



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/00433/2017
EA/00436/2017

THE IMMIGRATION ACTS

Heard at Field House
On 14 June 2018

Decision & Reasons Promulgated
On 25 June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE LATTE

Between

MUHAMMAD ALI
REHMAT BIBI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER, SHEFFIELD UKVS

Respondent

Representation:

For the Appellant: Mr Z Nasim, counsel.
For the Respondent: Mr D Clarke, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the appellants against a decision of the First-tier Tribunal dismissing their appeals against the respondent's decision of 30 December 2016

refusing them an EEA family permit to join their son (the co-sponsor) and their daughter-in-law (the sponsor), a Lithuanian citizen exercising treaty rights in the UK.

Background.

2. The appellants are husband and wife, both citizens of India. The first appellant was born on 20 December 1969 and the second appellant on 10 April 1968. On 17 October 2016 they applied to join their sponsors in the UK. However, the respondent was not satisfied that they could meet the relevant requirements of the Immigration (European Economic Area) Regulations 2006 ("the 2006 Regulations") for the reasons set out in [2] of the judge's decision. In short, the respondent was not satisfied that the appellants were dependent on the sponsor or that they qualified as extended family members.

The Hearing before the First-tier Tribunal.

3. The sponsor did not attend the hearing before the First-tier Tribunal but her husband, the co-sponsor, did attend. He said that his wife was not at the hearing because she had felt unwell that morning and had gone to the Accident and Emergency Department of their local hospital. He did not ask for an adjournment. The judge gave him the opportunity of considering the matter with his counsel who confirmed that he did not want the hearing adjourned but wanted the appeal to go ahead [3].
4. The co-sponsor relied on his witness statement. He said that his father was not working. Two years previously, he had worked as a chef in a restaurant in Sahiwal, Pakistan [3]. He had been told by his doctor that he was not allowed to do hard work otherwise he would lose his life and his father decided to leave his employment [5]. He had previously worked as a chef in another restaurant for 15 years and when he (the co-sponsor) had married, his father was still working. His father had no savings and his salary was only just enough to live on.
5. He was asked about his marriage certificate which gave his father's occupation as a retail shop proprietor and he explained that his father also worked part-time in a retail store and added that after 2010 when he was in the UK he did not ask his father everything about his employment. His father had come to the UK with a work permit as a chef in 2010 but had returned to Pakistan because he did not like it here [5]. His parents lived in a house in Pakistan owned by his paternal grandfather and his father was charged rent as otherwise his grandparents would not be able to survive [10].
6. He said that his mother was a housewife. His father spoke English, but his mother spoke very little English. He explained that the sponsor had gone to hospital that morning because she was feeling pain in her chest. He was asked about his wife's signatures on her witness statement and on their lease, denying that the signatures were different and saying that sometimes she signed "roughly" [7].

7. The judge was not satisfied that the sponsor had been unable to attend because she was suffering from chest pains and noted that there was no documentary evidence that she had attended the hospital. She commented that, even if she had attended the hospital, there was no credible reason why the co-sponsor would not have asked for the matter to be adjourned so that his wife could attend court and give evidence on another day and he was well aware that the sponsor's evidence was being challenged by the respondent and that it was important for her to give evidence [13].
8. The judge referred to the copy of the tenancy agreement which had been put to the co-sponsor in evidence. He had confirmed that his wife had signed the agreement, but the judge found that her signature at A45 of the bundle was quite different from the signature on her witness statement of 6 November 2017. She found that the witness statement and tenancy agreement had not been signed by the same person [24].
9. She did not accept the co-sponsor's evidence about his father's work. She noted that the marriage certificate produced in evidence referred to his father as a retail store proprietor. He had given evidence that his father had resigned from employment in Pakistan because of his back problems and relied on a letter dated 11 January 2017 from Dr Khan of the Shah Hospital stating that the appellant's father was suffering from severe lumbago associated with right sided sciatica. It also said that he had been under treatment since 2015. The judge attached limited weight to the letter from the doctor, finding that the medical evidence was very limited and was not accompanied by medical notes of back problems from 2015 [25].
10. The judge accepted that there was some evidence that the sponsors had jointly sent funds to the appellant in Pakistan as there were several remittance slips before the date of the respondent's decision showing that on average about £200 had been sent from the UK. She noted that the sponsor's P60 for the tax year ending 5 April 2016, showed that she earned £6884.80 and commented that in the light of her limited earnings, she did not find it credible that she generally supported the appellants in Pakistan [23].
11. The judge found that the first appellant was the owner of a retail store and received income from that business [25]. She also referred to the fact that the appellants had employed deception in their visa application where at Q148 (Q145 in the second appellant's statement) the first appellant said that he only had one son, the son in the United Kingdom. In his evidence the co-sponsor said that he had a sister and a younger brother and the reason his father only referred to him as his son was because the younger brother was "lazy and careless" [26]. The judge did not find this explanation to be credible, nor did she accept that the appellants paid rent to the first appellant's father. She found that they were able to support themselves from the first appellant's business and were able to live rent free in family property [27].
12. In summary, the judge did not find the co-sponsor to be a credible or truthful witness or that the appellants were dependent on the sponsors [28]. She was not satisfied that the requirements of the 2006 Regulations were met. She went on to comment at [30] that the co-sponsor's evidence had raised serious concerns about the genuineness

of his marriage to the EEA national. He had been well aware that at the time he married his wife on 17 October 2012 that his visa was due to expire. Accordingly, she dismissed the appeal.

The Grounds and Submissions.

13. The grounds set out five grounds of appeal. Firstly, it is argued that the judge failed to apply the correct test or burden of proof when assessing whether it was the sponsor's signature on both the tenancy agreement and her witness statement and she had failed to conduct a proper assessment of the evidence under the test set out in RP (Proof of forgery) Nigeria [2006] UKUT 86. There had been no clear evidence before her when making findings on that issue and the judge had failed to consider the submissions made on behalf of the appellants at the hearing that signatures on two documents are often different as signatures are not rubber stamps.
14. Secondly, it is argued that the judge reached perverse or contradictory findings on the issue of financial dependency. She had commented at [23] that the sponsors had jointly sent funds to the appellant but then rejected this by simply assessing the sponsor's employment without any regard to the employment of the co-sponsor. Thirdly, the judge placed little weight on the independent evidence of Dr Shah giving insufficient reasons for doing so in circumstances where the evidence had come from a private hospital and an independent source.
15. Fourthly, it is argued that the judge made a finding of deception when this was not open to her and had not been raised by the respondent. The judge had acted in a procedurally unfair manner in making such findings when these were not made in the refusal letter, the appellants were not given a sufficient opportunity to address them and the judge perversely rejected the sponsor's explanation about the younger brother. Fifthly, the comments made by the judge at [30] of the decision that the evidence raised serious concerns about the genuineness of the co-sponsor's marriage to the sponsor were procedurally unfair and, in any event, the judge had failed to go through the prescribed tests as set out in case law for assessing whether the marriage was genuine or not.
16. Mr Nasim adopted the grounds in his submissions. He argued that the co-sponsor had not had an appropriate opportunity of addressing the issue of whether the sponsor supported the application. The appellant held a five-year residence card (and had subsequently been granted a permanent residence card) and this should have been sufficient to show that their relationship was genuine. The judge had erred by finding that the signatures on the tenancy agreement and on the sponsor's witness statement were different. When assessing the issue of dependency, she had erred by only looking at the sponsor's salary.
17. He argued that the judge's findings on dependency were contaminated by the false view that she took about whether the sponsor supported the application and whether the co-sponsor had fabricated the claim. He submitted that the evidence about the

appellant's father's employment in Pakistan was consistent with his immigration history in that he worked as a chef while briefly in the UK. When assessing dependency, the judge had not taken all the evidence into account. She had failed to engage with the issue of whether the dependency was one of choice or necessity and she had not dealt adequately with whether the appellants qualified as extended family members.

18. Mr Clarke submitted that the central issue was one of dependency. The judge had properly directed herself on this issue citing at [22] from the judgment in Lim v ECO, Manila [2015] EWCA Civ 1283. He argued that the judge's analysis of the evidence had to be considered in the context of the sponsor not attending to give evidence and the decision made by the co-sponsor not to apply for an adjournment. So far as the issue of the signatures was concerned, she had been entitled to find that the co-sponsor's explanation was not credible and that the signatures did not match. Her findings on dependency could not be categorised as perverse. At [23] she had referred to joint funds. She had been entitled to find that it was not credible that the sponsor had been supporting the appellants, whether or not the funds were jointly sent.
19. The judge had been entitled to take into account the conflict about whether the first appellant worked as a chef, in a retail store or was a retail store proprietor. It was open to her to comment at [16] that there was no documentary evidence confirming his employment. It was for the judge to assess what inferences should be drawn from the fact that in the application form the appellant's father had not disclosed that he had other children and it was open to the judge to reject the evidence that the appellants paid rent to the first appellant's father and to find that this was a property where the appellants were able to live rent free. Her findings, so Mr Clarke submitted, on the issue of dependency and finances were open to her.
20. It was for the judge to assess, so Mr Clarke argued, what weight to give the evidence from Dr Shah and she was entitled to comment that the medical evidence was very limited and was unaccompanied by medical notes of back problems from 2015. There had been no procedural unfairness and the co-sponsor and the appellants' representative had been given a proper opportunity of considering the issues raised in ground four. Ground five argued that the judge had not been entitled to make the findings she did at [30] but in this paragraph, the judge was raising concerns and was not making specific findings of fact.

Assessment of the issues.

21. The issue for me is whether the judge erred in law such that the decision should be set aside. I am not satisfied that ground one relating to the judge's findings about the signatures on the sponsor's witness statement and the tenancy agreement disclose any error of law. There is no reason to believe that the judge was not aware of the guidance set out in RP. This issue was raised in evidence and it was for the judge to decide what view to take. It is clear from the grounds that submissions were made on behalf of the

appellants to the effect that signatures were often different as they were not rubber stamps. The judge's finding of fact on this issue was properly open to her.

22. Ground two on the issue of financial dependency argues that the findings at [23] were perverse. This relates to the way the judge dealt with the evidence about payments sent to the appellants. The judge accepted that there was some evidence that the sponsors had jointly sent funds to the appellants in Pakistan, but it is argued that she went on to reject this by simply assessing the sponsor's income without regard to the income of the co-sponsor and his financial contribution. I am not satisfied that this has any material bearing on the outcome of the appeal or in itself indicates an error of law. The judge accepted that some payments had been sent and was entitled to look at the sponsor's income to see whether it was credible that she genuinely supported the appellants.
23. The judge correctly identified at [22] that the issue for her was whether it was shown that the appellants were financially dependent on the sponsors. The grounds take no issue with judge's self-direction on how dependency should be assessed set out in [18]-[22]. The critical issue was to consider whether the appellants could support themselves and if so, there was no dependency even if receiving financial support. If, on the other hand, the appellants could not support themselves from their own resources, the court would not ask why that was save where there was an abuse of rights and the fact that the appellants may have chosen not to get a job and become self-supporting was irrelevant.
24. The judge considered the evidence about the appellants' financial circumstances but found that they were not dependent on the sponsors. She was not satisfied about the evidence of the first appellant's employment noting that the co-sponsor had said that he was a chef whereas on the marriage certificate there was reference to him being a retail store proprietor. There was no documentary evidence to confirm his employment and she did not find that the medical evidence provided an adequate explanation to show that he was not working. She found at [25] that it was not credible that the first appellant had no savings and did not accept that he was paying rent to live in the family property owned by his own father, rejecting the evidence that he had to charge his own son rent in order to provide himself with an income [27] and [28].
25. When assessing the evidence about dependency the judge was entitled to take into account her finding that the appellants' application forms had failed to disclose that they had two children in addition to the co-sponsor and to reject the explanation that the younger brother was not included because he was "lazy and careless". On the basis of the evidence before her, it was clearly open to the judge to find that the appellants had failed to discharge the onus of showing that they were dependent on the sponsors and could not support themselves.
26. I am not satisfied there is any substance in the ground four, which argues that there was procedural unfairness or that the judge made ultra vires findings of deception. It is further argued that the judge's rejection of the co-sponsor's evidence about his

younger brother was perverse. These issues were raised at the hearing and the co-sponsor was questioned about them when giving evidence and the representative had the opportunity of making submissions. It was then for the judge to decide what weight to give to the evidence and to make findings of fact accordingly. Ground five again raises the issue of procedural unfairness in relation to the judge's comments in [30] about the co-sponsor's marriage. However, the judge did not make specific findings of fact. She said that her findings raised serious concerns about the genuineness of the marriage. These were concerns the judge was entitled to express.

27. Mr Nasim submitted that the judge's unjustified findings that the sponsor did not really support the appeal and her finding that the co-sponsor had fabricated the claim about the appellants paying rent tainted her overall findings on credibility and dependency, but I am not satisfied that this is the case. He also made the point that the co-sponsor had a five-year residence card (and now had been granted permanent residence) but that has no bearing on the judge's findings of fact. The judge made findings and reached conclusions properly open to her on the basis of the evidence before her. The appeal proceeded without the sponsor being available to give evidence but that was a choice made by co-sponsor, having had the opportunity of considering the matter with his representative.
28. Her finding that the appellants had failed to establish dependency meant that they could not meet the requirements of reg. 7 as family members. Mr Nasim argued that the judge had not dealt with reg. 8 but this is not raised in the grounds and, in any event, there was no adequate evidence in the light of the judge's findings of fact to show that they were extended family members within reg. 8. It may be that there is further evidence which might cast a different light on the judge's findings of fact, but the judge had to decide the appeal on the basis of the evidence before her and the grounds and submissions do not satisfy me that she erred in law in any way affecting the outcome of the appeal.

Decision.

29. The First-tier Tribunal did not err in law and its decision stands.

Signed: H J E Latter

Dated: 21 June 2018

Deputy Upper Tribunal Judge Latter