



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000865
First-tier Tribunal No: EA/06227/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 08 June 2023

Before:

UPPER TRIBUNAL JUDGE GILL

Between

Mrs. Sahanaz Akhter
(ANONYMITY ORDER NOT MADE)

Appellant

And

The Secretary of State for the Home
Department

Respondent

Representation:

For the Appellant: Mr A Malik, instructed by City Heights Solicitors.

For the Respondent: Ms S Lecointe, Senior Home Office Presenting Officer

Heard at Field House on 26 May 2023

Decision

1. The appellant, a national of Bangladesh born on 10 January 1970, appeals against a decision of Judge of the First-tier Tribunal Fox who, in a decision promulgated on 16 February 2023 following a hearing on 10 February 2023, dismissed her appeal against a decision of the respondent of 24 June 2022 to refuse her application of 31 January 2022 for an EU Settlement Scheme (EUSS) Family Permit under Appendix EU (Family Permit) of the Immigration Rules as the “*family member of a relevant EEA citizen*”, the relevant EEA citizen being her husband, Mr Rocha Sneden, a Portuguese national (hereafter the “sponsor”).
2. The sole issue before the judge was whether the appellant was dependent upon the sponsor for her essential needs.
3. Whilst it is clear that the decision-maker did not consider that the documentary evidence submitted by the appellant was sufficient to establish that she was dependent upon the sponsor for her essential needs, it is also clear that the decision-maker did not raise credibility as an issue; that is to say, the decision-maker did not contend that any of the documents submitted by the appellant were unreliable

as to their contents, nor did the decision-maker take issue with the credibility of any of the other evidence relied upon by the appellant in her application.

4. The respondent was not represented at the hearing before the judge. At the hearing, the judge did not raise any issues as to the reliability of the contents of the documentary evidence relied upon by the appellant in her appeal or the credibility of any of the other evidence relied upon.
5. At para 6, the judge stated, inter alia, that the hearing could proceed fairly and justly on the basis of submissions only. Para 7 of the judge's decision records that a late request was made for an interpreter. However, Mr Malik (who represented the appellant before the judge) and his instructing solicitor agreed that the interpreter was unnecessary in the circumstances.
6. In all of these circumstances, I am satisfied that the appellant and her representatives were under the clear impression that they did not need to address the judge on the reliability of the contents of any of the documentation that was relied upon in the appellant's appeal, nor did they need to address the judge on the credibility of any of the other evidence relied upon.
7. In giving his reasons for his decision at para 15 onwards, the judge took into account at paras 15 and 16 discrepancies which he described as minor. Paras 17-26 appear at first glance to read as if the judge may have been saying that the documentary evidence was insufficient to establish dependency. However, on closer examination, it became clear that that was not the case in relation to paras 18, 19, 20, 21, 22, 23 and 26.
8. For example, at para 20, the judge said that there was "*no reliable evidence*" to demonstrate that the deposit had been paid to the landlord in accordance with para 3 of the terms and conditions of the tenancy. Given that the tenancy agreement specifically stated that the deposit had been paid, it was clear that the judge was stating that this evidence was not reliable, not merely that the documentary evidence before him was insufficient.
9. In addition, at para 22 of his decision, the judge noted that the letter of support from Hira Pharmacy at AB/140 stated that the pharmacy does not issue receipts even upon request. It is clear from para 22 that the judge considered that the reliability of the contents of this letter of support was reduced by reason of the fact that the letter was provided "*with no apparent reference to the actual records of alleged transactions that may have taken place*".
10. In addition, para 23 of the judge's reasoning plainly shows that the judge considered that the reliability of the contents of the letter of support from Hira Pharmacy was further reduced by reason of the fact that the appellant's bank statements showed that almost all of the credits into her account were withdrawn within days of receipt.
11. In all of these circumstances, Ms Lecointe accepted that the judge had erred in law by taking into account credibility or the reliability of the contents of documentary evidence, an issue which had not been raised by the decision-maker and which were not put to the appellant in order to provide her with an opportunity to address the judge.
12. I agree. Indeed, it is clear from the fact that the judge said at para 6 of his decision that the hearing could proceed fairly on the basis of submissions only and from para

7 where the judge recorded that Mr Malik and his instructing solicitor agreed that an interpreter was unnecessary, that the appellant and her representatives were completely unaware that they had to address the question whether the documentary evidence submitted in the appeal was reliable as to its contents.

13. I am therefore satisfied that the judge erred in law by failing to give the appellant and her representatives notice that he was concerned about the reliability of the contents of the documentary evidence and thereby give them an opportunity to address him on that issue.
14. For the reasons given above, the appellant has been deprived of a fair hearing.
15. I therefore set aside the entire decision of the judge.
16. As this case falls within para 7.2(a) of the Practice Statements for the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal, the parties agreed before me that a remittal to the First-tier Tribunal is the right course of action. I agree.

Notice of Decision

The decision of the First-tier Tribunal involved the making of errors on points of law such that the decision is set aside in its entirety. This case is remitted to the First-tier Tribunal for a fresh hearing by a judge other than Judge of the First-tier Tribunal Fox.

Signed: Upper Tribunal Judge Gill

Date: 31 May 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