



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004520
First-tier Tribunal No:
EA/10886/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 03 April 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE BAGRAL

Between

KOMALPREET KAUR
(NO ANONYMITY ORDER MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr M Fazli, Counsel instructed by Solicitor's Inn
For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

Heard at Field House on 17 January 2024

DECISION AND REASONS

Anonymity

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

Introduction

2. This is the appellant's appeal against the decision of First-tier Tribunal Judge S Taylor ("the Judge") promulgated on 29 August 2023.
3. Permission to appeal was granted by First-tier Tribunal Judge Gumsley on 10 October 2023.

Factual Background

4. The appellant is a national of India. She was aged 24 at the date of hearing before the Judge. On 19 June 2022, she applied for an EEA Family Permit as the dependent of her stepmother, Ewa Alina Zych, a national of Poland, who is married to the appellant's father, Harjinder Singh. That application was refused by way of a decision dated 4 October 2022. The refusal raised the issue of dependency in the following operative terms.

As evidence of your dependency upon your relevant EEA Citizen sponsor or their spouse or civil partner you have provided the following evidence, money transfers stated 20/10/2020, 11/12/2020, 26/12/2020, 16/06/2022 and 17/06/2022.

This limited amount of evidence you have provided does not prove that you are financially dependent on your sponsor. I would expect to see substantial evidence of dependency over a prolonged period. This evidence should also show that without the financial support of your sponsor your essential living needs could not be met.

This office would also need evidence of your own domestic circumstance in India, for example, bank statements and evidence showing any other income you receive and evidence of all your expenditure. Without such evidence I am unable to sufficiently determine that you cannot meet essential living needs without financial or other material support from your relevant EEA Citizen sponsor or their spouse or civil partner *[sic]*.

The decision of the First-tier Tribunal

5. The parties were represented before the Judge and the representatives agreed the sole issue was that of dependency. In that regard the Judge directed himself as follows.

"15. The appellant's representative submitted that it was not required for the appellant to provide a forensic accounting analysis of income and expenditure, which I accept. However, the appellant is required to satisfy the specific test of appendix EU, that having regard to her financial and social conditions, or health, she could not meet her essential living needs without the financial and other material support of the sponsor. As this is an appeal under the EUSS, the appellant has to demonstrate that she was dependant on the sponsor and her father as of December 2020 *[sic]*. The representatives before me take no issue with this.

6. The Judge heard evidence from the appellant's stepmother and father. The Judge found the evidence, particularly that of the appellant's father was unreliable. The Judge's reasoning is set out in a lengthy paragraph at [16], and can be compartmentalised as follows:

- Mr Singh stated in his written evidence that the appellant had been his dependant for a number of years, but he had not kept documentary evidence because he did not foresee that the documents would be needed. This contrasts with his oral evidence that the appellant was living with his father, in the family home, and that his father had responsibility for the appellant up to 2020. It was envisaged that she would remain in India, finish her studies, and marry.
- Mr Singh stated that his father had moved to a care home in 2020 and could no longer be responsible for the appellant. I am not satisfied as to the reliability of this evidence, as Mr Singh's statement is dated 2023 and makes no mention of his father moving into a home. Mr Singh did not

mention the care home until the end of cross examination. Mr Singh first stated that the appellant had become dependent on him in 2022 and then changed his evidence to 2020. He stated in evidence that his father had been supporting the appellant up to 2020. If the appellant was living in the family home until 2020 and was supported by her grandfather, this casts doubt on the claim that she was dependant on the sponsor *[sic]*.

- The only documentary evidence of financial support sent to the appellant by the sponsor prior to December 2020, are three money transfers, all dated within the last ten weeks or so before the specified date, which amount to approximately £3000. Although the Western Union receipts stated that the amounts are for living expenses, the appellant and sponsor has not explained why the appellant required such a sizeable sum of money to spend within a 10-week period, especially as she is a single woman living in the family home in a small village. The sponsor stated that she would send the appellant £250 per month and no explanation has been given by the appellant or the sponsors of the reason for the disproportionately large amount of money given to the appellant in the weeks before the specified dated *[sic]*, which damages the credibility of the appeal.
- There is no further documentary evidence of support for almost a year and a half until June 2022. Given Mr Singh's evidence that the appellant was dependant on her grandfather until 2020, and the unusual nature of the large payment in a 10-week period leading up to the end of 2020, I cannot be satisfied that the appellant has demonstrated that she was dependant on the sponsor prior to the end of 2020 *[sic]*.
- A letter has been provided that the sponsor covers the appellant's college fees, but these are not her essential living expenses.

7. Accordingly, the judge declined to accept that the appellant had demonstrated that she was dependent upon her stepmother and father and accordingly dismissed the appeal.

The grounds of appeal

8. The appellant's grounds are two-fold. Ground 1 asserts, first, that the Judge erred in the approach taken in relation to the assessment of credibility - the appellant's father was not given an opportunity to specifically comment upon the concerns the Judge had in relation to the remittances totalling £3000, and second, the Judge failed to make adequate findings on other matters relevant to the issue of dependency. Ground 2 asserts that the Judge failed to consider relevant evidence when assessing dependency and erred in concluding that education was not an essential living need.

9. Permission to appeal was granted on all grounds.

10. The respondent did not file a Rule 24 response; however, Mr Lindsay opposed the appeal.

Decision on error of law

11. It is not necessary to recite the submissions of the representatives, but they are reflected where necessary below. Having carefully considered the grounds, the

evidence, and the submissions. I conclude that the Judge materially erred in law for the following reasons.

12. It is argued in the first part of ground one that the Judge procedurally erred in failing to give the witnesses an opportunity to explain why a sum of approximately £3000 was remitted to the appellant prior to December 2020 over a 10-week period. The evidence shows that these payments were sent by the appellant's father in three instalments: one in October 2020 and two in December 2020. These remittances together with a further two, dated in June 2022, were submitted with the application, and are referenced in the respondent's refusal decision.
13. It is appreciably clear that the Judge was concerned by the evidence that £3000 had been remitted to the appellant by her father over a relatively short period of 10 weeks prior to the specified date; evidence which did not chime with the stepmother's evidence that she sent the appellant £250 per month. At [16] the Judge referred to this evidence on three occasions and to the lack of an explanation "of the reason for the disproportionately large amount of money given to the appellant...which damage[d] the credibility of the appeal". Whilst the Judge was entitled to be concerned about this evidence, he fell into error, in my judgement, by his failure to air his concerns at the hearing and, in doing so, deprived the witnesses of an opportunity to provide an explanation to a point which formed a significant basis of his reasoning.
14. I recognise that there is no general obligation on a judge to give notice to the parties during a hearing of all matters that may form the substance of his/her decision. I also recognise that whether a judge has committed a procedural error resulting in unfairness of a type relied upon in this case, is entirely fact sensitive. These are general points of principle, amongst others, reiterated in Abdi & Ors v Entry Clearance Officer [2023] EWCA Civ 1455, which the representatives did not cite, but therein is a discussion of the judgements in Secretary of State for the Home Department v Maheshwaran [2002] EWCA Civ 173 and WN v Secretary of State for the Home Department [2004] UKIAT 00213, which they did cite, and which I have considered.
15. It seems to me that the question of whether there was procedural unfairness in this case requires consideration of whether the point that concerned the Judge was an obvious one which the appellant ought to have anticipated. That in my view requires an analysis of the refusal, the evidence, the position of the parties at the hearing in light of the issue(s) and whether the appellant's general credibility was called into question.
16. In this case, I consider that the evidence does not sufficiently indicate that the appellant could have reasonably anticipated the point taken against her by the Judge which was material to his assessment of credibility for the following reasons. First, the respondent's refusal decision does not put credibility in issue at all. Whilst the remittances that were the source of the Judge's concerns were before the respondent, no issue is taken with the sums remitted or the period during which they were sent, notwithstanding that this evidence did not align with the appellant's declaration in the application that she received £300 per month from her stepmother. The respondent's refusal was squarely based on the evidence being insufficient to meet the test of dependency.
17. I next turn to the parties' respective positions and the evidence before the Judge at the hearing. At [7-13] the Judge summarised the evidence of the

appellant's stepmother and father and the submissions of the representatives. In particular, at [8] and [10] the Judge summarised the evidence of the stepmother and father given in response to cross-examination respectively, and the father's responses to his questions at [11], and the respective submissions of the representatives at [12-13]. It is plain from the evidence set out therein that the respondent did not raise during cross-examination of either witness the point that concerned the Judge in respect of the remitted sums totalling £3000. It is further plain from the Judge's questioning of the father, that he was not asked to explain the reason for the large sums remitted that were of concern to the Judge. In this context, I do not see how the issue that concerned the Judge would on any reasonable view have been obvious to the appellant, either before, or during the hearing.

18. On the face of the Judge's decision, therefore, it seems clear to me that the Judge made an adverse credibility finding against the appellant on the basis of the large sums remitted in October and December 2020 that did not form part of the respondent's case. Whilst the Judge had other reasons for doubting the evidence - the evidence of the appellant's father was contradictory and there was a large gap in the evidence of remittances from 2020 to 2022 - the lack of explanation for the disproportionately large sums remitted was a factor that formed a significant part of his reasoning.
19. Mr Lindsay submits that the appellant has failed to make out a procedural unfairness error as she has not produced a transcript or a note of the proceedings. However, on the particular facts of this case - given what I have said above regarding the substance of the respondent's refusal and the evidence and submissions at the hearing - I do not consider that this is necessary. It seems plain to me that the point of concern was not raised either by the respondent nor the Judge at the hearing, and that failure led to unfairness to the appellant in depriving the witnesses of an opportunity to provide an explanation. I cannot rule out the possibility that there may well have been as Mr Fazli submitted legitimate reasons for large sums being remitted to the appellant at that time. For the above reasons, I am thus satisfied that this part of ground one is made out.
20. I am not, however, satisfied that the second part of ground one is made out. This contends that the Judge failed to take into account remittances sent to the appellant in 2023, that he failed to make specific findings on the father's evidence, that the Judge mischaracterised the evidence as inconsistencies rather than "potential omissions" which ought not to have undermined credibility, and that he made no assessment of the stepmother's evidence. I consider that these grounds amount to a disagreement with the Judge's conclusions.
21. I agree with Mr Lindsay that there is no requirement for a judge to record slavishly all that is said at a hearing and address each point raised by the evidence. Mr Fazli, rightly, accepted that. A judge is required to consider the disputed issue(s), evaluate the evidence in light of the issue(s) and reach reasonable findings on the evidence. I am satisfied that the Judge carried out that duty in respect of the matters under challenge hereunder. The Judge was clearly aware of the evidence and gave succinct summaries of the relevant evidence and submissions. That included reference to the father's written evidence at [9] and the specific aspects of that evidence that it is said the Judge failed to adequately consider, the stepmother's evidence and the appellant's representative's submissions at [13], which referred to evidence of support since 2020.

22. There is no reason to assume that the Judge left these matters out of account in reaching his conclusions, or that he failed to appreciate that remittances had been sent in 2023. Those remittances were only of potential relevance if the Judge accepted the evidence of dependency prior to the specified date. It is plain at [16] that the Judge concentrated on setting out his reasons for rejecting that contention, and, in my view, he was entitled to find that the written and oral evidence of the father was contradictory on material matters.
23. As for Ground two, this asserts the Judge failed to adequately consider the letter from R.S Educational Institute confirming the appellant continued as a student at that institute to date, and that her stepmother and father paid the institute's fees and made all decisions in respect of her education, and further erred in finding that the appellant's education expenses were not an essential living need. The Judge clearly took into account the letter from the appellant's college at [16], and whilst I accept, he erred in concluding that education was not an essential living need in light of Singh v SSHD [2022] EWCA Civ 1054, I am not satisfied that the error is material in this case.
24. The Court of Appeal in Singh did not determine on the facts of that case whether education was an essential need, as that issue had not been raised before the First tier Tribunal but found that it was in principle capable of being an essential need (at §23). The Court indicated that would need a wide-ranging examination to determine whether education amounted to an essential living need in any particular case. The evidence on the point before the Judge was to say the least slim. It was notable that there was no written evidence of any significance on why it was said the appellant's education was an essential living need. The written testimony of the appellant's stepmother and father was brief and only alluded to paying for the appellant's education and to receiving regular feedback from "her educational institutes". There was no attempt therein to explain in any detail the appellant's educational background or her intentions in that regard going forward.
25. It is further notable that there was no evidence from the appellant in that regard, who was 21 years old at the date of application, and not of school age. The lacuna in the evidence was not plugged by the letter from the institute, which was equally brief, and did not even as a minimum, explain the subject matter and level of the appellant's studies. Given the limited extent of the evidence before the Judge regarding the appellant's education, I am not satisfied that even if the Judge had recognised in principle that education was capable of being an essential living need, that it would have made a material difference to the outcome in this case. I find ground two is not made out on the evidence that was before the Judge.
26. Nonetheless, and in conclusion, I am persuaded that an error of law is made out, because the Judge's conclusion that the credibility of the appeal was damaged is in part based on a procedurally unfair adverse credibility finding in relation to the lack of explanation for the remittances totalling £3000 prior to the specified date. As was held in Abdi at para [37], tribunals, like courts, must set aside a determination reached by the adoption of an unfair procedure unless they are satisfied that it would be pointless to do so because the result would inevitably be the same. This is a very high hurdle to surmount, and whilst the prospects do not seem great on the evidence, I am not satisfied that the test is met in the instant case. Whilst the Judge gave other good reasons for rejecting the evidence and ultimately may have reached the right conclusion on the

evidence, at the very least the appellant is entitled to a lawfully sound decision, and I am not satisfied this has occurred in this instance.

27. In light of the nature of the error of law, the appellant has been deprived of a fair hearing in the First-tier Tribunal, and accordingly the appropriate course is for this appeal to be remitted to the First-tier Tribunal for a completely fresh hearing, with none of the Judge's findings of fact being preserved.

Notice of Decision

The decision of the First-tier Tribunal contained an error of law, and accordingly the decision is set aside in its entirety.

This appeal shall be remitted to the First-tier Tribunal for a fresh hearing before any judge apart from Judge S Taylor, with none of the Judge's previous findings of fact being preserved.

Postscript

This appeal first came before Upper Tribunal Judge L. Smith and Deputy Upper Tribunal Judge Bagral sitting as a panel on 23 November 2023. There was no attendance on behalf of the appellant either by her representatives or indeed by the sponsors. We adjourned the hearing following enquiries made by the Tribunal's clerk with the appellant's representatives who provided an explanation for their absence. After the hearing a further email communication sent to the Tribunal from the appellant's representatives was drawn to our attention that caused the panel to be concerned that it had been provided with a contradictory and potentially misleading explanation for their absence at the hearing. It is adjournment decision of 23 November 2023, Deputy Upper Tribunal Judge Bagral said this:

- "4. Shortly, after the conclusion of the hearing, the Tribunal received a further email from Mr Manzoor setting out a formal application for an adjournment with reasons. It is stated that the Notice of Hearing was sent to the "wrong/general email address i.e. ilford@solicitorsinn.co.uk" and should have been sent to amer@solicitor@gmail.com, the email address provided in the application for permission to appeal to this Tribunal. It is further stated the Appellant had not received the Notice of Hearing and, furthermore, that instructed Counsel was engaged on other matters and unable to attend the hearing at short notice.
5. We have some difficulties accepting these reasons, which gives us some cause for concern. First, the explanation for the Appellant's representatives failure to attend the hearing, appears to us to be contradictory. In the first email the Appellant's representatives stated they had "never" received the Notice of Hearing. However, in the second email, it appears to be accepted that the Notice of Hearing was received, but sent to the "wrong/general email address". Second it is not clear to us, that if instructed Counsel was otherwise engaged and could not attend the hearing at short notice, why the Tribunal was earlier informed that a representative could attend albeit remotely.
6. Whilst we accept the Appellant's application for permission to appeal was emailed to the Tribunal by Mr Manzoor from his email address - amer.solicitor@gmail.com - the application form for permission to appeal itself that is available to us does not give an email address for preferred service of documents, and Mr Manzoor did not expressly state in this email that any further communication from the Tribunal should be sent to his email address.

7. Having reviewed the digital files we note that service of all documents post the grant of permission to appeal to this Tribunal were sent either to ilford@solicitorsinn.co.uk and/or info@solicitorsinn.co.uk. This includes the Tribunal's letter to the Appellant's representatives acknowledging receipt of the Appellant's application to appeal to this Tribunal and the Notice of Hearing. We are satisfied therefore that the Notice of Hearing was sent to the Appellant's representatives at the correct email address and, indeed, the only email address(es) known to the Tribunal for service of documents. In the circumstances, we are not satisfied that a satisfactory explanation has been given for the Appellant's representatives failure to attend the hearing."

The panel observed the Tribunal's inherent jurisdiction to govern proceedings before it and to hold to account the behaviour of representatives whose conduct may fall below the minimum professional standards, and thus issued directions requiring the appellant's representatives to file a written response addressing the panel's concerns. The appellant's representatives duly complied with that Direction and whilst the explanation provided is not entirely satisfactory, I am satisfied that there was no intention to deliberately mislead the Tribunal, and that procedures have been put in place to ensure there is no recurrence of the same. The evidence and representations are a matter of the Tribunal's record and on this occasion no further action will be taken.

R.Bagral

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
29 March 2024