



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-002530

First-tier Tribunal No: EA/04219/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 18th of September 2024

Before

UPPER TRIBUNAL JUDGE LODATO

Between

EZEKIEL OLUWABANJI MOIFEOLUWA AJAYI
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Ferguson, counsel

For the Respondent: Mr Lawson, Senior Presenting Officer

Heard at Field House on 4 September 2024

DECISION AND REASONS

Introduction

1. The appellant appeals, with permission, against the decision of First-tier Tribunal Judge Farrall to dismiss his appeal under regulation 8 of the Immigration (European Economic Area) Regulations 2016 (the '2016 Regulations').

Procedural background

2. The appellant applied for a residence card under the 2016 Regulations on 31 December 2020, the last day on which such an application could be made before the end of the transition period which preceded the exit of the UK from the EU. His application was refused by the respondent in a decision dated 26 February 2021. The appellant's appeal against that refusal decision was heard by the judge on 21 March 2024. The disputed issues between the parties were summarised at [4] as the sufficiency of evidence going to the appellant's claimed residence with,

and dependency on, his sponsoring brother. The appeal was dismissed in a decision promulgated on 15 April 2024.

3. The reasons which underpinned the dismissal of the appeal were set out between [11]-[19]. In short, it was found (at [11]) that the appellant and his brother gave consistent evidence about the relevant background of the collapse of the appellant's business in Nigeria and the breakdown of his marriage which led to him living in his brother's property in Nigeria and receiving a monthly allowance. It was noted that the sponsor gave evidence that the appellant now lives with him in the UK, and he continued to pay him a monthly allowance. The judge went on, at [14], to note records which supported the sponsor paying for utilities at the property in Nigeria but that there was "little independent evidence" that the appellant lived there between 2017-2019 ([15]). Between [16] and [18], the judge summarised evidence which tended to support the proposition that that the appellant received regular payments from his brother, lived with his brother in the UK and that the sponsor paid for training courses for the appellant. However, the conclusion was reached in each of these paragraphs that this evidence was not sufficient to establish cohabitation or dependency.

The Grounds of Appeal and the Grant of Permission

4. The appellant sought to challenge the lawfulness of the judge's decision on five grounds. Grounds one and two amounted to the suggestion that the Judge misdirected himself in law as to the appropriate legal thresholds for establishing joint residency and dependency. Ground three contended that the judge had not provided adequate reasons for rejecting the consistent evidence of the appellant and his sponsor. Grounds four and five argued that the effect of the decision undermined the purposive thrust of the Directive and that it was never made clear precisely why the appeal was dismissed.
5. Permission to appeal was granted by First-tier Tribunal Judge Sills in a decision dated 28 May 2024. Permission was not restricted to particular grounds. The reasons for granting permission were expressed in the following terms:

Given the Sponsor and Appellant both gave evidence, the Judge arguably gave inadequate reasons for finding that the Appellant had not established dependency on, or membership of the same household as, his brother, in either Nigeria or the UK.

The Error of Law Hearing

6. Mr Lawson, appearing on behalf of the respondent, made it clear at the outset of the hearing that he did not seek to contest that the decision involved the making of a material error of law. He conceded the appeal and invited me to remit the matter to First-tier Tribunal to consider the matter *de novo*.
7. Ms Ferguson, for the appellant, invited me to rely on the respondent's concession to find that there was an error of law and that the natural disposal given the broad challenge to the adequacy of the reasoning would be for the matter to be remitted to the First-tier Tribunal for a hearing *de novo*.

Decision on Error of Law

8. I am satisfied that the decision involved the making of a material error of law. As noted above, this was not disputed at the error of law hearing. Much like Judge

Sills in granting permission, I was struck by the considerable tension in the judge's decision in seemingly finding no fault with the consistent narrative evidence of the appellant and his sponsoring brother about their circumstances before going on to conclude that more evidence was needed to establish a relationship of dependency or shared residence. The judge summarised the various parts of the overall evidential picture before asserting, without any reasoning, that this did not satisfy him of the relevant legal tests, or that the evidence was not sufficient to meet the standard of proof. It was difficult to understand why these conclusions were reached and the appellant will have been left in a state of considerable uncertainty as to why his evidence, and that of his brother, was not questioned and yet this was not found to establish the necessary legal thresholds. The fundamental purpose of judicial reasons is to explain why proceedings were decided in the way they were. The reasons which underlie this decision did not achieve this purpose rendering them unlawfully inadequate. The references to a lack of supporting evidence give the impression that the judge was seeking further corroboration in circumstances where there was no legal requirement for the appellant to produce such additional evidence.

9. For the above reasons, I find that the judge's reasons were legally inadequate and amount to a material error of law.

Disposal

10. The parties spoke as one in suggesting that the appropriate course to take following the finding of an error of law was to remit the matter to the First-tier Tribunal to decide the appeal *de novo*. Given the scope of the fact-finding process which is required, I am satisfied that it is appropriate to return the matter to the First-tier Tribunal to hear the appeal afresh.

Notice of Decision

11. The decision of the First-tier Tribunal involved the making of an error of law. The First-tier Tribunal's decision is set aside, and the appeal is remitted to the First-tier Tribunal for consideration afresh by a judge other than Judge Farrall.

Paul Lodato

Judge of the Upper Tribunal
Immigration and Asylum Chamber

9 September 2024