



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000859

First-tier Tribunal No: EA/06863/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 25 September 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

ZUBAIDA BEGUM
(No anonymity order made)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: none

For the Respondent: Mr Bates a Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 30 August 2023

DECISION AND REASONS

1. The Appellant was born on 1 January 1932. She is a citizen of Pakistan. She appealed against the decision of the Respondent dated 28 June 2022, refusing her application for an EEA Family Permit under the EU Settlement Scheme to join her Sponsor who was her daughter, Tayyabia Akbar Aftab Waraich, a German national.
2. The Appellant was unrepresented. She did not attend the hearing before me by the time the appeal was called on at 11.05am. I am satisfied she had been notified of the date time and venue for the hearing as she had been written to on 9 August 2023 at the address given on the notice seeking permission to appeal with the relevant hearing details. There was no application to adjourn. I was aware of her arguments as I had the grounds seeking permission to appeal. In those circumstances I decided it would be fair to proceed in her absence

3. The Respondent refused the application as there was no evidence to prove she was dependent on her Sponsor or to show she cannot meet her essential living needs without financial or other material support from her Sponsor and that she was being supported by her Sponsor.
4. She appeals against the decision of First-tier Tribunal Judge Kelly, promulgated on 9 February 2023, dismissing the appeal.

Permission to appeal

5. Permission was granted by Judge Lawrence on 15 March 2023 who stated:

“2. It is arguable that the Judge’s reasons for rejecting the claim of dependency are inadequate, in particular the Judge’s consideration of the claim that between 2019 and June 2022, the Appellant had been financially supported through rental payments relating to a property owned by her daughter and sponsor in Pakistan.”

The First-tier Tribunal decision

6. Judge Kelly recorded that:

“6. The appellant submitted a bundle of documents that included a witness statement by the sponsor and the appellant respectively (each dated the 30th January 2023), a letter from the sponsor’s employer (dated the 25th October 2021) and a selection of her wage slips from that employment, a selection of the sponsor’s bank statements issued by Barclays Bank, the appellant’s rental agreement for her home in Pakistan, a medical report from the appellant’s cardiologist in Pakistan, and monthly schedules of the appellant’s expenditure in Pakistan with supporting receipts.

7. The Sponsor gave oral testimony at the hearing in which she explained that her mother had been financially dependent upon her father’s income as an agriculturalist until he died in 2019. Between 2019 and June 2022, the sponsor had been financially supporting her mother by arranging for rental payments from a property she owns in Pakistan to be paid to directly to her mother. However, following the rental property becoming vacant in June 2022, she instead began to make regular monthly payments to her mother by money transfer from the UK, the documentary receipts for which are included within the appellant’s bundle of documents (above).”

7. Judge Kelly made the following findings:

“9. I am not however satisfied that the sponsor was financially dependent upon the appellant as at the 31st December 2020. The sponsor claimed that her father (upon whom the sponsor had been hitherto dependent) had died at the end of 2019, and that the proceeds from the sale of the agricultural land that he had previously farmed were exhausted in paying for his medical bills in the last few months of his life. No documentary evidence has been provided to support either of these claims, whether with the application or in time for the hearing. The appellant moreover failed to provide any documentary evidence at all when submitting her application to the respondent. Of equal significance is the fact that all the documentary evidence that is now relied upon to support the appellant’s claimed dependency – such as bank statements and money transfer receipts – was only generated after her application had been refused in June 2022. The sponsor claimed that the reason for this was that the arrangements for financially supporting her mother had

changed in the very same month that the respondent refused her mother's application (see paragraph 7, above). This seemingly remarkable coincidence emboldened Ms Tariq to submit that the documents before the Tribunal had only been created in order to give a false impression of dependency. I do not go that far. Nevertheless, and given the complete lack of documentary evidence in relation to this issue, I am not satisfied that the appellant has discharged the burden of proving that she was dependent upon the sponsor for her essential living needs as at the 31st December 2020."

The Appellant's grounds seeking permission to appeal

8. The grounds asserted that:

"...the financial dependence upon the Sponsor started by May 2020 however the Tribunal Judge for unknown reason disregarded both the oral evidence given by the sponsor and the supporting evidence presented by in the Appellant's bundle. The evidence clearly implicated the fact that the financial dependence started by May 2020 and not after December 2020 as stated by the Tribunal Judge."

Respondent's position.

9. There was no rule 24 notice. Mr Bates submitted orally that there was no material error of law. The opening lines of [9] of Judge Kelly's decision deals with the issues. Evidence was submitted after 30 December 2020 does not rectify existing evidential deficiencies. It was almost impossible for the Judge to find that the money was for her essential living needs. There was nothing irrational or perverse in the Judge's conclusions.

Discussion

10. There is no material error of law regarding the issue of dependency for these reasons. The Judge noted at [6] the rental agreement documentation and at [7] the oral evidence of rental payments. He noted at [9] the lack of evidence of her husband's death or land sale to pay medical expenses, the lack of evidence submitted with the application, and the fact that "all of the documentary evidence that is now relied upon to support the appellant's claimed dependency - such as bank statements and money transfer receipts - was only generated after her application had been refused in June 2022." The Judge did not also have to refer to rental income as he had already mentioned it. He did not therefore disregard it. These were all findings open to the Judge on the evidence. There was nothing perverse or irrational in the findings made by the Judge. The grounds amount to nothing more than a disagreement with the evidence based decision.

Notice of Decision

11. The Judge did not make a material error of law.

Laurence Saffer
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
30 August 2023

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email.