



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Prepared 7 September 2023

Case Nos: UI-2023-002153
UI-2023-002152
First-tier Tribunal Nos:
EA/11561/2022
EA/11555/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 28 September 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

MUKHTAR BEGUM
MEHMOOD HUSSAIN
(NO ANONYMITY ORDER MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr M Azmi
For the Respondent: Ms A Everett

Heard at Field House on 7 September 2023

DECISION AND REASONS

1. The Appellants, nationals of Pakistan, appeal against the decisions of Judge Row made on 6 June 2023 to dismiss their appeals against the Respondent's decisions to refuse EUSS entry for leave to come to the United Kingdom under the settlement scheme.
2. The Appellants' dates of birth are 1 January 1954 and 1 August 1951. They were sponsored in making their application for entry by their son Sajid Mahmood and his wife Ana Perkone an EEA national. The Respondent's decision essentially questioned whether the Appellants were financially dependent upon the Sponsors. When the matter came before First-tier Tribunal Judge Row evidence was provided particularly concentrating on payments which the Sponsor had

made and in particular he explained the presence of some documentary evidence concerning those payments and why they did not appear to cover a more extensive period than the Judge expected.

3. The Judge, it is fair to say, in what is a relatively brief decision doubted the reliability of the evidence or the purpose of money transfers which it was acknowledged had been made and the Judge at paragraph 15 said in relation to the evidence that had been given about the money transfers:

“15. The Appellants’ contention is that they are entirely dependent on the Sponsor. If that is the truth then the Appellants are dependent on the Sponsor to meet at least part of their basic needs.”

I find it is unclear what the Judge meant. The Judge continued:

“16. I have reservations about what was said is the truth”.

4. What those reservations were was less than clear but the Judge at paragraph 18 takes against the Appellants because they have not produced statements identifying what they had, what they received and from where it came. The Judge concluded “The Appellants have chosen not to produce them. One explanation of all that would be that these statements would not suit their purposes.”
5. The Judge continued at paragraph 19 “The timing of the money transfers, beginning a short time before the Appellants made their first application, indicates to me that they had commenced them in order to provide evidence to support this application”. The Judge might be right in that being a motive but it somewhat ignores the clear evidence provided by the Sponsors as to the extent of time over which they had provided financial support and the reasons for so doing. The Appellants had other children who it seemed were not supporting the Appellants. Quite why that is a matter to be taken against the Sponsor or indeed the Appellants is less than clear. The Judge draws adverse inferences, which were not put to the Appellants representatives or the Sponsors, as to the true basis of the finances of the Appellants. I concluded that the Judge had made a material error of law in how he addressed the reliability of the evidence, its sources and its genuineness.
6. There was ultimately no evidence to gainsay the money transfers that were evidenced and the Sponsors’ evidence about the monies and the way it had been sent for the benefit of the Appellants at an earlier time. I concluded that from the discussion of the evidence as presented the overall picture did not sustainably maintain the conclusion that the Sponsors were not providing the financial support because of the dependency of the Appellants. The Appellants, fortunate as they may have to have a number of children not all of whom are financially supporting them, did not mean that they were not supportive in other family ways or that the Sponsors were not supporting them.
7. I concluded therefore that the Judge had, with the reasons which he had provided, failed to explain and address the evidence which had not been contradicted so much as doubted and speculated upon by the First-tier Tribunal Judge. I concluded that, in the light of the grant of permission to appeal of First-tier Tribunal Judge Singer that there was a material error of law in the approach

taken to the evidence by the Judge. Finding that there is material error of law I invited submissions from the parties. Ms Everett stood on the Rule 24 statement and Mr Azmi, Counsel, argued that it was sufficient to show there was the extent of the dependency and its purposes which are the requirements within the Immigration Rules. I found therefore that in the context of the EU Settlement Scheme the Appellants had provided evidence which showed on a balance of probabilities that the requirements of the EU Settlement Scheme were met. Accordingly I substitute the following decision.

8. The Original decisions of First-tier Tribunal Judge Row cannot stand. The appeal of each Appellant is allowed under the EU Settlement Scheme. No anonymity order was sought nor is one required.

A handwritten signature in black ink, appearing to read 'T. Dauby'. The signature is written in a cursive, somewhat stylized font with a large initial 'T'.

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber