IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005122

First-tier Tribunal No: EA/08087/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 3rd of November 2023

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

RIMSHA SAGHIR
(no anonymity order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms A Kaoser, AK Solicitors Ltd
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 24 October 2023

DECISION AND REASONS

1. The appellant is a citizen of Pakistan born on 6 May 1997. She appeals, with permission, against the decision of the First-tier Tribunal dismissing her appeal against the respondent's decision to refuse her application for an EEA Family Permit under the European Economic Area (EEA) Regulations 2016, as the extended family member of an EEA national.

2. The appellant applied on 8 January 2021 for an EEA Family Permit as the extended family member of the sponsor, her cousin Tanveer Zeeshana, a Portuguese citizen

living in the UK since March 2012. Her application was refused on 27 January 2021 as the respondent did not accept that she met the requirements of Regulation 12 of the EEA Regulations. The respondent considered that the evidence submitted by the appellant did not sufficiently demonstrate that she was financially dependent on her sponsor, that she required the financial support of the sponsor for her essential needs or that the sponsor was able to financially support her.

3. The appellant appealed against that decision and her appeal was heard in the First-tier Tribunal by Judge Jepson on 5 July 2022. At the commencement of the hearing, the Home Office Presenting Officer referred the judge to additional evidence served the previous day which consisted of a schedule of people whose entry into the UK had been sponsored by the sponsor, together with a previous Tribunal decision of Judge Cruthers involving the same sponsor. Neither the judge nor the appellant's representative had had sight of that evidence and the appellant's representative objected to it being considered as part of the appeal. The judge decided to consider the evidence since it was information about which the sponsor was already aware, and he gave the appellant's representative some time to take instructions, following which the appeal proceeded, with the appellant's representative not requiring an adjournment.

4. The judge noted that the appellant's case was that she had moved in with the sponsor's parents in 2014 when her own parents disapproved of her relationship with the person who later became her husband and that she had moved out in March 2019 when she got married. After her marriage ended in 2020/2021, she moved back into the sponsor's family home. The sponsor's father subsequently died, in 2018, and the other family members then moved out, so that the appellant was currently living there alone. The appellant claimed that dependency had therefore resumed, following the previous period of dependency, when she returned to that address and continued to date, as her own family was unwilling to assist her. The appellant claimed to have no source of income other than that sent by the sponsor and that she required about 17,000 PKR a month. It was stated that the sponsor lived with her husband and children and was employed until January 2021 when she had to stop work to look after her mother who had moved to the UK, but who then returned to Pakistan in March 2021 and passed away in June 2021. The sponsor travelled to Pakistan from July to September 2021 and then returned to the UK and resumed work. The sponsor's evidence before the judge was that it was now only the appellant who was dependent upon her and that she sent the appellant about £75 a month.

5. The judge noted that the family relationship between the appellant and sponsor was not disputed and that the sole issue was dependency. The judge accepted that the evidence showed that the appellant lived alone and that there was sufficient evidence to show her needs. The judge found that the evidence of the sponsor's circumstances showed that the family was able to keep their heads above water but only by a small margin. He accepted that the sponsor had sufficient to send the appellant £75 a month and that that amount was sent on a fairly consistent and regular basis. However the judge noted that, as with the appellant's application, some of the other applicants, including the applicant for whom a Tribunal decision had been produced, were relying upon the same sponsor and were claiming that the sponsor was not supporting anyone else, whereas the respondent's evidence showed that at the time the appellant sought entry to the UK the sponsor was purporting to support a large number of people. The judge did not accept that he was being told the truth about the sponsor's level of sponsorship of other people and considered that the sponsor was purporting to support relatives to an extent that was far beyond her means. He considered that there had been a deliberate attempt by the sponsor to conceal

material information and he therefore did not accept that the appellant was dependent upon the sponsor. The judge accordingly found that the requirements of the EEA Regulations were not met and he dismissed the appellant's appeal.

6. The appellant sought permission to appeal to the Upper Tribunal on the grounds that it was unfair for the judge to have admitted and relied upon documents which had only been produced at the hearing, that the judge ought to have focussed upon the relevant issue of dependency rather than those documents, and that the judge had failed to give the sponsor a proper opportunity to explain the circumstances of those other applications.

7. Permission was granted in the First-tier Tribunal. The respondent produced a rule 24 response opposing the appeal. The matter then came before me for a hearing and both parties made submissions.

8. Ms Kaoser produced a skeleton argument for the hearing which she accepted was relevant to a re-making of the decision in the appeal rather than addressing the error of law issue and she therefore made oral submissions instead. Her submissions were lengthy and repetitive and I have sought to distil the relevant challenges arising from them.

9. Essentially, Ms Kaoser submitted the judge had acted unfairly and prejudicially in making the adverse credibility findings that he had against the sponsor. She submitted that it was unfair and prejudicial of the judge to make adverse credibility findings on the basis of documents produced by the respondent the day before the hearing when credibility had otherwise not been an issue in the respondent's refusal decision. She submitted that it was unfair and prejudicial of the judge to have given significant weight to, and focussed upon, the determination of Judge Cruthers in the appeal of the sponsor's uncle, Muhammad Saghir, when his circumstances were different to that of the appellant. She asserted further that the judge had erred by giving the significant weight that he did to the schedule of applications sponsored by Tanveer Zeeshana when the schedule was incomplete and circumstances had changed since those applicants had made their applications. As to why the appellant had answered "no" when asked if her sponsor had ever sponsored anyone else to join her in the UK, Ms Kaoser submitted that that question in the application form was dangerous and misleading, given that the online form advised an applicant to state "no" if they were unsure or did not know. Ms Kaoser submitted that it was "outrageous" to penalise people for saying "no" when they may not be privy to all the sponsor's information and to the circumstances of other applicants. She submitted that it was unfair also because it was the appellant's declaration and not the declaration of the sponsor and it was therefore unfair to penalise the sponsor in that respect. Ms Kaoser submitted that the appellant had produced a wealth of evidence which was consistent and which corroborated the account that she was dependent upon the sponsor for her essential needs. The sponsor had given truthful evidence and should not have been found lacking in credibility. The respondent's policy guidance failed to state what was required of the sponsor and an applicant was penalised if they produced a wealth of evidence. The judge was therefore prejudiced and biased.

10. Mr McVeety pointed out that the submissions made by Ms Kaoser went well beyond the appellant's challenge in her grounds, which was simply that the judge should not have accepted the evidence from the respondent produced at a late stage. There had been no challenge to the substance of the judge's decision. He submitted that, in any event, it was clear what was required of the appellant and sponsor, which was simply that they tell the truth. The appellant had lied by saying that the sponsor had not

sponsored anyone else. The question in the application form was not misleading. Mr McVeety submitted that the judge was perfectly entitled to consider evidence which had come to light since the refusal decision showing that the sponsor had sponsored several other applicants. The weight given to that evidence was a matter for the judge. There was no bias or prejudice by the judge. The judge had given the appellant's representative the option of applying for an adjournment but she declined the offer. The appellant could not now complain about having had no chance to respond to the documents produced by the respondent. Mr McVeety submitted that, contrary to Ms Kaoser's submissions, the sponsor had not given consistent evidence, as pointed out by the judge at [42] of his decision. The judge was entitled to conclude as he did.

11. Ms Kaoser reiterated the points previously made in response.

Discussion

12. As Mr McVeety submitted, the submissions made by Ms Kaoser went beyond the appellant's grounds of challenge and the grant of permission. Indeed, a significant part of the submissions involved Ms Kaoser's account of her own experiences completing application forms for applicants and her own evidence about a lack of clarity in the application form, a matter upon which the appellant had never relied before the judge.

13. It was asserted by Ms Kaoser that the Home Office guidance did not provide clear instructions on what was required of an applicant and sponsor in order to demonstrate dependency and that the question on the application form as to whether the sponsor had sponsored any other person was unclear and "misleading and dangerous". However I agree with Mr McVeety that the relevant question in the application form at page 7 of 10, "Has Zeeshana Tanweer Zeeshana ever sponsored anyone else to join or accompany them to the UK?", was not a complex one but was one which admitted of only one answer, either "yes" or "no", and the appellant had answered "no". In the light of the list of applications sponsored by Zeeshana Tanveer around the same time, produced by the respondent, it seems to me that the judge was perfectly entitled to conclude that the appellant had therefore not been truthful. Ms Kaoser submitted that it was "outrageous" to penalise the appellant for saying "no" when she would otherwise, by responding "yes", be required to provide information about other applicants to which she would not be privy. I reject that submission. Firstly, it was not one made before the judge but was Ms Kaoser's own evidence. Secondly, the explanation that was provided at the hearing before the judge, namely that the other applicants in the list had ceased being dependent upon the sponsor, was one which was considered by the judge but rejected for reasons given at [43] and [45], as was the suggestion that the appellant may not have known of the other applicants. At [43] the judge found that it would be difficult to imagine the appellant being unaware of the other applicants being supported by the sponsor, given that everyone on the schedule was a family member. At [45] he found it to be quite a coincidence for all of the people in the list to have gone from being dependent on the sponsor to being self-sufficient, as was being claimed by the sponsor, and noted in addition that the sponsor changed her evidence when shown the schedule. It seems to me that the judge's reasoning in that regard was clear and cogent. Ms Kaoser's objection was simply a disagreement.

14. As for the challenge to the judge's reliance upon the schedule of applications in the first place, it seems to me that that likewise has no merit. I note that that was the only real challenge in the grounds of appeal and was the basis for the grant of permission. I agree with Mr McVeety that the judge was perfectly entitled to admit evidence from

the respondent which had come to light when the appeal was being prepared and which was relevant to the issues arising in the appeal, and was perfectly entitled to accord that evidence the weight that he did. Had he done so without giving the appellant's representative an opportunity to consider the evidence and take instructions, that would have been another matter. However that was not the case and there is no merit in the assertion in the grounds that the judge considered the evidence without giving the representative adequate time to take instructions and respond. It is plain from the judge's record at [4] to [8] of his decision that he offered the appellant's representative ample opportunity to consider the evidence and take instructions and specifically indicated that he would not be averse to an adjournment if requested, but the appellant's representative confirmed that an adjournment was not sought. The sponsor was given an opportunity to seek to clarify the issues arising from the evidence and it is simply not now open to the appellant, having received a negative decision, to complain about the judge considering the evidence. The same can be said about the decision of Judge Cruthers. Ms Koaser objected to the judge having given weight to that decision when it involved a different appellant, but the judge was fully aware of that and explained at [41] the extent to which he was according weight to the document. The weight that he gave to that document, and to the schedule of applications, was a matter for him.

15.It was Ms Koaser's submission that the appellant and sponsor had provided a wealth of evidence which corroborated their accounts, without inconsistencies, and which demonstrated the appellant's dependence upon the sponsor. She submitted that the sponsor had answered the questions put her truthfully and that there had been no credibility issues raised by the respondent prior to the hearing. On that basis the judge ought to have accepted that evidence rather than making assumptions about the sponsor being deceitful and being fixated on documents produced only a day before the hearing. However, as the judge observed at [42] of his decision, the sponsor did not give consistent evidence. On the contrary, the judge noted that she had changed her account after being shown the schedule of applications. The judge was perfectly entitled to take that into account and to draw the adverse conclusions that he did when considering the evidence as a whole. He was entitled to conclude that there had been a deliberate attempt to conceal information and to find that that undermined the overall claim in regard to the appellant's dependency upon the sponsor. There was no unfairness, prejudice or bias in such a conclusion. The assertion that there was, is a serious allegation and is one which has not been substantiated at all by the appellant.

16.For all these reasons I find there to be no merit in the grounds. The judge was fully and properly entitled to make the adverse findings that he did and to conclude that the required dependency was not demonstrated. He was entitled to dismiss the appeal on the basis that he did. The grounds and the submissions made by Ms Koaser do not identify any errors of law in his decision. Accordingly I uphold the judge's decision.

Notice of Decision

17.The making of the decision of the First-tier Tribunal did not involve a material error on a point of law requiring it to be set aside. The decision to dismiss the appeal stands.

Signed: S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

25 October 2023