



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001403
First-tier Tribunal No:
EA/08749/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 25 June 2023

Before

UPPER TRIBUNAL JUDGE KAMARA
DEPUTY UPPER TRIBUNAL JUDGE WELSH

Between

Rozina Hoxha
(NO ANONYMITY ORDER MADE)

Appellant

and

The Entry Clearance Officer

Respondent

Representation:

For the Appellant: Mr J Gajjar, counsel instructed by Connaught Law Ltd
For the Respondent: Mr A Basra, Senior Home Office Presenting Officer

Heard at Field House on 19 June 2023

DECISION AND REASONS

Introduction

1. The appellant has been granted permission to appeal the decision of First-tier Tribunal Judge Coll promulgated on 17 March 2023. Permission to appeal was granted by First-tier Tribunal Judge Parkes on 25 April 2023.

Anonymity

2. No anonymity direction was made previously, and there is no reason for one now.

Factual Background

3. The appellant is a national of Albania, now aged fifty-one. Her son, Harrison, is married to a Romanian national who has leave in the United Kingdom under the EU Settlement Scheme. The appellant unsuccessfully applied for an EEA Family Permit on 21 October 2020 as well as 12 February 2021. On 25 August 2021, the appellant made an application for a Family Permit under the EU Settlement Scheme. That application was refused on 18 August 2022, which is the decision challenged in this appeal.
4. The decision of 18 August 2022 stated that the application for a Family Permit was refused because insufficient evidence had been provided that the appellant was dependent upon her EEA citizen sponsor. The Entry Clearance Officer (ECO) was not satisfied that the small number of undated money transfer receipts demonstrated that the appellant could not meet her essential living needs without the material support of the sponsor. The ECO commented that the respondent expected to see further, substantial evidence of dependency along with evidence of the appellant's circumstances in Albania.

The decision of the First-tier Tribunal

5. At the hearing before the First-tier Tribunal, the judge heard evidence from the sponsor and the appellant's son. She found that their evidence was inconsistent, that the documents did not support the witness evidence and that the appellant had not set out her essential living needs, expenditure or provided documentary evidence.

The grounds of appeal

6. There are four grounds of appeal. Firstly, the judge misdirected herself as to the level of dependency required, stating that the appellant had to show that she could not meet half of her essential living needs. Secondly, the judge misdirected herself as to the admissible evidence in that she wrongly concluded she was only entitled to look at material predating the date of application. Thirdly, the judge failed to give adequate reasons for rejecting the explanation regarding a discrepancy as to the cost of living in Albania. Lastly, an irrational conclusion or excessive weight was attached to the appellant not previously mentioning that she lived in a property owned by her family.

7. Permission to appeal was granted on the basis sought, with the judge granting permission making the following remarks.

In paragraph 6 the Judge indicated that only evidence up to the date of application was being considered and in paragraph 7 referred to the funds covering half the Appellant's essential needs. The grounds are arguable as it appears that the Judge wrongly limited consideration of the evidence, the other grounds may be argued.

8. The respondent filed a Rule 24 response dated 16 May 2023. In it, the appeal was opposed, with the following comments being made in relation to the second ground.

7. The Appellant claims that the failure by IJ Coll not to consider further evidence (money transfers) produced by the appellant is a misdirection on admissible evidence [6].

8. The respondent submits that the IJ correctly directed themselves to consider the evidence at the time of application.

9. Appendix EU at Annex 1 dependant parent (a) (cc) “where the date of application is after the specified date and where the applicant is a joining family member at the date of application.”

10. The argument under regulation 9(4) of the Immigration (Citizens’ Rights Appeals) (EU Exit) 2020, only applies if the evidence before the First Tier Tribunal Judge is capable of being relevant at the date of application. It is submitted the evidence produced after the date of decision, makes no difference to the original date of decision, therefore the IJ correctly identified at [6] and [7] that the only evidence that can be considered was the evidence at time of application, which was relevant to the substance of the decision, therefore there is no arguable material error of law.

The error of law hearing

9. We heard submissions from both representatives. Mr Gajjar relied heavily on his grounds of appeal, whereas Mr Basra relied on the respondent’s Rule 24 response. At the end of the hearing, we announced that the judge materially erred as set out in all four grounds and set her decision aside. Mr Gajjar invited us to remit the matter to the First-tier Tribunal rather than to retain the matter in the Upper Tribunal because the judge misdirected herself as to the law, deprived the appellant of a fair hearing in the First-tier Tribunal and de novo findings were required.

Decision on error of law

10. The judge misdirected herself by including in the list of issues before the First-tier Tribunal at [5] of the decision, the question, ‘Could the appellant not meet half of her essential needs...’ This was not a typographical error as can be seen from [7] where the judge states that it is ‘sufficient for the appellant to receive money from her sponsor which covers half of her essential needs.’ Also, at [7], the judge states that this and other points come from the ‘relevant’ guidance. That guidance is not identified. Nor did Mr Basra argue that the judge had correctly summarised the respondent’s guidance. We are therefore satisfied that the judge misapplied the correct test, that the appellant would be unable to meet her essential living needs without the material support of the sponsor.

11. The judge further erred in respect of her consideration of the evidence. The judge concluded at [6] that she was only entitled to consider the evidence ‘up to and including the date of the application.’ There is no explanation as to why the judge found this to be the case. Mr Basra attempted to argue that the judge was correct, but his submissions were difficult to follow. It appears to us clear that regulation 9(4) of the Immigration (Citizens’ Rights Appeals) (EU Exit) Regulations 2020 stipulates that ‘the relevant authority may also consider any matter which it thinks relevant to the substance of the decision appealed against, including a matter arising after the date of the decision.’ This error was evidently material as the judge excluded from her consideration much of the evidence of financial support as can be seen from her schedules at [15-18] of the decision. We note that the judge raised the question of whether evidence up to the date of decision should be considered at [15] which was also erroneous.

12. The errors set out in the first two grounds suffice to render the decision unsafe, however we will briefly mention the grounds three and four. We consider that the

judge was wrong to reject the sponsor's explanation for an apparent discrepancy at [14] without giving any reasons. Lastly, we find that the judge's comment at [24] regarding the appellant living in a home owned by her family indicates that an adverse inference was drawn from what appears to be an immaterial issue.

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

The decision of the First-tier Tribunal is set aside.

The appeal is remitted, de novo, to the First-tier Tribunal (Taylor House) to be reheard by any judge except First-tier Tribunal Judge Coll.

T Kamara

Judge of the Upper Tribunal
Immigration and Asylum Chamber

20 June 2023