



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001910
UI-2023-001911
UI-2023-001912
UI-2023-001913
First-tier Tribunal No: EA/53441/2021
EA/53442/2021
EA/53443/2012
EA/53444/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 7th of December 2023

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**RIZWAN HUSSEIN
TEHZEEBA KOUSAR
KASHAF ERIZWAN
CHODHARY DIAM HUSSAIN
(NO ANONYMITY ORDER MADE)**

Appellants

and

AN ENTRY CLEARANCE OFFICER (156284)

Respondent

Representation:

For the Appellant: Mr Ahmad, a direct access barrister.
For the Respondent: Mr Tan, a Senior Home Office Presenting Officer.

Heard at Manchester Civil Justice Centre on 23 November 2023

DECISION AND REASONS

1. The Appellants appeal with permission a decision of First-tier Tribunal Judge Mack ('the Judge'), promulgated following a hearing at Manchester on 16 February 2023, in which the Judge dismissed their appeals.
2. The Appellants are nationals of Pakistan who applied for EEA family permits on 5 November 2020 as the dependence of Mubashar Ali ('the Sponsor') who is the brother of the first appellant.
3. Having considered the evidence the Judge sets out her findings of fact from [43] of the decision under challenge.

4. The Judge notes no issue was taken by the Entry Clearance Officer (ECO) with the biological relationship between the Appellants and Sponsor.
5. The Judge noted the gap in the evidence in relation to remittances, finding at [62] not being satisfied that the Appellants had addressed what is described as “the huge gap in the remittances” and was satisfied this was because they are unable to do so, which the Judge finds undermines the claim that the Appellants are dependent upon the Sponsor for their essential needs.
6. In relation to the Sponsor’s employment, it was clear in the refusal that the ECO did not accept the documentary evidence in relation to this point. The Judge at [66] notes the employees name on the payslip did not match the employees name on the confirmation letter, and that despite the Sponsor claiming to have provided support for a number of years the payslip in the bundle is dated May 2022, after the application was made.
7. At [67] the Judge refers to evidence from the Sponsor that he had changed jobs over two years previously which gave rise the question why he had submitted a letter from the company he did not work for as part of his evidence to the First-tier Tribunal. The Employers letter is dated 9 January 2020.
8. At [68] the Judge found the evidence as to the employment lacked credibility and that the Sponsors claim in his statement he worked full time was contradicted by the oral evidence that this was not the case. The Sponsor submitted a letter from employer that he had a full-time job yet in his oral evidence when directed to the fact the payslip did not match the letter as to who the employer is, he said he no longer worked there.
9. At [69] the Judge notes the only confirmation letter of employment is dated January 2020 in relation to a company the Sponsor no longer works for.
10. The Judge appreciated the Appellants did not have to show a past history of dependency but considered the evidence made available to be relevant.
11. In the conclusion section of the determination the Judge writes:
 72. On the face of it this was an appeal where a substantial amount of evidence had been submitted, however, when looked at a little more closely the evidence of the actual financial position of the appellant’s and sponsor was meagre and I have detailed my concerns above. I spreadsheet detailing items and cost is an appellant generated document and carries little weight in the absence of additional documentary evidence.
 73. I am satisfied that the application process clearly identifies the type of evidence the respondent wish to see to evidence dependency and given the limited evidence submitted then I find this can only reasonably be a choice. If the appellant’s choose not to serve evidence then the likely reason is that they have no such evidence and / or what they do have would undermine the claim of dependency.
 74. Mr Ahmed submits that if the appellant’s are in free accommodation then that is the end of it and the appeal should be allowed. In trying to focus on the claim of free accommodation scant regard was paid to other equally important aspects this appeal.
 75. It would never be sufficient in demonstrating free accommodation to rely on fragile contradictory documents. in cross examination sponsor was undermined to the extent that I found his evidence could not be relied upon a visa accurate or truthful. The appellant’s have not demonstrated but they alone live in a property purchased by the sponsor. on the balance of probabilities the appellant's mother also resided at that address. If this were correct then this would mean that the appellants and the sponsor have not been truthful about this property. As a result it is quite possible other people live there, and equally possible that the appellants do not. I

note the vote documents, however normal evidence responses said that these contained in error so this affects the weight I place upon them.

76. I am satisfied that little information was provided in respect of the sponsors incomings and outgoings, and that this was deliberate. the sponsor deliberately submitted and employers letter for a job he does not have. This lends itself to the likely possibility that he doesn't currently have a job. a pay slip does not mean he has a job for anytime longer than the one pay slip covers.
77. In order to be granted a family permit the requirements of the 2016 EEA Regulations must have been met. On the evidence before me not only can I not be satisfied that the appellants are in fact dependent on this sponsor for their essential needs, I am not satisfied that the sponsor is a qualified person either now, when the application was submitted or the application decided.
78. The burden of proof is on the appellant's and I find that they have not discharged the burden of proof in establishing to the balance of probabilities that the sponsor was residing in the UK in accordance with the regulations, or that they were and are dependent on the sponsor for their essential needs.

12.The appellant sought permission to appeal on four grounds. These are, in summary:

- a. The Judge failed to deal with the appellant fairly with an open mind and objectively.
- b. Failed to review, analyse evidence objectively assess the evidence.
- c. Failed to direct herself as to the definition of dependency and failed to resolve the issues raised in the grounds of appeal regarding lack of extensive examination and failed to give sufficient reasons as to whether free of charge accommodation to constitute material dependency.

13.Permission to appeal was refused by another Judge of the First-tier Tribunal but granted on a renewed application by Upper Tribunal Judge Blundell on 23 June 2023, the operative part of the grant being in the following terms:

The appellant's grounds of appeal are not clearly expressed. Unfortunately, the same might properly be said of the decision under appeal, which was seemingly not proofread before it was issued. Various typographical errors which were presumably made by the judge's typist have not been corrected in the version of the decision which was sent to the parties. In certain parts of the decision, those difficulties go beyond the inappropriate insertion of apostrophes or the starting of a sentence (or paragraph) with a lower case letter, and cause the reader real difficulty in understanding what was meant by the judge.

Leaving those observations to one side, however, I am persuaded that the grounds are arguable. It is arguable, in particular, that it was unfair for the judge to permit the respondent to raise a wholly new issue on the day of the hearing. Other points in the grounds are evidently less persuasive, in particular the point made at [10], relating to an error of translation in the documents, which the judge could not have hoped to discern from what was before her. Notwithstanding that comment, I make no direction limiting the scope of argument before the Upper Tribunal.

14.The Secretary of State opposes the appeal and 24's response dated 20 July 2023, the operative part of which reads:

3. It will be respectfully submitted that any new issue raised was within limits as it clear went to the issue of dependency which was being argued at the hearing. The judge records that Counsel was given time to take instructions on that evidence and wished to continue with the hearing.
4. It is submitted that GOA reveal no material errors in law.
5. The issues raised on behalf of the ECO in the hearing were already live as evidenced by the review ahead of the hearing.
6. The judge had to consider whether the four applicants were dependent for their essential needs which it is clear they were not.
7. The Grounds are no more than an argument with the FTT fact finding which is not irrational in nature. It is trite that weight given to evidence is a matter for the Trial judge. *Volpi v Volpi* EWCA Civ 464 [2022] Lewison LJ [2]
8. It will be submitted that there is no merit in the unfairness point raised.
9. The respondent opposes the appellant's appeal. In summary, the respondent will submit inter alia that the judge of the First-tier Tribunal directed himself appropriately.

Discussion and analysis.

15. The heading of Ground 1 implies bias or a lack of a level playing field for the Appellants. The reason for this appears to be the Appellant's representative's objection to the Judge allowing the Presenting Officer to introduce a document into the evidence at the start of the hearing.
16. The decision of the Judge to do so is properly explained in the determination, namely that it was relevant to the issues in the appeal. It was said the Appellant had made statements regarding the number of individuals occupying the property in Pakistan which was shown not to be true on the basis of a visa application form relating to another applicant, obtained by the Presenting Officer having undertaken a search using the name of the Sponsor.
17. Whether the document was to be admitted was a question for the exercise of the Judge's discretionary case management powers. As always in such a case the question is the relevance of the evidence and the fairness of any decision made in relation to the need for there to be a fair hearing.
18. If one reads [34 - 42] of the determination in full it is clear that no procedural irregularity based upon a fairness argument arises. The Judge records Mr Ahmad's objection to the introduction of the document, the explanation provided by the Presenting Officer, and the Judge standing the appeal down to enable Mr Ahmad to consider the document and take instructions. The Judge records at [40] making it very clear to Mr Ahmad that she would look favourably on an application to adjourn if he required the same. The Judge notes at [39] Mr Ahmad indicated that he would take instructions and may request an adjournment in order to submit additional documentary evidence. The Judge records at [41] Mr Ahmad returning to court having considered the document and not requesting an adjournment. At [42] the Judge again records having reminded Mr Ahmad that he could request an adjournment although he stated he wanted to proceed, with the Judge considering it in the interest of justice to do so.
19. The Judge was therefore aware of the potential impact of admitting the document late in the day, provided the opportunity for an adjournment request if one was made, and that Mr Ahmad was content for the hearing to proceed. No legal error is established in the exercise of her discretionary case management powers by the Judge or on the basis of fairness on the facts.

20. There was no indication of any application having been made for an adjournment. When during the course of his submissions to the Upper Tribunal Mr Ahmad appeared to indicate that if he had been aware of, or given the opportunity to address some issues that arose in the hearing, further evidence could have been provided, he was asked whether he applied for an adjournment to do so, he stated he did not, indicating he was happy to proceed.
21. The Grounds assert the reasons given for the late submission was unjustified but that does not establish legal error as the judge admitted the document having considered the explanation.
22. Mr Ahmad arguing the Judge failed to deal with an objection under regulation 12(4) of the Immigration (European Economic Area) Regulations 2016 ('the 2016 Regulations') does not establish legal error. That provision reads:
- (4) An entry clearance officer may issue an EEA family permit to an extended family member of an EEA national (the relevant EEA national) who applies for one if—
 - (a) the relevant EEA national satisfies the condition in paragraph (1)(a);
 - (b) the extended family member wants to accompany the relevant EEA national to the United Kingdom or to join that EEA national there; and
 - (c) in all the circumstances, it appears to the entry clearance officer appropriate to issue the EEA family permit.
23. If that relates to the Appellant's argument that the ECO failed to consider the provision of free accommodation by the Appellant, this was an argument noted by the Judge at [60] of the decision under challenge. In any event, the appeal at this stage is not against the decision of the ECO but the decision of the Judge.
24. The Grounds also assert the Judge erred at [53] of the determination by "stretching the meaning of non-acceptance of the claimant to equate with the issue of credibility". There is no arguable merit in such a claim. In that paragraph the Judge was considering a document to be found at page 109 of the Appellant's appeal document which was provided by the Appellants and is described as a vote certificate in the name of the Sponsor, dated 4 November 2020. The Judge notes the address and the house number appearing on the document is 9. The Judge notes, however, a further document submitted at page 93 of the Appellant's bundle described as a Sale Deed for a property dated 1 August 2020, submitted to prove the Sponsor owns the property where he lives, states the house number is 1 not 9. The Judge records that when this point was put to the Sponsor by the Presenting Officer Mr Ahmad objected claiming it was not a matter raised in the refusal letter or on review, but the Judge was properly entitled to allow the question to be asked and to expect the Sponsor to answer the same, as it was relevant to the issues in the appeal.
25. In his submissions before the Upper Tribunal Mr Ahmad referred to the documents, translation, and evidence, claimed the number in dispute was a family number. That was not the evidence given to the Judge on the day and the Sponsor clearly addressed the issue by accepting that it was a property number.

26. The Grounds of appeal also assert the Judge erred in overruling the objection regarding the line of cross examination without dealing with the objection, specially by reference to regulation 12(5).
27. Regulation 12(5) states: "(5) Where an entry clearance officer receives an application under paragraph (4) an extensive examination of the personal circumstances of the applicant must be undertaken by the Secretary of State and if the application is refused, the entry clearance officer must give reasons justifying the refusal unless this is contrary to the interests of national security."
28. It is not made out by reference to the specific wording of the regulation, or any authority to which the Judge was referred, that when the ECO has undertaken such extensive examination a Tribunal hearing an appeal against the decision is restricted in the evidence it wishes to consider to enable the merits of the appeal to be properly assessed. That will be contrary to the interests of justice if, as in this case, it related to a relevant issue.
29. The Grounds also assert that the Judge failed to note the translation of the vote document which incorrectly translated the house number, but the Judge was clearly aware of all the evidence put forward and the document having been read by the interpreter, as confirmed in the determination. Whilst it was not the job of the interpreter to read the document as the role of an interpreter was to interpret not translate, there is no appeal by the Secretary of State in relation to the Judge proceeding in this way.
30. The claim the Judge failed to analyse all the original documents and translations is without merit.
31. The Grounds also assert the Judge failed to deal with a further objection made on the basis the decision-maker can only raise an objection i.e. the Entry Clearance Officer (ECO) in an EU case, because of the provision of regulation 12 (3). This is a further attempt by Mr Ahmad to argue a restriction upon the ability of the Judge to conduct the case as she thought appropriate in the interests of justice.
32. Regulation 12(3) reads: (3) An entry clearance officer must issue an EEA family permit to—
 - (a) a family member who has retained the right of residence; or
 - (b) a person who is not an EEA national but who has acquired the right of permanent residence under regulation 15.
33. There is nothing in the regulations that suggests any objection or adverse finding cannot be made by a judge, bearing in mind the judge shall be considering an appeal against the decision made by the ECO who would have considered regulation 12. In this case the ECO did not consider it appropriate to issue the EEA Family Permit.
34. Asserting the Judge failed to apply the law and conduct an objective assessment is not made out on the evidence or the determination when read as a whole. The Judge accepts that prolonged dependency is not required and makes specific reference to this fact. The Judge accepts that remittances had been made and considered the evidence in relation to expenses. The Judge is not required to set out each and every aspect of the evidence in the determination.
35. The Judge was clearly concerned about the evidence of the Sponsor's employment which was found to be "meagre" and at [68] found the evidence of the employment lacked any real credibility. That is relevant to whether the EEA national sponsor in the UK has the ability to provide funds to meet the essential needs of the Appellants.

36. Mr Tan in his submissions raised a more fundamental point. This is not an application under the Immigration Rules but under the 2016 Regulations which incorporated into UK domestic law Directive 2004/38/EC. That is the Directives relating to free movement within Member States of the EU. Its purpose is to enable EU nationals to exercise treaty rights in another Member State free from restrictions that may prevent them from so doing. It is accepted that a person may not exercise treaty rights if, for example, they were unable to have their family members with them. It is for this reason that those who satisfied the definition of a family member had an automatic right to join the EU national in the host Member State, prior to 11.00 pm 31st December 2020 in relation to the EU. An extended family member, such as the Appellants in this appeal, only had a right to join the EEA national if their entry was facilitated.
37. The common issue arising in relation to both family members and extended family members is the requirement for an EU national to be exercising treaty rights in the host Member State. In this appeal the Judge casts doubt upon the Sponsor's claimed employment and clearly did not accept there was sufficient evidence to establish that the Sponsor was exercising treaty rights in the UK by virtue of employment or otherwise. That finding is not challenged. Accordingly, the failure of the Appellants to establish the Sponsor was exercising treaty rights is fatal to the appeal.
38. I indicated during the hearing that I do not accept that the Appellants have established any procedural unfairness sufficient to amount to a material error of law on the basis of the admission of the document or conduct of the hearing in relation to the various challenges made by Mr Ahmad, or otherwise.
39. The Grounds assert at [7] the alleged failure of the Judge to provide reasons for not accepting the free of charge accommodation itself had been sufficient to allow the appeal, but the Judge does provide reasons, as noted above, for why she was not able to put weight upon this aspect of the Appellant's evidence or indeed any of the evidence. The Judge specifically expresses concerns in relation to the claims regarding the property at [75]. The Judge's finding that the Appellants and Sponsor had not been truthful about the property is finding reasonably open to the Judge on the evidence.
40. As indicated during the course of the hearing, the question is not whether free accommodation was provided. In the same way that the provision of remittances in isolation does not satisfy the test. The issue in a claim involving extended family members is whether the support provided was essential, i.e. whether without such support the extended family member would not be able to meet their essential needs. It was not made out that if free accommodation was not provided the appellants would not be able to adequately accommodate themselves, in the same way it was not made out that without the remittances the Appellants would not be able to meet their essential needs. As the Judge noted there was a substantial gap in the evidence of remittances which gives rise to the question how essential needs were met during a period when there was no income being provided from the UK. Mr Ahmad suggested the answer during the course of his submissions to the Upper Tribunal but there was nothing before the Judge to indicate a satisfactory explanation.
41. I do not find the Appellants have established legal error material to the decision to dismiss the appeal sufficient to warrant the Upper Tribunal interfering any further in this matter.

42. The Judge has made findings which an informed reader can understand supported by adequate reasons. The fact the Appellants and their representative disliked the decision and have suggested alternative findings the Judge should have made to enable a more favourable outcome does not establish those findings actually made are infected by legal error material to the decision to dismiss the appeal.
43. The Judge dealt with the grounds of appeal advanced before the First-tier Tribunal.

Notice of Decision

44. No material legal error has been made out in the decision of the First-tier Tribunal. The determination shall stand.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

24 November 2023