



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003054
UI-2023-003055

First-tier Tribunal No: EA/02973/2022
EA/02975/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

22nd February 2024

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**RABIA RAFIQ
ASMA ASMA
(NO ANONYMITY ORDER MADE)**

Appellant

and

AN ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: The sponsor Mr Mohammad Rafiq Yasin.

For the Respondent: Mr Diwnycz, a Senior Home Office Presenting Officer.

Heard at Phoenix House (Bradford) on 19 February 2024

DECISION AND REASONS

1. In a determination promulgated on 22 November 2023 the Upper Tribunal found a material error of law in the decision of the First-tier Tribunal judge who allowed the appeal of the above appellants, citizens of Pakistan born on 10 November 1993 and 9 June 1998 respectively, as a result of the failure of the judge to deal with a specific issue raised by the Entry Clearance Officer (ECO) relating to the question of whether the sponsor was in the UK at the date of application, 4 November 2021.
2. The ECO was concerned that the sponsor was not present in the UK on that occasion contrary to a requirement of the EUSS family permit scheme.
3. The majority of the current hearing was taken up discussing this issue with the sponsor and with him examining documents that he held his phone by way of wage slips relating to his employment in the UK. He was unable to provide salary slip for the relevant date but was able to provide a number of salary slips for dates before and after. The later ones contained cumulative pay to date.

4. It was therefore necessary to establish whether there was other evidence that corroborated the sponsor's claim that he was in the UK at the relevant date. Although it is circumstantial evidence there is within the appellant's bundle a number of MoneyGram money transfer receipts naming the sponsor as the sender and referring to various amounts sent to the appellants, who are named as the receivers, in Pakistan. They include transfers for 24 September 2021, 4 October 2021, and 9 December 2021. There is also the oral evidence confirmation from other family members of the sponsor being in the UK at the relevant time.
5. The applicable standard is the civil standard, the balance of probabilities. I am satisfied when assessing the evidence in the round that on the balance of probabilities there is sufficient in the oral and circumstantial evidence to support the sponsor's claim that he was in the UK on 4 November 2021.
6. It is a preserved findings that payments are made by the sponsor to the appellants in Pakistan. In relation to whether those payments are required to meet the essential needs of the appellants, their situation is as previously outlined namely that they live with the sponsor's brother; although the sponsor's evidence that is that his brother cannot care for them much longer.
7. In relation to the purpose for which the payments are made, the sponsor confirmed that his brother cannot support the appellants on their own which is why he sends remittances to ensure their essential needs are met. The sponsor has had his own health needs and has on occasions been unable to work and so was asked what happened in terms of meeting the appellants needs if he was unable to work. The sponsor confirmed that in such circumstances his son who lives in Spain will be called upon to help from whom the sponsor could borrow the money.
8. It is clear from the evidence that without the support provided by the sponsor in the UK the appellants essential needs would not be met. I am therefore satisfied, on the balance of probabilities, that the appellants are dependent upon their UK-based sponsor, a Spanish national and their father, for meeting their essential needs in Pakistan and, accordingly, satisfy the definition of dependent family members which was one of the issues of concern to the ECO.
9. On that basis I allow the appeals.

Notice of Decision

10. Appeals allowed.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

20 February 2024