



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: IA/03322/2014

**THE IMMIGRATION ACTS**

**Heard at Birmingham Sheldon Court  
On 9<sup>th</sup> January 2015**

**Determination Promulgated  
On 22<sup>nd</sup> January 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**MR CHUKWUEBUKA MICHAEL NWADIUTO  
(ANONYMITY ORDER NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr M Ruparelia (LR)

For the Respondent: Mr N Smart (HOPO)

**DETERMINATION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge P J M Hollingworth, promulgated on 4<sup>th</sup> September 2014, following the hearing at Nottingham Magistrates' Court on 26<sup>th</sup> August 2014. In the determination, the judge dismissed the appeal of Mr Chukwuebuka Michael Nwadiuto. The Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

## **The Appellant**

2. The Appellant is a male, a citizen of Nigeria, who was born on 7<sup>th</sup> October 1990. He appealed against the decision of the Respondent dated 3<sup>rd</sup> January 2014, refusing his application for a residence card under Regulation 8(1) of the Immigration (EEA) Regulations 2006, such a refusal being on the basis that the Appellant had not provided any evidence of his dependency on his EEA national Sponsor at any time, either in Nigeria or in the United Kingdom. He also had not provided any evidence that he was dependent on his EEA national Sponsor immediately prior to entering the United Kingdom.
3. The Appellant's case is that he has been dependent on his uncle, Mr Ucho Onwuzo. He has been in the United Kingdom since February 2011. He has been living with his uncle since then. His case has been that when he was in Nigeria he was sent money through his family and supported at school with payment of five school fees from the age of 13 to 18, by the uncle. The uncle, Mr Ucho Onwuzo, then moved to Germany in 2000 and supported him from Germany until he moved to the United Kingdom in 2009 and carried on supporting him.

## **The Judge's Findings**

4. The judge set out the background to the Appellant's claim. He described how the Appellant had been living with his mother and brother and sister from 2000 until 2009 in Nigeria. The mother was a trader, she bought and sold goods. The Appellant's brother and sister are still in Nigeria, and are younger than the Appellant and are going to school. The judge observed that when the Appellant's representative at the hearing, asked the Appellant for the identity of his financial Sponsors, "the Appellant replied mum and dad were the financial Sponsors" (paragraph 9). The judge further observed that the uncle, upon whom the case of dependency was based, was not in attendance at the hearing, such that the judge could place no weight upon the uncle's statement, because no reasons were given for his absence from the hearing (see paragraph 18).
5. Furthermore, the judge observed that, "there is distinct paucity of corroborative documentary evidence showing that the Appellant's uncle sent any money to Nigeria for the benefit of the Appellant" (paragraph 19). The judge was clear that the Appellant's representative "was able to draw my attention to one document to which I have referred above in setting out his submissions which constituted the corroborative documentary evidence" (paragraph 20).
6. The judge's clear conclusions were that the Appellant was "unconvincing, and lacking in plausibility" because  

"not only was he unable to recollect the details of his original visa application to the United Kingdom [that is to say] in terms of who exactly was sponsoring him but it took him a considerable period of time to be able to explain the details of his pursuit of studies in the United Kingdom" (paragraph 21).

7. In any event, the judge noted how,

“the statement of the Appellant is remarkable for its brevity. No detail is contained within that statement as to the financial position. .... There has been no attempt whatsoever in the witness statement of the Appellant or his uncle to exhibit any items in the bundle submitted on behalf of the Appellant”.
8. There was, however, the issue of the “commonality of address”, but the judge observed that, “even on the basis that the corroborative documentary evidence establishes commonality of address the difficulties which confront the Appellant in the context of dependency had been set out above” (paragraph 24).
9. The final conclusion of the judge was that,

“In the light of the state of the evidence to which I have referred, I do not find that the correspondence attached to the Appellant’s bundle advances the case on behalf of the Appellant given the paucity of corroborative documentary evidence both in relation to what took place in Nigeria as to the support of the Appellant and to what has transpired in the United Kingdom” (paragraph 29).

The appeal was dismissed.

### **Grounds of Application**

10. The grounds of application place reliance upon the case of **Dauhoo (EEA Regulations - Reg. 8(2)) Mauritius [2012] UKUT 79**. This is to the effect that the person applying must show either current residence with the Sponsor or current dependency on the Sponsor. The judge applied an incorrect test in relation to current residence. Moreover, dependency did not have to be of necessity.
11. On 16<sup>th</sup> October 2014, permission to appeal was granted.

### **Submissions**

12. At the hearing before me, Mr Ruparelia, a legal representative, appeared on behalf of the Appellant. He placed reliance upon **Dauhoo** (in ground 4 of the Grounds of Appeal). He also drew my attention to the skeleton argument. He pointed out the judge’s observation that, “The essence of the case is that it is claimed that the Appellant has been and is dependent on his uncle” (paragraph 18). His submissions before me were that there were a number of documents, such as bank statements, utility bills, “at GNK of the Respondent’s bundle” which were overlooked by the judge.
13. The entirety of the evidence before the judge established the Appellant’s eligibility under Regulation 8. There were pay slips from the uncle which showed his financial commitments to the Appellant. All of this was overlooked. There was enough that the Appellant had to show his dependency on his uncle.

14. For his part, Mr Smart submitted that the Appellant was seeking to establish that he was an “extended family member” and under the case of Dauhoo, he had to establish both a prior dependency before coming to the UK as well as a current dependency after coming to the UK. The judge did consider all the evidence. He referred to the “paucity of corroborative evidence” especially “in relation to what took place in Nigeria” but also “to what has transpired in the United Kingdom” (paragraph 29).
15. The fact was, as the judge himself fully appreciated, that the Appellant was only “able to draw my attention to one document to which I have referred above” (see paragraph 20). This document, in the Appellant’s bundle, is very difficult to decipher. The same copy in the Respondent’s bundle is easier to read. However, at this stage Mr Ruparelia helpfully intervened to say that he did have an original of this document which he could read out.
16. He pointed out that this was a remittance sum for January 2010 of £65 from the uncle to the Appellant. (It was accepted by all parties that £5 of this would be taken up in administrative costs so that the sum that was being remitted was £60). Mr Smart submitted that one document was insufficient to show dependency.
17. Second, the Appellant had been asked (at paragraph 9 of the determination) the identity of his financial Sponsor and the judge records that, “The Appellant replied mum and dad were the financial Sponsors” (paragraph 9). Given that it had been the Appellant’s case that he was financially dependent upon his uncle this gave a lie to such a claim of dependency.
18. In reply, Mr Ruparelia submitted that it was clear even from the single document that existed that money transfers were taking place at a time when the Appellant was in the home country of Nigeria because it is dated January 2010, and the Appellant entered the UK in January 2011.
19. Second, there was in the Respondent’s bundle (at L1), a statement dated 26<sup>th</sup> September 2013, from Ucho Onwuzo, that the Appellant had received money from his uncle, Mr Sunny Onwuzo, through Ucho Onwuzo. The Sponsor was Mr Sunny Onwuzo, an uncle of the Appellant. Mr Ucho Onwuzo was another uncle of the Appellant. The statement reads that the sponsoring uncle “has sent money to me from Germany as well as the UK on different occasions via money transfer organisations such as the Western Union”. I noted that no such official evidence was produced before Judge Hollingworth.

### **No Error of Law**

20. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law, such that I should set aside the decision. The determination of the judge is clear, comprehensive, and factually wholly correct. It is absolutely correct that there is a “paucity of evidence”. It is correct that the uncle did not attend the hearing to explain the extent of his support for the Appellant. It is correct that the evidence existed for the judge to conclude that the Appellant’s

evidence was unconvincing and lacking in plausibility. It is also correct that the Appellant's statement "is remarkable for its brevity" (paragraph 23).

21. The plain fact is that only one document exists and even that to the tune of only £60 as the value of the remittance to the Appellant from Sunny Onwuzo. One remittance is a gift of money from an uncle who has managed to acquire residence and employment abroad for a relative or relatives back at home.
22. It is not evidence of dependency. The burden of so showing rested on the Appellant. In the circumstances, it was not discharged and the judge was correct to conclude as he did as a matter of law and as a matter of fact.

**Decision**

23. There is no material error of law in the judge's decision. The determination shall stand.
24. No anonymity order is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

21<sup>st</sup> January 2015