



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

Appeal Number: EA/04623/2019 (R)

THE IMMIGRATION ACTS

**Heard at Birmingham
On 29th September 2020**

**Decision & Reasons Promulgated
On 5th October 2020**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MS ROBINA BEGUM
(Anonymity Direction Not Made)**

Respondent

Representation:

For the Appellant: Mrs H Aboni, Senior Home Office Presenting Officer

For the Respondent: Mr A Janjua, Morden Solicitors

DECISION AND REASONS (R)

1. The appellant in the appeal before me is the Secretary of State for the Home Department (“SSHd”) and the respondent to this appeal is Ms Robina Begum. However, for ease of reference, in the course of this decision I adopt the parties’ status as it was before the FtT. I refer to Ms Begum as the appellant, and the Secretary of State as the respondent.

2. The appellant is a national of Pakistan. Her application for a family permit to join her son, Suleman Chaudry in the United Kingdom as a dependent direct relative in the ascending line, was refused by the respondent for reasons set out in a decision dated 6th August 2019. The decision was maintained following review by an Entry Clearance Manager on 31st December 2019. The appellant's appeal against that decision was allowed for reasons set out in a decision promulgated by First-tier Tribunal Judge Louveaux on 24th March 2020.
3. The respondent claims Judge Louveaux failed to provide adequate reasons for the findings on material matters, and in particular, how, in the absence of requisite evidence the EEA sponsor can adequately support and accommodate the appellant financially. It is said the judge acknowledged the low income of the sponsor but made no assessment of the sponsor's ability to maintain and support the appellant, given that there is clearly already financial strain on the sponsor and his family. The respondent claims it was incumbent upon the judge to identify the evidence to demonstrate that the sponsor would be able to support the appellant financially and otherwise in this country, when the current financial remittances to the appellant, which are not substantial, are already a strain on the sponsor and his family.
4. Permission to appeal was granted by First-tier Tribunal Judge Page on 15th June 2020. He considered it arguable that the judge gave inadequate reasons for finding that the EEA sponsor could support and accommodate the appellant.
5. The hearing before me on 29th September 2020 took the form of a remote hearing using skype for business. Neither party objected. At the outset, I was informed by Mr Janjua that neither the appellant nor the sponsor intended to join the hearing. Mr Janjua confirmed the appellant is happy for the hearing to proceed in her absence. I sat at the Birmingham Civil Justice Centre and the hearing room and building were open to the

public. The hearing was publicly listed, and I was addressed by the representatives in exactly the same way as I would have been, if the parties had attended the hearing together. I was satisfied: that this constituted a hearing in open court; that the open justice principle has been secured; that no party has been prejudiced; and that, insofar as there has been any restriction on a right or interest, it is justified as necessary and proportionate. I was satisfied that it was in the interests of justice and in accordance with the overriding objective to proceed with a remote hearing because of the present need to take precautions against the spread of Covid-19, and to avoid delay. I was satisfied that a remote hearing would ensure the matter is dealt with fairly and justly in a way that is proportionate to the importance of the case, the complexity of the issues that arise, and the anticipated costs and resources of the parties. At the end of the hearing I was satisfied that both parties had been able to participate fully in the proceedings.

6. At the outset of the hearing before me, Mrs Aboni, quite properly in my judgement, acknowledged that the grounds of appeal are not particularly well drafted and in any event, as the appeal arises from the refusal of an EEA family permit under the Immigration (European Economic Area) Regulations 2016, there is no maintenance and accommodation requirement.
7. Ms Aboni submits Judge Louveaux properly noted at paragraph [12] of the decision that the appellant did not provide any evidence regarding her own financial circumstances so as to satisfy the respondent that the support provided by the sponsor, was necessary in order to meet her essential needs in Pakistan. Mrs Aboni submits there was an absence of evidence before the FtT regarding the appellant's own financial circumstances which was required to establish that any support provided by the EEA sponsor was required to meet her essential needs in Pakistan. She submits the reasons given by Judge Louveaux for the conclusion that the appellant is dependent on the sponsor, are inadequate.

8. Judge Louveaux noted the appellant is a 67-year-old divorcee who suffers from various health issues. He heard evidence from the sponsor, and as set out at paragraph [16] of the decision, he found the sponsor to be a wholly credible witness. Judge Louveaux was satisfied that the appellant has proven, on the balance of probabilities, that she is dependent on the sponsor, i.e. that she needs the material support of the sponsor in order to meet her essential needs. At paragraphs [17] to [23] of his decision Judge Louveaux sets out his reasons for the finding that the appellant is dependent on the sponsor. In reaching that decision, Judge Louveaux had regard to the documentary evidence showing continuous monthly payments from the sponsor to the appellant between May 2017 and February 2020, and in addition, a large number of additional money transfers dating back to 2010. He accepted the evidence that the appellant lives as a lodger with another family and that she pays them in cash every month in exchange for board and lodging. He accepted the appellant has no bank account and picks up money sent by the sponsor every month from Western Union branches in cash. The judge was satisfied that the money sent by the sponsor to the appellant every month covers all of the appellants outgoings, including the cost of her treatment and medication. In reaching his decision, the Judge noted, at paragraph [22], that the sponsor has a limited income and at paragraph [23], he was satisfied that the sponsor is of limited means and that the payments that he has been making to the appellant represent a significant financial sacrifice given that he has his own family to support.
9. It is in my judgement clear that in reaching his decision, Judge Louveaux had regard to the evidence before him and it was open to him to find that the appellant is dependent on the sponsor in order to meet her essential needs, for the reasons set out in the decision.
10. In my judgment, in reaching his decision, the judge clearly applied the correct test. Where a judge applies the correct test, and that results in an arguably generous conclusion, it does not mean that it was erroneous

in law. As the Court of Appeal said at [18] of Herrera v SSHD [2018] EWCA Civ 412, it is necessary to guard against the temptation to characterise as errors of law what are in truth no more than disagreements about the weight to be given to different factors, particularly if the judge who decided the appeal had the advantage of hearing oral evidence. The assessment of such a claim is always a highly fact sensitive task. The FtT judge was required to consider the evidence as a whole and he plainly did so, giving adequate reasons for his decision. The findings and conclusions reached by the judge are neither irrational nor unreasonable. The decision was one that was open to the judge on the evidence before him and the findings made.

11. It follows that I dismiss the appeal.

Decision

12. The appeal is dismissed. The decision of First-tier Tribunal Judge Louveaux promulgated on 24th March 2020 shall stand.

13. Judge Louveaux declined to make a fee award because the appeal had been allowed on the basis of information that was in large part not before the respondent at the date of the decision. The decision not to make a fee award stands.

Signed **V. Mandalia**

Date; 29th September 2020

Upper Tribunal Judge Mandalia