



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

Appeal Number: EA/05181/2019

THE IMMIGRATION ACTS

Heard at Field House

On 16 October 2020

**Decision & Reasons
Promulgated
On 1 July 2021**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

EMMANUEL KENYAH AFFUL
(anonymity direction not made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Akouba Marcelline Assouan, Sponsor

For the Respondent: Mr Esen Tufan, Senior Home Office Presenting Officer

Interpreter:

Mr E Donker: Twi and English

DECISION AND REASONS

1. This is an appeal by a citizen of Ghana against a decision of the First-tier Tribunal dismissing his appeal against a decision of the Entry Clearance Officer refusing him a family permit as an extended family member of an EEA national.
2. The grounds of appeal are rather protracted and make lofty references to human rights law but permission was granted because it was arguable that the appellant did not have actual knowledge of the hearing before the First-tier Tribunal.
3. Before me the appellant was represented by his aunt Akouba Marcelline Assouan. She was assisted by Mr Donkor, an interpreter who interpreted in the Twi and English languages. I am grateful to Mr Donkor for his assistance.
4. I am satisfied that for some reason the appellant did not know of the hearing before the First-tier Tribunal. His aunt has responded on other occasions and if for some reasons she was being silly and trying to avoid a hearing she would not have answered the phone when she was telephoned by the Tribunal in

Birmingham to establish her whereabouts. I am satisfied she has told me the truth about not knowing about the hearing. I do not in any way criticise the First-tier Tribunal for making the decision that it did on the information before it but I have the advantage of hearing the sponsor and I find there was a procedural irregularity amounting to an error of law and I set aside the decision.

5. I intend to proceed immediately to remaking that decision. I asked the sponsor very carefully if there was any evidence or information she would have sent in that she had not sent in and she answered in the negative. I then asked her what submissions she would have made and she indicated she could say nothing more than asking for a fair hearing and looking at the papers carefully, which, with respect to the First-tier Tribunal Judge, is precisely what the appellant got in respect of the material before the Tribunal.
6. The sponsor did not take an oath and did not formally give evidence. Certainly, she was not cross-examined but I formed the impression that she is very fond of the appellant, her nephew, and she may well have been a mother figure to him when he was younger but he is now a man who has turned 20 and was over 18 when the application was made. They have certainly lived apart for at least eight years because that is the time in which the sponsor has been in the United Kingdom. There is no serious contention that he is a member of the sponsor's household but it was said that the appellant is the dependant of the sponsor.
7. The First-tier Tribunal concluded at paragraph 30 that there was not sufficient evidence before it to demonstrate that he is dependent on the sponsor to meet his everyday needs. The judge was right and there is no such evidence before me. There is no detailed statement, there was no schedule of income and expenditure, all that was produced in documentary form was a series of transactions showing useful sums paid by the aunt to her nephew.
8. There is nothing in the evidence which enables me to see that the appellant really needed that money for his maintenance or that the sponsor could afford that money in the long term. I am quite satisfied that some money was sent and I think it was probably very welcome but it is not enough on its own to establish dependency. The appellant bears the burden to the balance of probabilities and has not discharged that burden.
9. I set aside the decision of the First-tier Tribunal because of procedural irregularity that was not in any way the judge's fault and I remake the decision and I dismiss the appeal.
10. The sponsor has conducted herself with dignity today but I have to make the decision on evidence and the evidence necessary to allow the appeal is not there. That is my decision.

Notice of Decision

11. The First-tier Tribunal erred in law. I set aside its decision but substitute a decision of my own dismissing the appeal against the Respondent decision.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 20 November 2020