



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-004723

First-tier Tribunal No:
EA/15541/2021

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 24 July 2023**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

**Almahmuda Rima
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr P Richardson, Counsel

For the Respondent: Mr P Lawson, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 13 July 2023

DECISION AND REASONS

1. The appellant is a national of Bangladesh. On 21 April 2021 she made an application for an EU Settlement Scheme (EUSS) Family Permit on the basis that she is a 'family member of a relevant EEA citizen'. The appellant is the daughter of Mr Rashidul Islam, ("the sponsor") who is an EEA citizen. The application was refused by the respondent on 17 October 2021.
2. The respondent concluded the appellant had not provided adequate evidence to show she is dependent on a relevant EEA citizen. The

appellant's appeal against that decision was dismissed by First-tier Tribunal Judge Clarke for reasons set out in a decision promulgated on 6 June 2022.

3. The appellant claims the decision of Judge Clarke contains material errors of law. The appellant advances four grounds of appeal, although it is right to say that there is a good degree of overlap. First, at paragraph [12] of the decision, the judge failed to properly identify the issue in the appeal and to direct herself properly on the law in connection with that issue and apply the correct test. Second, the judge failed to give adequate reasons why she rejected the appellant's own evidence of dependency as set out in her witness statement. Third, the judge failed to properly appreciate the duration of the appellant's father's financial support, and therefore, fourth, the judge failed to engage with its magnitude.
4. Permission to appeal was granted by Upper Tribunal Judge Rintoul on 16 November 2022. He said:

"I am just persuaded that the judge erred in her approach to what needed to be demonstrated on the balance of probabilities, and that her approach to the evidence was flawed as is averred. Whether, however, that was material in the light of the evidence will be a matter for the panel hearing the appeal."

Decision

5. Before addressing each of the grounds of appeal, it is useful to begin by setting out the relevant legal test that arises in such an appeal.
6. In Lim - ECO (Manila) [2015] EWCA Civ 1383 Lord Justice Elias, with whom McCombe LJ, and Ryder LJ agreed, said, at [25], it is not enough simply to show that financial support is in fact provided by the EU citizen to a family member. The family member must need the support from his or her relatives in order to meet his or her basic needs. The correct test was set out at paragraph [32] of the decision. The critical question is whether the individual is in fact in a position to support themselves. That is a simple matter of fact. If they can support themselves, there is no dependency, even if he/she is given financial material support by the EU citizen. Those additional resources are not necessary to enable them to meet their basic needs.
7. More recently, in Latayan v SSHD [2020] EWCA Civ 191, Jackson LJ said:

"23. Dependency entails a situation of real dependence in which the family member, having regard to their financial and social conditions, is not in a position to support themselves and needs the material support of the Community national or his or her spouse or registered partner in order to meet their essential needs: *Jia v Migrationsverket Case C-1/05*; [2007] QB 545 at [37 and 42-43] and *Reyes v Migrationsverket Case C-423/12*; [2014] QB 1140 at [20-24]. As the Upper Tribunal noted in the unrelated case of *Reyes v SSHD (EEA Regs: dependency)* [2013] UKUT 00314 (IAC) , dependency is a question of fact. The Tribunal continued (in reliance on *Jia* and on the decision of this court in *SM (India) v Entry Clearance Officer (Mumbai)* [2009] EWCA (Civ) 1426):

"19. ... questions of dependency must not be reduced to a bare calculation of financial dependency but should be construed broadly to involve a holistic examination of a number of factors, including financial, physical and social conditions, so as to establish whether there is dependence that is genuine. The essential focus has to be on the nature of the relationship concerned and on whether it is one characterised by a situation of dependence based on an examination of all the factual circumstances, bearing in mind the underlying objective of maintaining the unity of the family."

Further, at [22]

"... Whilst it is for an appellant to discharge the burden of proof resting on him to show dependency, and this will normally require production of relevant documentary evidence, oral evidence can suffice if not found wanting. ..."

8. Whether the appellant was dependent on the sponsor was therefore a factual question for the judge to assess on the evidence before the Tribunal. The burden rested upon the appellant.
9. The findings and conclusions of Judge Clarke are set out at paragraphs [5] to [13] of her decision. At paragraphs [8] and [11] of her decision, Judge Clarke refers to a decision made by First-tier Tribunal Judge Groom in a separate appeal (EA/01383/2021) against a similar refusal of an application made by the appellant's husband at the same time. At paragraph [10] Judge Clarke refers to the evidence of the appellant as set out in her witness statement. At paragraph [12] Judge Clarke concludes:

"I have considered with care the length of the remittances, some are deposited directly into the bank and some are cash collection, the Appellant's statement of what is sent and what is needed. However, the only issue for her to prove on a balance of probabilities is what her essential needs are. The Appellant has not itemised the amounts for rent, clothing, travel etc. Nor has she provided supporting evidence of the rent from her landlord, or medicines from the pharmacy or doctor, or travel or clothing which I conclude some could have been obtained. I am left with an assertion by the Appellant that this is what she and her family needs and her duty is to substantiate her claim, which I find she has not despite her bundle of over 200 pages."

The grounds of appeal

10. Although set out as four grounds of appeal, there is a considerable degree of overlap because the grounds focus upon the judge's consideration of the evidence and the test she applied. Since the focus of grounds three and four is upon the consideration of the money transfers, which then feed into the Judge's decision, I begin by addressing those two grounds first.
11. The appellant claims that contrary to what is said at paragraph [9] of the decision, the appellant had provided evidence of money transfer that span from January 2016 until March 2022 and because of the misdirection as to the duration of remittances, Judge Clarke failed to engage with its magnitude.

12. I accept that at paragraph [9] of her decision Judge Clarke refers to the transfer receipts spanning the period January 2016 to March 2021, whereas they spanned to March 2022, but that is in my judgment immaterial to the outcome of the appeal. The judge was clearly aware that transfers were made after March 2021. At paragraph [10] of her decision she refers to the evidence of the appellant as set out in her witness statement, noting in particular the appellant's claim that if she requires more then the sponsor sends more "such as on 11 March 2022". The fact that the sponsor had regularly sent money to the appellant, over a lengthy period, be that five years or six years, was not in issue.
13. It is clear from the authorities that it is not enough simply to show that financial support is in fact provided by the EU citizen to the family member. Families often send money to each other, even regularly, across international borders and that can be for a whole range of reasons. Here, there is a requirement of dependency to meet essential living needs, not just evidence of regular money transfers.
14. I turn then to grounds one and two which can again be taken together since they both concern the test applied by the judge and the reasons she gave. The appellant submits that at paragraph [12] of her decision, Judge Clarke failed to properly identify the issue in the appeal and to direct herself properly on the law. The issue was not as Judge Clarke set out "*..for [the appellant] to prove on a balance of probabilities is what her essential needs are ..*". The appellant submits Judge Clarke did not address her mind to the correct legal test, which was whether the appellant was dependent upon her father to meet her essential needs. The appellant claims Judge Clarke failed to give adequate reasons why she rejected the appellant's own evidence of dependency.
15. Mr Richardson drew my attention to the appellant's witness statement in which she claims her father has been supporting her and her family regularly, even before he moved from Italy to the UK. She claims her father regularly sent financial assistance to meet her necessary expenditure. She refers to the money transfer receipts evidencing money sent to her since 2016. Mr Richardson submits an appellant is not required to prove on balance, what her essential needs are, and the Judge imposed a requirement that does not exist. I asked Mr Richardson whether reading the decision as a whole, the phrase adopted by Judge Clarke in paragraph [12] is just unfortunate wording rather than the application of an incorrect test. Mr Richardson submits the parties do not have a window into the mind of the Judge, and the Judge here focused wholly on the failure to provide receipts for day-to day expenses. That demonstrates an error of approach and the application of the wrong test.
16. I reject the first and second grounds of appeal. In her decision refusing the appellant's application, the respondent said:

"You have provided money transfers from your sponsor to you. It is noted that you have not provided any evidence of your own domestic circumstance in Bangladesh. Without such evidence I am unable to sufficiently determine that you cannot meet essential living needs without

financial or other material support from your relevant EEA Citizen sponsor or their spouse or civil partner.”

17. That is summarised by Judge Clarke at paragraph [3] of her decision. At paragraph [8] of her decision Judge Clarke noted Judge Groom had previously refused an appeal in respect of a similar application made by the appellant’s partner. Judge Groom had noted that there was documentary evidence of money transfers, without any evidence of the husband’s income and expenditure “and details of his essential living needs” Judge Groom had been unable to conclude on balance that the husband was financially dependent upon the appellant’s father for his essential living needs to be met. At paragraph [11] of the decision, Judge Clarke set out an extract from the decision of Judge Groom, in which there is a reference to the decision of the Court of Appeal in Lim.
18. At paragraph [12], Judge Clarke confirms she has considered the remittances. In my judgement, although the use of the phrase “..However, the only issue for [the appellant] to prove on a balance of probabilities is what her essential living needs are..” is unfortunate, it demonstrates ‘clumsy’ wording rather than the application of the wrong legal test. In any event, the adoption of that phrase was in my judgment immaterial to the outcome of the appeal.
19. Here the appellant lives with her husband in Bangladesh. His application for an EEA family permit has been refused and an appeal against that decision has been dismissed. The dependency relied upon by the appellant is for all intents and purposes financial dependency to meet her essential living needs. It was for the appellant to establish that she is dependent upon her father in the sense that she needs the support in order to meet her basic needs. In her witness statement the appellant simply said, at paragraph [9]; “The sponsor has regularly sent financial assistance to meet my necessary expenditures.”. The appellant does not identify the expenditure. At paragraph [12] she the appellant claims; “I strongly submit that without the financial support of my father, my essential living needs could not be met as I do not have any other source of income or support.”. Judge Clarke refers to the evidence of the appellant regarding the sums sent to her at paragraph [10] of her decision.
20. In his ‘sponsorship declaration’ the appellant’s father confirms he regularly sends money to his daughter and son-in-law, by which they pay their household expenses. He does not say what household expenses. He refers to the period over which he has provided support and states at [7]; “..For example I have paid the expenses for my daughter and son-in-law’s marriage ceremony, including the hall booking, shopping, catering etc...”. That is obviously not evidence of financial dependence to meet essential living needs.
21. The question what her essential needs are, and how they are met is plainly relevant. Here, Judge Clarke explained at paragraph [12];

“...The Appellant has not itemised the amounts for rent, clothing, travel etc. Nor has she provided supporting evidence of the rent from her landlord, or medicines from the pharmacy or doctor, or travel or clothing which I

conclude some could have been obtained. I am left with an assertion by the Appellant that this is what she and her family needs and her duty is to substantiate her claim, which I find she has not despite her bundle of over 200 pages.”

22. The obligation on a Tribunal is to give reasons in sufficient detail to show the principles on which the Tribunal has acted, and the reasons need not be elaborate, and do not need to address every argument or every factor which weighed in the decision. I accept the decision here is very brief, but that reflects the evidence that was before the Tribunal and the issues that arise.
23. It is clear from what is said that Judge Clarke had in mind the evidence set out in the witness statement of the appellant. She described it as an assertion by the appellant. What is said by the appellant in her witness statement is capable of being corroborated but beyond evidence of money transfers, even over a lengthy period, there a distinct and noticeable absence of any evidence to support the claims made by the appellant that she requires the financial support to meet her essential needs. There was no witness statement from the appellant’s husband. It was the paucity of the evidence regarding the essential living needs of the appellant and how they are met that was of concern to the Judge. A judge is not required to give reasons for their reasons. I accept, as Mr Richardson submits that a full breakdown of the expenses incurred is not required, but plainly a breakdown that is supported by cogent evidence to support the claim that essential living needs are met by the money transfers are capable of going a long way to discharging the burden upon an applicant that they need the material support of the Community national in order to meet their essential needs. That evidence, the Judge found, was lacking. Reading the decision as a whole it is clear the judge did have in mind the correct test and the evidence of the appellant. The unfortunate way it was expressed is in my judgment, in any event, immaterial to the outcome of the appeal.
24. It follows that in my judgment there is no material error of law in the decision of First-tier Tribunal Judge Clarke capable of affecting the outcome and I dismiss the appeal.

Notice of Decision

25. The appeal is dismissed.

V. Mandalia
Upper Tribunal Judge Mandalia

Judge of the Upper Tribunal
Immigration and Asylum Chamber

14 July 2023