



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003016
First-tier Tribunal No:
EA/06309/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 23 April 2023

Before

UPPER TRIBUNAL JUDGE HANSON

Between

MUMTAZ HUSSAIN
(NO ANONYMITY ORDER MADE)

Appellant

and

AN ENTRY CLEARANCE OFFICER (UKLPA/142189)

Respondent

Representation:

For the Appellant: No appearance (see below).

For the Respondent: Mr McVeety, a Senior Home Office Presenting Officer.

Heard at Phoenix House (Bradford) on 3 March 2023

DECISION AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Hillis ('the Judge'), promulgated on 28 January 2022, in which the Judge dismissed the appellant's appeal against the refusal of an Entry Clearance Officer (ECO) of his application for a Family Permit as an extended family member of an EEA national exercising treaty rights in the United Kingdom. The ECO was neither satisfied that the appellant's sponsor was a qualified person or that the appellant was dependent upon his Sponsor to meet his essential financial needs in Pakistan at the date of decision.
2. The appellant is a citizen of Pakistan born on 6 February 1973. The Sponsor is his brother who is a national of Spain.
3. The Judge was asked to determine the merits of the appeal on the papers. The Judge's findings are set out from [9] of the decision under challenge.
4. There was no dispute in relation to the biological relationship between the appellant and the Sponsor.
5. The Judge finds on the evidence that the Sponsor is a qualified person at the date of the application [12].

6. The Judge was not satisfied with a number of unidentified receipts in the Sponsor's bank statements which are said to be compatible with his income as declared in his P60 from his employer, and therefore found they were not received from employment in the form of wages [13].
7. The Judge finds that a number of transfers that were made to Pakistan did not disclose the source of the funds that made up those transfers. The Judge therefore finds at [15] that it had not been established that the remittances made by the Sponsor to the Appellant genuinely came from the Sponsor's income in the UK, or that the evidence established that the Sponsor had sufficient funds left after meeting his own essential needs in the UK to make a meaningful contribution to the appellant's financial needs in Pakistan.
8. The Judge also finds the appellant and Sponsor had failed to provide sufficient details of their own financial commitments in Pakistan, the UK, and Spain and that the appellant had failed to show, on the balance of probabilities, that he was dependent on his brother's accommodation in Pakistan [16].
9. The grounds seeking permission to appeal assert the Judge's findings that [13 - 15] "seem unusual and poorly related to the test it was required to apply", that the reasoning is inadequate, and that no conclusions were reached by the Judge in relation to the question of whether the monies that were sent were used to meet essential living costs. The grounds assert inadequacy of reasoning.
10. Permission to appeal was granted by another judge of the First-tier Tribunal on 30 May 2022 on the basis it is said to be arguable the Judge failed to give adequate reasons at [16] when finding the appellant was not dependent on the sponsor, and that it was arguable the Judge's findings in respect of the appellant's dependency on the sponsor overall are lacking.
11. The Secretary of State has filed a Rule 24 response dated 18 July 2022 in which it is argued no legal error arises as the Judge clearly consider the content of the sponsor's bank statements, made an assessment of the money transfer receipts, and assesses all of the evidence in the round, before coming to the conclusions set out in the decision. It is submitted that the basis of the claim was that the Sponsor's work provided the necessary support on the basis of his income from employment. The Rule 24 response asserts the Judge provided adequate reasons for why he was not satisfied the appellant was dependent on his brother for his accommodation in Pakistan, and that the Judge directed himself appropriately.

Discussion

12. The Judge was asked to consider the merits of the appeal of the papers. He did so. Following the grant of permission to appeal notice of the date, time, and place of the hearing was sent to the parties. There was no attendance on behalf of the appellant before the Upper Tribunal as a result of an email being received in the following terms:

From: zarqa riaz <zarqariaz21@gmail.com>
Sent: 02 March 2023 16:31
To: Field House Correspondence
<FieldHouseCorrespondence@Justice.gov.uk>
Subject: Appeal Number EA/06309/2021

Dear Sir. Appeal Number EA/06309/2021, Appellant Mr Mumtaz Hussain.

My appeal is being heard on 03 March 2023. I am currently residing in Pakistan and waiting for an outcome of my appeal matter. My sponsor will not be able to attend the hearing tomorrow. I therefore request, if you kindly

decide the appeal without our presence. I look forward to receive the tribunal's determination.

Thanks.

13. I am satisfied there has been proper service of the notice of hearing in accordance with the Upper Tribunal Procedure Rules. I am satisfied this has come to the notice of the appellant and/or the Sponsor, and that in light of the specific request for the matter to be determined in the absence of the appellant's representative it is just and fair to proceed as requested.
14. When considering whether a judge has made a material legal error the starting point has to be consideration of whether the Judge has identified the core issues in the appeal and made a clear coherent decision upon the same.
15. In the refusal dated 29th March 2021 the ECO specifically raised the question of whether sufficient evidence had been provided by the appellant to prove that without the financial support of the Sponsor his essential needs could not be met. The refusal refers to the definition of financial dependence in the respondent's guidance, clearly setting out that a person would need the financial support of EEA national in order to meet their essential needs. It was found at that stage, however, that in the information provided with the application the appellant had not demonstrated that the money received was used in any way to support him in meeting his essential needs, especially in light of the limited details regarding income and outgoings that had been provided.
16. The Judge spent some time examining the sponsor's financial history possibly because this is a matter that had been raised by the ECO in the decision under challenge.
17. As identified in the grounds seeking permission to appeal, the core question for the Judge was whether remittances were being made by the Sponsor to the appellant and whether those remittances were required to meet the appellant's essential needs in Pakistan. It is necessary to read the determination as a whole but when one does there is clearly a finding by the Judge that the evidence lacked the required degree of clarity to establish that any monies that were being sent were necessary to meet the appellant's essential needs. The first sentence at [16] that the appellant and his sponsor had failed to provide sufficient details of their financial commitments in Pakistan, the UK and Spain respectively is a finding clearly within the range of those available to the Judge on the evidence provided, which I have also been able to consider in detail as part of this appeal.
18. It is appreciated that some of the wording used by the Judge at [16] is probably responsible for the grant of permission to appeal, specifically where the Judge states that the evidence did not support the claim the Sponsor made a meaningful contribution to enable the Appellant to meet his essential needs in Pakistan. A reading of the term 'meaningful contribution' implies the Judge was not satisfied that the sums sent represented a sincere and committed contribution to meeting the appellant's essential needs. The question of the sincerity of contributions is addressed by the Judge when addressing the concerns regarding the payments into the Sponsor's bank account and lack of clarity in relation to the remitted funds. The use of standard phraseology in relation to the core question may have assisted the appellant and Sponsor in their understanding of the decision.
19. The bottom line, having reviewed the evidence, is that the Judge's conclusions in relation to the funds said to form the remittances and whether those remittances were required to meet the appellant's essential needs based upon deficiencies and lack of clarity in the evidence, and lack of evidence of

dependency in relation to accommodation, whatever may be claimed by the appellant and Sponsor, have not been shown to be findings outside the range of those reasonably available to the Judge on the evidence. Accordingly, no legal error material to the decision to dismiss the appeal is made out.

Notice of Decision

20.No legal error in material to the decision of the First-tier Tribunal to dismiss the appeal is made out. The determination shall stand.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

3 March 2023