate is unreliable evidence, but the respondent failed to adduce any evidence in support of her assertions.
 - d. It was unfair for the judge to conclude, at [21] that it is not credible that the sponsor would not know where the appellants live in relation to Kumasi, as she was born in Ghana. The sponsor cannot

reasonably be expected to know every geographical location in Ghana.

- e. At paragraph [22], the Judge said there is no credible medical evidence that the appellants mother is incapable of looking after the appellants and when a parent is still alive, credible evidence is needed to show that she cannot look after the appellants. The appellants claim it is a long-established principle of European Law that dependency does not need to be whole, and neither is it necessary to investigate why the appellants are dependent on their sponsor. Here there was evidence before the Tribunal regarding the health of the appellants' mother.
 - f. The evidence before the First-tier Tribunal, taken cumulatively was sufficient to establish the appellants are dependent on the sponsor.
4. Permission to appeal was granted by First-tier Tribunal Judge Beach on 1 April 2022. Judge Beach accepted it is arguable that the First-tier Tribunal Judge has applied the incorrect burden of proof in assessing the documents. A clear allegation had been made by the respondent in the Notice of Decision with regard to the authenticity of the document. Judge Beach said it is also arguable that in finding that the appellants had to provide proof that the goods sent by the sponsor to Ghana were present in their home, the First-tier Tribunal Judge had applied too high a standard of proof when assessing whether the appellants were dependent on the sponsor.
 5. Before me, Mr Azmi submits that at paragraph [24] of the decision, Judge Chana refers to the claim that was made by the appellants that the burden of proof is on the respondent to provide evidence that the second appellant's birth certificate is not authentic and that such evidence had not been provided. However at paragraph [25], Judge Chana erroneously said that it is not for the respondent to provide evidence that the birth certificate is not genuine. The second appellant's birth certificate (*page C3 of the appellant's bundle*) confirms he was born on 22 December 2005 and his birth was registered on 13 January 2006. The respondent said in her decision that the birth certificate includes some of the security feature that according to information provided by the Ghanaian competent authorities were added to Ghanaian birth certificates in 2009, casting doubt upon the authenticity of the document. It was for all intents and purposes an allegation of fraud. The burden was therefore on the respondent to establish that the document is fraudulent and cannot be relied upon. Mr Azmi submits that it is clear from what is said at paragraphs [23] and [32] of the decision that the judge misunderstood the claim made by the respondent. The respondent did not claim features were added to the second appellant's birth certificate in 2009. Furthermore, at paragraphs [32] and [33], Judge Chana refers to this being the 'second application' made by the appellants and to 'earlier refusals', whereas these appellants had not made any previous applications and there were no prior refusals.
 6. Mr Azmi submits the Judge's erroneous approach to the second appellant's birth certificate and relationship with the sponsor has impacted

upon her overall assessment of the claims made by the appellants and their credibility.

7. Mr Azmi submits Judge Chana found there was no credible evidence that the appellant's mother is incapable of looking after the appellants and that there is no credible evidence that the appellants mother or other family members have not provided for the appellants essential needs and that it is only the sponsor has done so. He submits Judge Chana considered the claim made by reference to a requirement for sole responsibility rather than dependency for essential living needs. At paragraph [31] Judge Chana referred to the various items shipped by the sponsor to Ghana. The Judge said these items (*washing machine, freezer, microwave, laptops, clothes and shoes*) are not for the appellants' essential living needs, but luxury items. Judge Chana acknowledges at [30], that there are financial remittances but states those alone do not in themselves show that the sponsor has been providing the appellants with all their essential needs. Mr Azmi submits there was evidence before the First-tier Tribunal that Judge Chana simply failed to engage with;
 - a. In her witness statement dated 6 December 2021, the sponsor claimed (*paragraphs 14 and 15*) that the appellants live in accommodation that she rents for them and that she paid the rent in full, in advance for the whole term. At page F3 of the appellant's bundle there was evidence that the tenancy agreement relating to the property in which the appellants live with their mother is rented by the sponsor.
 - b. At Page E89 of the appellants bundle there was a letter from Mr Richard Bonsu confirming that that in February 2021 he was given £500 to give to the appellant's mother when he was visiting Ghana.
8. Mr Azmi submits that looking at the evidence in the round, the evidence established the second appellant is related to the sponsor as claimed and the appellants, both of whom are children, rely upon the sponsor to meet their essential needs.
9. In reply, Mr Williams submits the respondent does not allege that the second appellant's birth certificate is a forgery, and does not allege the document was fraudulently submitted in support of the application. The respondent had said simply pointed out that as the birth certificate was registered 13 January 2006 and includes some of these features that were added to Ghanaian birth certificates in 2009, that casts doubt upon the authenticity of the document submitted as evidence of the second appellant's relationship with the sponsor. It was open to the second appellant to establish that he is related to the first appellant and sponsor as claimed by other evidence such as DNA evidence but he failed to do so.
10. In any event, at paragraph [21], Judge Chana records that the sponsor was asked about that birth certificate and how it was procured and her evidence was discrepant. There was a discrepancy between the picture painted about the health of the appellants' mother and the evidence that their mother was able to obtain the document in the way claimed. Mr Williams submits it was open to Judge Chana to conclude the second

appellant's birth certificate could not be relied upon. Mr Williams submits that even if Judge Chana were wrong about the second appellant's relationship with the sponsor, any error was immaterial, because the appeal would have been dismissed in any event because the judge was not satisfied that the appellants are dependent upon the sponsor for their essential needs.

11. Mr Williams accepts Judge Chana erroneously refers to this being the second application being made by the appellants at paragraphs [32] and [33] of her decision. He submits that is immaterial. At paragraph [26], Judge Chana did not find the sponsor to be a credible witness. Although the sponsor initially claimed the appellants' mother's family are "not supportive", she then accepted that when the appellants come to the United Kingdom, their mother will live with her family, and that she will continue to provide some support to her. The Judge rejected the claim that the appellants' mother's family are not supportive. The Judge found, at [27], that the sponsor was attempting to claim that she is the only person who has been looking after the appellants. However, the judge found she was not being told the whole truth about this family and their circumstances. At paragraph [30] of the decision, Judge Chana said that she has no credible evidence that the appellants mother or other family members have not provided for the appellants' essential needs, and that it is only the sponsor who has done so. The Judge referred to the test and did not accept that the appellants have had no family support from other relatives in Ghana, and that they need the support of the sponsor for their essential needs. Mr Williams submits it was open to Judge Chana to conclude that the items shipped by the sponsor to Ghana are not items for essential needs.

Decision

12. There is force in the claims made by the appellants that Judge Chana erred in her assessment of the evidence regarding the appellant's relationship with the sponsor. I accept, as the appellants claim, the respondent had only challenged the evidence concerning the relationship between the second appellant and sponsor. Although Judge Chana said at paragraph [19] that the first question she had to determine is whether the appellants are related to the sponsor, she had previously noted at paragraph [11] that the issue concerning the relationship was only referred to by the respondent as far as the second appellant is concerned.
13. I also accept that Judge Chana had recorded, at paragraph [19] of her decision, that the Presenting Officer had accepted the explanation given in the appellant's skeleton argument. Although the Presenting Officer was unable to concede the point, that was a good indication that a reasonable explanation for the anomaly had been provided. The respondent had not provided any evidence to support the assertion in the decision that according to information provided by the Ghanaian competent authorities, certain security features that appeared on the second appellant's birth certificate were added to Ghanaian birth certificates in 2009. The second appellant had provided prima facie evidence in the form of a birth certificate and whether or not the burden shifted to the respondent to

establish the birth certificate is unreliable evidence, the Judge should have treated the respondent's claims with some caution.

14. The decision of Judge Chana could have been much more clearly expressed, however, I accept, as Mr Williams submits, the judge's analysis of the second appellant's birth certificate and whether he is related to the sponsor as claimed, is immaterial to the outcome of the appeal. That is because even if the Judge had accepted the second appellant is related to the sponsor as claimed, the Judge rejected the appellants' claim that they are dependent on the sponsor for their essential living needs.
15. In Lim - ECO (Manila) [2015] EWCA Civ 1383 Lord Justice Elias, with whom McCombe LJ, and Ryder LJ agreed, said, at [25], it is not enough simply to show that financial support is in fact provided by the EU citizen to a family member. The family member must need the support from his or her relatives in order to meet his or her basic needs. The correct test was set out at paragraph [32] of the decision. The critical question is whether the individual is in fact in a position to support themselves. That is a simple matter of fact. If they can support themselves, there is no dependency, even if he/she is given financial material support by the EU citizen. Those additional resources are not necessary to enable them to meet their basic needs.
16. More recently, in Latayan v SSHD [2020] EWCA Civ 191, Jackson LJ said:

"23. Dependency entails a situation of real dependence in which the family member, having regard to their financial and social conditions, is not in a position to support themselves and needs the material support of the Community national or his or her spouse or registered partner in order to meet their essential needs: *Jia v Migrationsverket Case C-1/05*; [2007] QB 545 at [37 and 42-43] and *Reyes v Migrationsverket Case C-423/12*; [2014] QB 1140 at [20-24]. As the Upper Tribunal noted in the unrelated case of *Reyes v SSHD (EEA Regs: dependency)* [2013] UKUT 00314 (IAC), dependency is a question of fact. The Tribunal continued (in reliance on *Jia* and on the decision of this court in *SM (India) v Entry Clearance Officer (Mumbai)* [2009] EWCA (Civ) 1426):

"19. ... questions of dependency must not be reduced to a bare calculation of financial dependency but should be construed broadly to involve a holistic examination of a number of factors, including financial, physical and social conditions, so as to establish whether there is dependence that is genuine. The essential focus has to be on the nature of the relationship concerned and on whether it is one characterised by a situation of dependence based on an examination of all the factual circumstances, bearing in mind the underlying objective of maintaining the unity of the family."

Further, at [22]

"... Whilst it is for an appellant to discharge the burden of proof resting on him to show dependency, and this will normally require production of relevant documentary evidence, oral evidence can suffice if not found wanting. ..."

17. Whether the appellants' are dependent on the sponsor is therefore a factual question for the judge to assess on the evidence before the Tribunal. The burden rested upon the appellants.
18. Here, the appellants are living with their mother in Ghana, albeit in a property rented by the sponsor. Judge Chana heard oral evidence from the sponsor and did not find her to be a credible witness. Judge Chana noted the evidence before the Tribunal regarding the health of the appellant's mother and considered that against the claim made by the sponsor that she had been able to travel and the lack of any medical evidence to support the claim that the appellant's mother is unable to look after the appellants'. Judge Chana found that the appellants and their mother have a supportive family in Ghana and that she was not being told the whole truth about the family and their circumstances. That is a finding that is not challenged. The Judge had regard to the evidence of the remittances being sent by the sponsor to Ghana, and it was open to the judge to find that the remittances alone do not establish the funds sent are to meet the appellants' essential living needs. It is clear from the authorities that it is not enough simply to show that financial support is in fact provided by the EU citizen to the family member. Families often send money to each other, even regularly, across international borders and that can be for a whole range of reasons. Here, there is a requirement of dependency to meet essential living needs, not just evidence of regular money transfers or evidence of money transfers over a prolonged period. It was in my judgment open to the Judge to find that various items such as a washing machine, freezer, and a microwave are not items needed to meet the essential living needs. The Judge did not require evidence that the goods that have been sent are in the appellants home, but made the observation that the goods may have been sent, for onward sale. The Judge found that the items were not shipped for the appellants' benefit. That is a finding that was open to her.
19. Mr Williams quite properly acknowledges the Judge erroneously refers to the applications made by the appellants as their second applications. That again is immaterial to the outcome of the appeals, where the judge considered all the evidence before the Tribunal in the round. The Judge found that the dependency is contrived for the sole purpose of appearing to meet the definition of 'extended family members' within the EEA Regulations 2016.
20. Reading the decision as a whole, it is clear Judge Chana was satisfied that there have been transfers of funds, but was not satisfied that the appellants have established that on balance, the funds are necessary to enable the appellants to meet their basic needs. The findings and conclusions reached by Judge Chana in that respect are rooted in the evidence. I reject the claim that the findings and conclusions are irrational or perverse. Their accommodation needs are plainly taken care of by the fact that they live with their mother in rented accommodation that has been paid for by the sponsor. Beyond evidence of money transfers, even over a lengthy period, there is a distinct and noticeable absence of any evidence to support the claims made by the appellant that they require the financial support of the sponsor to meet their essential needs. The

evidence before the First-tier Tribunal was lacking in circumstances where several members of the same family all live together, and the funds transferred appear to have been provided by way of support for the family generally, rather than to meet the essential living needs of the appellants.

21. I accept it will very often be difficult to obtain receipts to substantiate expenditure, but plainly a breakdown of costs that is supported by cogent evidence to support the claim that a persons essential living needs are met by the money transfers, is capable of going a long way to discharging the burden upon an applicant that they need the material support of the Community national in order to meet their essential needs. Such evidence is all the more important where the appeal concerns children who are living with a parent and on the face of it, the Childrens' essential living needs are subsumed within the household expenditure as a whole. The evidence was lacking here, and the evidence of the sponsor was found not to be credible.
22. I have reminded myself of what was said in MD (Turkey) v SSHD [2017] EWCA Civ 1958 that adequacy of reasons means no more nor less than that. It is not a counsel of perfection. Still less should it provide an opportunity to undertake a qualitative assessment of the reasons to see if they are wanting, even surprising, on their merits. To identify an error of law there has to be more than a general literary criticism. Although "error of law" is widely defined, the Upper Tribunal is not entitled to find an error of law simply because it does not agree with the decision, or because the Tribunal thinks the decision could be more clearly expressed or another judge can produce a better one. Baroness Hale put it in this way in AH (Sudan) v SSHD at [30]:

"Appellate courts should not rush to find such misdirection simply because they might have reached a different conclusion on the facts or expressed themselves differently."
23. In my judgment, the grounds of appeal do not disclose a material error of law capable of affecting the outcome of the appeal.
24. It follows that I dismiss the appeal.

Notice of Decision

25. The appeal is dismissed

V. Mandalia

Upper Tribunal Judge Mandalia

Judge of the Upper Tribunal
Immigration and Asylum Chamber

26 July 2023

