



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000213
UI-2023-000214
First-tier Tribunal No:
EA/52907/2021 EA/52908/2021

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 13 August 2023**

Before

**UPPER TRIBUNAL JUDGE KAMARA
DEPUTY UPPER TRIBUNAL JUDGE JFW PHILLIPS**

Between

**ISAAC FRIMPONG BAIDOO
JOSEPH CLEMENT KWARTENG**

Appellants

and

THE ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr M West, counsel instructed by Crystal Solicitors
For the Respondent: Mr E Terrell, Senior Home Office Presenting Officer

Heard at Field House on 18 July 2023

DECISION AND REASONS

1. This is the remaking of the appeals of the appellants following the decision of Upper Tribunal Judge Blum to set aside the decision of the First-tier Tribunal dismissing their appeals against the decisions of the respondent, dated 21 December 2019, to refuse to issue them with EEA Family Permits.

Anonymity

2. No anonymity direction was made previously, and there is no reason for one now.

Factual Background

3. The appellants are now aged in their late twenties and are the nephews of the sponsor, Mrs Rose Mansah, who is an Italian national residing in the United Kingdom. They applied to join their sponsor in the United Kingdom on 21

November 2019. According to the decision notices, the applications were refused solely on the basis that the appellants had not provided sufficient evidence that their relationship with the sponsor was as stated.

The decision of the First-tier Tribunal

4. While the judge accepted that the appellants and the sponsor were related as claimed, the appeal was dismissed on the basis that the appellants were not dependent upon the sponsor and that the sponsor was not exercising treaty rights in the United Kingdom.

The error of law decision

5. In a Rule 24 response dated 4 April 2023 the respondent accepted that the First-tier Tribunal had erred in law by widening issues beyond those identified in the decision notice and the respondent's review without adequate notice to the appellants. Following the Rule 24 response the parties signed a consent order and the error of law hearing listed for 23 June 2023 was vacated. The terms of the consent order were that the decision of the First-tier Tribunal was set aside, and the appeal was to remain in the Upper Tribunal for remaking.
6. Upper Tribunal Judge Blum's decision of 27 June 2023 included the following directions:
 - i) The findings of fact made by Judge of the First-tier Tribunal Rea relating to the existence of a family relationship between the appellants and their sponsor are preserved (the findings are clear and clearly reasoned, they relate to a discreet issue and have not been the subject of any challenge by the respondent).
 - ii) The issues to be determined in the remaking of this appeal, which will take place in the Upper Tribunal on a later date, are:
 - (a) Whether the appellants are dependent on their sponsor.
 - (b) Whether the sponsor was a qualified person under the terms of the Immigration (European Economic Area) Regulations 2016.
 - iii) Any new evidence upon which the appellants wish to rely must be filed and served on the Upper Tribunal and the respondent no later than 14 days prior to the remaining hearing.

The remaking hearing

7. As a preliminary point, Mr West asked us to grant permission for the issue of the appellants' claimed membership of the sponsor's household to be included in the issues to be determined. He argued that Judge Blum had inadvertently limited the scope of remaking and that it was always part of the appellants' case that they were members of the household of sponsor. He also made the point that the expansion of the issues beyond that of relationship meant that the appellants had suffered a detriment. Mr Terrell contended that the respondent was entitled to take the two points set out in Judge Blum's decision but accepted that the issue of membership of a household was raised and that the respondent was not prejudiced. The panel agreed to permit the expansion of the issues to three, to include the membership of household matter.
8. Thereafter, we heard evidence from Mrs Mansah and submissions from both representatives. At the end of the hearing, we reserved our decision.

Decision on remaking

9. In reaching this decision we have taken into consideration all the evidence before us and arguments made so far as they relate to the position as at the relevant date of 31 December 2020, as agreed by both representatives.
10. We will start with the issue of whether the sponsor is a qualified person. In short, Mr Terrell drew our attention to the evidence of employment in the appellant's bundle, in the form of P60s and made no other submission. There was no challenge to the sponsor's oral evidence which included that she had worked as a cleaner in the United Kingdom at all relevant times and there was no suggestion that her work was marginal and ancillary, with reference to *D M Levin v Staatssecretaris van Justitie* (case no. 53/81). Having examined the payslips and P60s provided, which cover the relevant years of 2014 to 2020 inclusive, we are satisfied that the sponsor was engaged in genuine and effective employment as a cleaner and that she can be classed as a worker for the purpose of the Immigration (European Economic Area) Regulations 2016.
11. We now consider the issue of dependency. As indicated above, there was no challenge to the sponsor's evidence as to the appellants' circumstances. We considered that the sponsor gave a straightforward account without hesitation or embellishment. We therefore accept that the sponsor used to support her sister and the appellants prior to the sister's untimely passing in 2018. Thereafter, the sponsor supported the appellants by accommodating them free of charge in her property in Ghana as well as sending modest sums of money. Documentary evidence of numerous remittances from the sponsor to the appellants was before us. We heard that the appellants used a little of this money to purchase chewing gum to sell at the roadside to supplement the funds sent by the sponsor. The sponsor explained that the money made by the appellants enabled them to do no more than buy some food. While the sponsor's remittances to the appellants are modest, this is entirely in keeping with her own modest income from cleaning. We find that the provision of accommodation is a significant contribution towards the appellants essential living needs. We accept that the appellants have no meaningful independence and would most likely be homeless and destitute without the sponsor's support. This is not a situation where dependency is contrived. There is proximity in the relationship between the appellants and sponsor and her support has been long standing. Considering all matters holistically and applying *Jia v Migrationsverket* C-1/05 [2007] QB 545, we find that the appellants have established, on the balance of probabilities, that there is a genuine relationship of dependency and that they were in receipt of financial support from the sponsor to meet their essential needs.
12. Having found that the appellants were dependent upon the sponsor for their essential needs, there is no utility in us considering whether the appellants were part of the sponsor's household.

Notice of Decision

The appeal is allowed.

T Kamara
Judge of the Upper Tribunal
Immigration and Asylum Chamber

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email