



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001664
First-tier Tribunal No:
EA/50725/2022
IA/04683/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 13 August 2023

Before

UPPER TRIBUNAL JUDGE KAMARA
DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS

Between

MALIK MUHAMMAD ASEES
(NO ANONYMITY ORDER MADE)

Appellant

and

The Entry Clearance Officer

Respondent

Representation:

For the Appellant: Mr Z Iqbal, solicitor, Greystone Solicitors Ltd
For the Respondent: Mr E Terrell, Senior Home Office Presenting Officer

Heard at Field House on 18 July 2023

DECISION AND REASONS

Introduction

1. The appellant has been granted permission to appeal the decision of First-tier Tribunal Judge Cansick promulgated on 21 January 2023.
2. Permission to appeal was granted by Upper Tribunal Judge Jackson on 15 June 2023.

Anonymity

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

Factual Background

4. The appellant is a national of Pakistan now aged twenty-nine. On 24 December 2020 he applied for an EEA Family Permit on the basis that he was dependent upon Mr Muhammad Rashid Malik, who is a national of Portugal resident in the United Kingdom.
5. The appellant's application was refused by way of a decision notice dated 22 March 2021. In essence, the appellant's claimed dependency was rejected for the following reasons.

You state that you are financially dependent upon your sponsor and that every month you receive £150 and as evidence of this you have submitted irregular money transfer remittance receipts covering the period 07 May 2019 to 09 January 2021. However on closer examination I note that several of these transfer receipts show a different senders name as well a different beneficiary name to that your name. As the transfers are in other names without further evidence I am unable to accept these. You have provided no evidence that you have access to these funds during this period and therefore they hold little evidential value in support of your claim to be financially dependent on your sponsor. Furthermore this amount of evidence in isolation does not prove that you are or have been financially dependent upon your sponsor. I would expect to see substantial evidence of this over a prolonged period given that your sponsor has been residing in the United Kingdom since at least September 2009.

Additionally, I note you have provided three college receipts, however apart from these receipts you have provided no other evidence to demonstrate yours and your family's circumstances including your income, expenditure and evidence of your financial position which would prove that without the financial support of your sponsor your essential living needs could not be met.

The decision of the First-tier Tribunal

6. At the hearing before the First-tier Tribunal, the judge heard evidence from the sponsor and considered a significant quantity of documents provided on behalf of the appellant. The judge accepted that the remittance receipts were sent by the sponsor for the appellant's benefit and that the sponsor was in Pakistan for only some of the months for which no receipts were provided. The judge was concerned by the lack of explanation for the absence of receipts for the months when the sponsor was not in Pakistan, inconsistencies regarding the amounts sent by the sponsor and the appellant's expenses and the absence of evidence going to the appellant's financial circumstances. The judge concluded that the required dependency had not been demonstrated.

The grounds of appeal

7. The grounds of appeal argued that the Tribunal erred in its assessment in that there was firstly, a failure to adequately consider the money transfer receipts. Secondly, inadequate reasons were provided and/or there was a failure to give appropriate weight to the evidence and lastly, that the judge made a material mistake of fact as to the number of money transfer receipts.
8. Permission to appeal was granted on the basis sought, with the judge granting permission making the following remarks.

There is what appears to be a typographical error in paragraph 17 of the decision where money transfer receipts are said to be until January 2022, whereas it should be November 2022 but the correct period of months is referred to. In addition there is an arguable miscalculation that there are more months for which money transfer receipts are missing than are available and/or accounted for by the Sponsor being in Pakistan which arguably infects the findings in paragraph 21 of the decision and the weight to be attached to the evidence of the Appellant and the Sponsor that money is being sent for essential needs. It is therefore arguable that the findings as a whole on dependency could be infected by a miscalculation.

There are however adequate reasons otherwise given as to the weight to be attached to the various evidence and there are clear findings as to inconsistencies between the evidence of the Appellant and the Sponsor; as well as a lack of evidence as to the Appellant's financial circumstances. The Appellant will need to show that on balance, the arguable miscalculation in the number of months for which there is evidence of money transfers was material to the outcome of the appeal given the other findings.

9. The respondent filed no Rule 24 response.

The error of law hearing

10. Mr Terrell confirmed that there no Rule 24 response and that the appeal was opposed. Mr Iqbal relied upon his permission grounds, mentioning in passing that the appellant had applied for a Family Permit along with his sister, brother-in-law, nephew, and niece but had requested that his appeal be separated from theirs. Mr Iqbal conceded that the judge had made a typographical error at [17] in stating that the money transfer receipts were submitted only up until January 2022 as opposed to November 2022. He accepted that the judge had, in any event, correctly stated the number of months covered by the period between February 2019 and November 2022, which was calculated by the judge to be forty-six months. Otherwise, Mr Iqbal contended, without reference to any passage in the judge's decision, that the judge had failed to consider the appellant's witness statement and supporting documents. It suffices to say that Mr Terrell succinctly and firmly defended the decision in question. In response Mr Iqbal suggested that there was an explanation for the thirteen months when no remittances were sent, and the sponsor was not in Pakistan.
11. At the end of the hearing, we reserved our decision.

Decision on error of law

12. We find that the decision of the First-tier Tribunal contained no error of law for the following reasons. The strongest point made in the grounds related to the judge mistakenly stating that the money transfer receipts covered the period from February 2019 to January 2022. Given that Mr Iqbal accepted that the judge had merely made a typographical error and had not underestimated the number of months to be considered, we have no hesitation in finding that the judge's findings were not infected by a mistake of fact.
13. A further point made in the grounds is that at [21] the judge misdirected themselves by concluding that there was 'a greater number of months for which there are no receipts, and the sponsor was not in Pakistan,' whereas there were just thirteen out of the forty-six months without receipts. We do not accept that the judge made any such misdirection. It seems to us evident that at [21] the judge was merely stating that the months for which there were no transfers

exceeded the number of months the sponsor spent in Pakistan. The judge accepted that the sponsor could have given the appellant funds directly during his visits, but we find the judge was entitled to note the absence of any explanation as to why there were months when the sponsor was in the United Kingdom and no funds were sent.

14. Lastly, we reject the argument in the grounds that the judge's reasoning was inadequate and further note that there is no challenge to the judge's credibility findings set out at [22-26]. We consider that the judge made sustainable findings on all the evidence provided to arrive at the conclusion that dependency had not been established.

Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

The decision of the First-tier Tribunal is upheld.

T Kamara

Judge of the Upper Tribunal
Immigration and Asylum Chamber

4 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