



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2023-002209
UI-2023-002210
First-tier Tribunal Nos:
EA/10376/2022
EA/10373/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 19 October 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

(i) Mr Muhammad Azam
(ii) Mrs Paveen Akhtar
(NO ANONYMITY ORDER MADE)

Appellants

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellants: No appearance

For the Respondent: Mr C Bates (Senior Home Office Presenting Officer)

Heard at Manchester Civil Justice Centre on 6 September 2023

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Phull, promulgated on 20th April 2023, following a hearing at Birmingham on 10th March 2023. In the determination, the judge allowed the appeal of the Appellants, whereupon the Appellants subsequently applied for, and were granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellants

2. The Appellants are husband and wife. Both are citizens of Pakistan. The first Appellant was born on 6th February 1952. The second Appellant, his wife, was born on 1st July 1965. Both applied for an EU Settlement Scheme (EUSS) Family Permit. Both were refused in a decision dated 28th September 2022 by the Respondent because they had provided evidence only of five money transfer receipts from their sponsoring son-in-law, Mohammad Idrees Mirza, an EEA Regulations national (Spain), which it was said did not show their required dependency on their Sponsor under the Rules.

The Appellants' Claim

3. The Appellants claim that they are indeed dependent on their son-in-law, Mohammad Idrees Mirza for their essential needs and that they have submitted evidence of remittances which satisfies their dependency on their EEA citizen Sponsor. They therefore met the eligibility requirements for an EUSS Family Permit.

The Judge's Findings

4. The judge observed that in the appeal before her, the Entry Clearance Officer had alleged that the Appellants had not provided any evidence of their own domestic circumstances in Pakistan to demonstrate that they cannot meet their essential living needs without the financial or other material support of the relevant EEA citizen. It was acknowledged by the Entry Clearance Officer that the Appellants had submitted five money transfer receipts ranging from 30th January 2020 to 12th April 2022 but that a regular period of support over a substantial period of time is what would have been expected (paragraph 12).
5. In an appeal that was determined on the papers only, the judge held that the Appellants' evidence was consistent and that the Appellants were dependent on their EEA citizen for their essential needs. The judge held that, "there is no need to determine the reasons for the Appellants' recourse to that support or to raise the question whether he can support himself by taking up paid employment" (paragraph 13). The judge went on to record that, "The evidence in the application form shows the Appellant is married, the sponsor sends the remittances to the Appellant for him and his wife, Parveen Akhtar" and this satisfies the requirement of dependency (paragraph 13). The appeal was allowed.

Grounds of Application

6. The grounds of application state that in allowing the appeal the judge made a material error of law. First, whilst it was accepted that the Appellant were under no obligation to take up paid employment in order to support themselves, they were required under the terms of the Appendix EU (Family Permit) to demonstrate that any funds provided by the Sponsor was for the purposes of meeting their essential needs. The Appellants in this case had provided no evidence of their financial circumstances. The judge could not therefore have concluded that the monies were being sent because they were necessary rather than being sent as superfluous income, particularly given the lack of regularity, in that there were only five remittances sent in a sixteen month period.
7. Second, insofar as the judge referred to legal authority in the case of **Jia Migrationsverket Case C -1/05** and **LU 15.2.07**, the legal position had been misconstrued. This is because what those authorities established was that the concept of "dependent on them" meant dependency within the meaning of Article 43 of the EC Treaty, such that they, "needed the material support of that EU national, or his or her spouse, in order to meet their essential needs in the state of origin ...". On the evidence before the judge, this was not the case.
8. On 5th June 2023, permission to appeal was granted by the First-tier Tribunal on both grounds. Thereafter, there was a Rule 24 response submitted on behalf of the Appellants. It is most unfortunate that the terms in which this Rule 24 response is couched is in intemperate language. It refers to the Respondent's application for permission "with ulterior motive and mala fide intention". Nothing

in that Rule 24 response deals with the judge not having dealt with the funds being necessary for the Appellant's "essential needs".

Submissions

9. At the hearing before me on 6th September 2023 the Appellants were again without representation, and the Sponsor was not in attendance and there was no explanation for why this was the case. Mr Bates, appearing before me on behalf of the Secretary of State submitted that it was clear that the judge had failed to deal with the monies being sent for the purposes of the Appellant's "essential needs" and that there was clearly an error of law in that regard.

Error of Law

10. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law for the reasons set out in the Secretary of State's application for permission to appeal and the grant of permission by the First-tier Tribunal.

Re-Making the Decision

11. I have re-made the decision on the basis of the findings of the original judge, the evidence before her, and the submissions that I have heard today from Mr Bates. I am dismissing the appeal for the following reasons.
12. First, there are only five remittance receipts over a period of sixteen months from 2020 to 2022. The circumstances of the Appellants are not known. There is no evidence whatsoever that the monies that have been sent, such as they are over such a short period of time, would need it for their essential needs in Pakistan. In **Moneke (EEA-OFMs) Nigeria [2011] UKUT 341**, it was noted (at paragraph 41) that, "dependency is not the same as mere receipt of some financial assistance from the sponsor". On the evidence submitted by the Appellants this is precisely all that can be said of these remittances.
13. Second, in **Reyes (EEA Regs: dependency) [2013] UKUT 314**, it was said that whether a person qualified as a dependant under the EEA Regulations was to be determined at the date of the decision on the basis of the evidence produced or, on appeal, at the date of the hearing of the evidence produced to the Tribunal. The test of dependency was a purely factual test. It should be construed broadly to involve a holistic examination. The dependency must be in the present, not in the past. The dependency must not be interpreted so as to deprive the provision of its effectiveness. However, even if I take a broad approach, I cannot be satisfied that the Appellants are dependent on the Sponsor. Accordingly, this appeal is dismissed.

Notice of Decision

14. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is dismissed.

Satvinder S Juss

Judge of the Upper Tribunal
Immigration and Asylum Chamber

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18th October 2023