



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2023-003350**  
**First-tier Tribunal No:**  
**EA/07048/2022**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 06 November 2023**

**Before**

**UPPER TRIBUNAL JUDGE OWENS**  
**DEPUTY UPPER TRIBUNAL JUDGE B KEITH**

**Between**

**MR AISEOSA JUDE IYEN**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**Entry Clearance Officer**

Respondent

**Representation:**

For the Appellant: Mr L Kareem, Atlantic Solicitors

For the Respondent: Mr D Clarke, Home Office Presenting Officer [check]

**Heard at Field House on 27 September 2023**

**DECISION AND REASONS**

1. The appellant appeals against the decision of First-tier Tribunal Judge Hawden-Beal ("the judge") sent on 22 May 2023 dismissing his appeal against the refusal of an application for a EUSS family permit.

**Background**

2. The appellant is a citizen of Nigeria. He applied for an EUSS family permit to join his stepfather Mr Max Festus Omorogbe Aghedua, a Spanish citizen with settled status in the United Kingdom. He claims to be dependent on his stepfather and mother for his essential needs.

**Decision**

3. The judge found that the sponsor and the appellant's mother are validly married and that the appellant is therefore the stepson of the sponsor. The judge found that both the sponsor and the appellant's mother are Spanish citizens and that both have both been granted settled status in the United Kingdom.

4. The judge turned to the issue of dependency. The judge found that although the sponsor and the appellant's mother have been sending the appellant money, there is an evidential gap in remittances from January 2020 until August 2021. There is a further gap of about ten to eleven months after the sponsor visited the appellant in Nigeria in September 2021. It was not until August 2022 that the appellant's mother started sending money again. The judge directed herself that the appellant had to establish dependency as at the date of the application, which was in December 2021. The judge found that the appellant was not dependent on the sponsor at the date of the application and dismissed the appeal.

## **Grounds of Appeal**

### Ground 1 - Irrationality

5. The grounds are poorly pleaded. The grounds assert that the decision is irrational because the judge made a finding which no Tribunal, properly directing itself, could reach on the basis of the evidence which had been given and accepted by it. It is asserted that because the appellant has not started living an independent life, there must be a presumption that he is dependent on his parents. He was, at the time of the application, a student and wholly dependent on his parents for his essential living needs. Sufficient evidence of money transfers was presented to the Tribunal for the periods before and after the appellant's application to join his parents in the United Kingdom.
6. The grounds assert that there has never been a time that the sponsor did not support the appellant. The sponsor's evidence is that he always supported the appellant, including sending money through friends and family. It was irrational for the judge to state "I do not doubt that the sponsor and the appellant's mother were sending the appellant money during that time, but they have not provided the evidence to show that".
7. It is submitted that the appellant demonstrated that there has been regular support over a significant period of time confirming that the appellant has been in a situation of real dependency.

## **Permission to Appeal**

8. Permission to appeal to the Upper Tribunal was granted by First-tier Tribunal Judge Boyes on the basis that the judge had stated that she had accepted that financial support had been provided during the specific period but then refused to accept it absent documentary proof.

## **Rule 24 response**

9. There was no Rule 24 response.

## **Submissions**

10. Both representatives made submissions which we have taken into account and are set out in the Record of Proceedings.
11. Mr Kareem submitted that during COVID no-one could travel and that the sponsor was sending money through MoneyGram. The sponsor's evidence was that he left a certain amount of money for the appellant when he travelled to Nigeria in August to September 2021. The judge failed to take into account this

evidence. There was also inadequate reasoning by the judge at [21]. The appellant was a student at the time and reliant on his parents in the United Kingdom for his essential living needs, including toiletries, food and maintenance. His mother is currently in Nigeria with him.

12. Mr Clarke submitted that the grounds are not made out. Although the permission judge focused on the reasoning at [21], this is a reference to whether the sponsor and the appellant's mother were sending money. This is different to the test of dependency, which is set out at Lim [2015] EWCA Civ 1383. The appellant was required to demonstrate that he could not meet his essential living needs in whole or in part without the financial or other material support of the EEA sponsor and his mother. This is a simple matter of fact. The appellant needed to be dependent at the date of application. The judge made sustainable findings that there was no evidence of dependency at the date of application. The sponsor's evidence was that he had left the appellant with a sum of money when he visited Nigeria in August to September 2021 and his oral evidence was that this money would last him about a month. It was not until three months later that the appellant applied under the EUSS for a family permit. The judge also considers that there are gaps in the evidence. The evidence of MoneyGram transfers related to the period from 2017 to 2019 and then from 2022 to 2023. There was no evidence of any MoneyGram transfers between 2019 and 2022. The sponsor's evidence was that he took money to the appellant in October 2021. At [25] the judge noted that since the date of the refusal in 2022 the sponsors had sent £900 over an eighteen-month period. When the judge said I don't doubt that money was being sent during that time, this must be looked at in the context of the decision as a whole.
13. Ultimately, the judge was entitled to find that at the date of the application, the appellant was not dependent on his EEA sponsor and mother. The judge applied the correct test and the decision was not irrational.

### **Analysis and reasons**

14. We firstly note that the original grounds assert that the decision is irrational and that it was not open to the judge at [21] to make the following finding:

"I have no doubt that the sponsor and the appellant's mother were sending the appellant money during that time but they have not provided the evidence to show that".
15. During his oral submissions, Mr Kareem extended the grounds to include an assertion that the judge had failed to take into consideration evidence given by the sponsor and secondly that the reasoning in respect of dependency was inadequate. These were not the original grounds, as pleaded. He did not make an application to amend the grounds of appeal. We remind ourselves of the need for procedural rigour and that a Tribunal should not consider grounds that have been raised for the first time during an error of law hearing because of the need for consistency and good administration in the delivery of justice. We limit ourselves on this basis to the grounds as originally pleaded.
16. In any event, in respect of the first submission we note firstly that the judge has recorded the sponsor's evidence that he took money to the appellant in August/September 2021 and the judge has clearly accepted that evidence. There is no record either in any of the witnesses written statements or in the sponsor's oral evidence as recorded by the judge, that money was sent to the appellant in

Nigeria via friends or family in addition to the money remittances. Further, there were no statements in the appellant's bundle from family or friends confirming that they had taken money to the appellant when visiting Nigeria. This assertion was made by Mr Kareem at the error of law hearing and appears to be an attempt to give evidence. Any assertion that the judge failed to take into account this evidence, even if we had permitted the grounds to be amended would not be made out.

17. We note that the test of irrationality is a high one.
18. The application was originally refused because the Entry Clearance Officer was not satisfied that there was sufficient evidence of financial dependency. This was on the basis of the limited documentary evidence of money transfers to the appellant as well as a lack of information about the appellant's living and financial circumstances in Nigeria. The sponsor had been living in the UK since 2015 and the Entry Clearance Officer would have expected to see more evidence.
19. In terms of documentary evidence, the judge had before her more money transfers than were produced with the Entry Clearance application. There were money transfers dating from December 2017 to December 2019 and then from August 2022 to January 2023. The remittances were mainly from the appellant's mother, but the judge found that because it was accepted that the appellant's mother was married to the sponsor, these remittances could be taken into account. The judge correctly noted at [20] that there was no evidence of any money transfer receipts between December 2019 and August 2021 for a period of 18 months. It was manifestly open to the judge at [20] to question how the appellant had supported himself during this period. The only evidence of financial support between December 2019 and August 2022 was the sponsor's evidence that he visited Nigeria in August 2021 and left the appellant money to last him for about a month after he left in September 2021. There is then a gap of another ten to eleven months before the appellant's mother started sending him money again in August 2022. It is not asserted by Mr Kareem that the judge's analysis of the evidence was factually incorrect or that she overlooked documentary evidence.
20. The judge's finding that there is no evidence of any money transfers for the period between January 2020 until August 2021 was manifestly sustainable on the evidence before her. She pointed to the lack of MoneyGram transfers and receipts and lack of evidence of withdrawal of funds from a UK bank or a Nigerian bank. She took into account that there were no bank statements from the appellant to show that he was left money by the sponsor.
21. The judge needed to decide whether the appellant was dependent on his sponsor at the date of the application and also whether the appellant was dependent on the sponsor and the mother in whole or in part for his essential living needs.
22. At [12] the judge correctly noted that the burden of proof is on the appellant. From [22] the judge turned to the legal tests in respect of support. She referred correctly to the case of Reyes v Migrationsverket (2014) EU ECJ 423/12. The judge correctly directed herself that the support needed to be regular and provided over a significant period. The judge took into account that by the date of the application in December 2021 the only documentary evidence of support were money remittances ending in January 2021 and the sponsor's evidence that he had left money with the appellant in Nigeria for a period of a month in September

2021. She also noted that even after the application was refused, from the evidence of money remittances, a total of £900 had been sent between August 2022 and January 2023. We take into account that the witness statements did not provide detailed evidence that support was provided in other ways. We are satisfied that it was open to the judge to find that there was insufficient evidence before her for her to find that the support was regular, nor that it had been provided over a significant period. It was manifestly open to the judge to find that there was insufficient evidence to demonstrate that the appellant was dependent on the sponsor at the date of the application.

23. It might be said that it was somewhat artificial of the judge to find that the appellant was receiving financial support in the period prior to the application, had been left money by his stepfather in Nigeria in person a few months prior to the application and then that money transfers resumed after the date of the application and yet find that the appellant was not dependent at the date of the application in December 2021. However, there was a large gap of two and a half years in respect of the evidence of money remittances and apart from the evidence that the sponsor had left a limited amount of money in September 2021 very little evidence of ongoing support in this period.
24. The judge's comment at [21] does appear to be contradictory in that the judge appears to be stating on the one hand that she has no doubt that money was sent during that period but that there was insufficient evidence. We agree with Mr Clarke's submission that [21] needs to be read in conjunction with [25] where the judge again states that she has no doubt that money was sent. The statement is rather odd but does not in our view reach the high threshold of irrationality. We infer that the judge meant to state (however imperfectly expressed) that although there was evidence that money had been sent to the appellant there was insufficient evidence of dependency to meet the legal requirement that the financial support needed to be regular over a significant period [25] and in existence at the date of the application [24]. We discern no error in the judge's approach.
25. In any event even if this assertion at [21] were to be an error of law, in our view this is immaterial for the reasons Mr Clarke made in his submissions.
26. The judge directed herself correctly in respect of the legal test of dependency at [24] reminding herself that the dependency needed to be for the appellant's living needs.
27. There was before the judge very limited evidence about the circumstances in which the appellant was living in Nigeria. This issue was flagged to the appellant and sponsor in the refusal but was not addressed in any detail by appellant on appeal. Although the appellant provided evidence that he was a student in Nigeria, he had been left by his mother in Nigeria in 2008 when she went to join the sponsor in Spain. There was little information in the original application nor appeal statements or documents about the appellant's wider family, the economic circumstances of his grandparents, nor evidence that it was his sponsor or mother who paid for his studies. The evidence amounted to unsupported statements by the sponsor and the appellant's mother that the appellant was wholly dependent on them for his essential living needs. It was for the appellant to demonstrate that he was dependent as a matter of fact.
28. In our view in the light of this lack of evidence, it was entirely open to the judge to find that there was insufficient evidence that the appellant had demonstrated

on the balance of probabilities that he was as a matter of fact dependent on the sponsor and his mother wholly or in part for his essential living needs.

29. The grounds are not made out. The decision does not contain an error of law such that it should be set aside.

**Notice of decision**

30. The appeal is dismissed.
31. The decision by the First-tier Tribunal is upheld.

**R J Owens**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**6 November 2023**