



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2024-002476
First-tier Tribunal No:
EA/02117/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 09 October 2024

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

GULRAIZ KHAN
(ANONYMITY ORDER NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr Z Mohsan, Sponsor

For the Respondent: Ms C Newton, Senior Presenting Officer

Heard at Manchester on 8 October 2024

DECISION AND REASONS

Introduction

1. The appellant appeals a decision of First-tier Tribunal Judge Hillis ('the Judge') dismissing his appeal under the Immigration (European Economic Area) Regulations 2016.

Relevant Facts

2. The appellant is a national of Pakistan and aged 25. His sponsor is his paternal uncle, a national of Spain, who enjoys limited leave to remain in the United Kingdom under the EU Settlement Scheme. The sponsor is self-employed.
3. The appellant applied for an EEA Family Permit in August 2020. The respondent refused the application by a decision dated 20 October 2020 reasoning, *inter alia*:

“On your application you state that your sponsor has resided in the UK since 05 May 2020 and that you are financially dependent on him. As evidence of this you have provided money transfer remittance receipts from your sponsor to you. However, I would expect to see evidence which fully details yours and your family’s circumstances. Your income, expenditure and evidence of your financial position which would prove that without the financial support of your sponsor your essential living needs could not be met.

I therefore refuse your EEA Family Permit application because I am not satisfied that you meet all of the requirements of regulation 12 (see ECGs EUN2.23) of the Immigration (European Economic Area) Regulations 2016.”

First-tier Tribunal Decision

4. The appellant requested a paper consideration of his appeal. The matter was placed before the Judge on 8 January 2024 and the decision sent to the parties on 22 January 2024.
5. The Judge concluded that on the balance of probabilities the sponsor has been making significant financial payments to the appellant both prior to the application for an EEA Family Permit being made, and afterwards, at [11] of the decision.
6. However, the Judge identified concern as to various documents relied upon, at [12]-[15]. Consequent to the substance of the appeal before this Tribunal, it is appropriate to cite these paragraphs in full:

“12. I have carefully read and assessed the evidential weight that can be placed on the ELO shipping detail documents which contain the Appellant’s name as the recipient of the goods and conclude that I cannot attach any weight to them. Many of the items listed on the ELO documents, such as nail polish remover

pen and items for women and children are wholly inconsistent with the Sponsor's account that the Appellant lives on his own and has no dependants. There are very few items in these documents that could be assessed as essential needs of the Appellant. Given that he has no dependants I infer that he is either buying them for other relatives who are not his dependants or that he is running an informal business selling items for women and children on a cash basis and not declaring his income for tax purpose. The fact that the documents show he has not paid any income tax does not show he is not operating a business or is employed as claimed.

13. The Anwar Clinic and Zainab Hospital documents are, in a large part, illegible and does not identify whom the medication is for. The Government Post-Graduate College Mandi Bahuddin and the Utility Stores Corporation documents are not translated into English and I am, therefore, unable to take them into account.

14. I accept that the utility bills submitted bear not only the Appellant's name but the Sponsor's name too but conclude that they fail to show who actually pays for the utilities. I also bear in mind that it has not been claimed the Appellant lives in the property rent-free.

15. I accept that Pakistan is a cash-based economy, particularly in rural communities. It is very difficult to prove a negative, which in this appeal is that that Appellant has no other source of income which could meet the whole of his essential daily needs in Pakistan. I also accept that receipts in Pakistan are not given to purchasers as readily as they are in the UK and that the purchaser's name might not be on it. The Appellant's Allied Bank statements merely show that he receives money and withdraws it in cash."

7. At [16], the Judge concluded that the appellant had failed to show that he has no access to other source of funds and that the funds he receives from his sponsor are not only used to meet his essential needs but also that he could not meet his essential needs without receipt of those funds.

Grounds of Appeal

8. The appellant signed the grounds of appeal. He complains that he did not receive the respondent's bundle, contrary to directions. Consequently, he was unable to prepare his case and so was unable to address documents that concerned the Judge. It was further contended

that the Judge ignored evidence establishing dependency, such as a confirmation letter issued by the FBR, a letter from the PLRA, job refusal letters, and his father's medical reports.

9. First-tier Tribunal Judge Bartlett granted permission to appeal by a decision dated 22 May 2024 reasoning, *inter alia*:

“2. The grounds assert that the appellant did not receive the respondent's bundle. The Determination relied on a document provided by the appellant which appeared in the respondent's bundle. It seems to me that as the documents was supplied by the appellant and he requested a paper hearing, not having sight of the respondent's bundle did not have a material effect on how he would have proceeded with the case. However, I am required to assume that the appellant is telling the truth about non-receipt of the bundle and if he did not receive it, there is an arguable error relating to fairness of the proceedings.”

10. The respondent has filed a detailed rule 24 response prepared by Ms Rushforth, dated 3 June 2024. At its core, the response details:

- i. The respondent served her bundle by post on 23 November 2023 to the 'care of' address provided by the appellant.
- ii. If it was not received, the appellant had sufficient time to contact the First-tier Tribunal or the respondent to request it be sent again.
- iii. Even if the appellant did not receive the bundle, and behaved reasonably in not making efforts to obtain it, there was no procedural unfairness in the Judge proceeding to consider the appeal given that the appellant “clearly had a copy of the refusal letter, which he appealed, the other documents were evidence he had supplied to the Home Office, he was therefore entirely familiar with these documents even if not received in bundle format. For instance, the receipt referred to in the grounds of appeal was the appellant's own document, the fact he claims to have forgotten about it doesn't establish procedural unfairness.”

Law

11. Regulation 8 of the Immigration (European Economic Area) Regulations 2016 details, as relevant to this appeal:

‘(1) In these Regulations “extended family member” means a person who is not a family member of an EEA national under regulation 7(1)(a), (b) or (c) and who satisfies a condition in paragraph (2), (3), (4) or (5).

(2) The condition in this paragraph is that the person is—

(a) a relative of an EEA national; and

(b) **residing in a country other than the United Kingdom and is dependent upon the EEA national or is a member of the EEA national’s household**; and either—

(i) is accompanying the EEA national to the United Kingdom or wants to join the EEA national in the United Kingdom; or

(ii) has joined the EEA national in the United Kingdom and continues to be dependent upon the EEA national, or to be a member of the EEA national’s household.’

[Emphasis added]

12. The Court of Justice of the European Union confirmed in Case C-83/11 *Secretary of State for the Home Department v Rahman* EU:C:2012:519 [2013] QB 249, at [33], that dependency is to be established as existing at the date of the application.
13. In *Bigia v Entry Clearance Officer* [2009] EWCA Civ 79; [2009] Imm AR 515, at [24], the Court of Appeal confirmed that the test of dependency is taken to be that established by the CJEU in Case C-01/05 *Jia v Migrationsverket* EU:C:2007:1 [2007] QB 545, at [43], namely the applicant needs the material support of the Union citizen in order to meet their essential needs in their home country.
14. The Upper Tribunal confirmed in *Moneke (EEA - OFMs) Nigeria* [2011] UKUT 00341 (IAC); [2011] Imm AR 928, at [41], that dependency is not the same as mere receipt of some financial assistance from the sponsor. It means that the person needs financial support from the Union citizen in order to meet his essential needs, not in order to have a certain level of income.
15. The appellant in this matter is therefore required to establish that the material support received by his sponsor met his essential needs at the date of application.

Discussion

16. At the outset I express my gratitude to the sponsor, Mr Zafar Iqbal Mohsan, who attended the hearing and said all that he could on the appellant's behalf.
17. It is properly to be noted that the appellant requested a paper consideration of his appeal before the First-tier Tribunal. Consequently, there is no meritorious basis for the complaint advanced in the grounds of appeal that he was not given the opportunity to respond to the Judge's consideration of the evidence.
18. The respondent was required by case management directions to send a copy of her hearing bundle to an address provided by the appellant. In this instance the address provided by the appellant was that of his sponsor.
19. Service is a legal act. Service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the documents and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post. However, service is a rebuttable presumption. A recipient can establish that they did not receive the document(s).
20. As confirmed at the hearing, I am satisfied to the requisite standard that though the respondent posted the bundle to the sponsor, it was not received by him. I consider the sponsor to be an honest witness on this issue.
21. Having made this finding, I am required to consider the twin issues of fairness and materiality. By his grounds of appeal, the appellant states:
 - "8. ... The judge has incorrectly assumed that nail polish is woman specific things. I use nail polish remover for cleaning my razors and to remove adhesive residue on clothes. The fact that receipt date is not known neither the exact details of goods contained in receipt is provided to me through bundle, my case is seriously prejudiced in absence of respondent bundle.
 9. The judge was heavily influenced with receipt containing nail polish removal, he disregarded all other evidence more specifically the receipts on pages 84 to 100, which show goods bought essential for living from the funds transferred from my sponsor.

10. There is no single piece of evidence nor assertion which could show that I have any other source of income to sustain my life. All of my daily needs are met with the help of money received from my sponsor.”
22. I observe the appellant’s application form where he confirms that he is a single man. I also note the sponsor’s evidence, as detailed in his witness statement dated 31 October 2023, that the appellant lives alone in the sponsor’s house in Pakistan, with no dependents.
23. I turn to the appellant’s evidence, and the receipts that caused the Judge concern. They are located from pages 37 to 49 of the respondent’s bundle and accompanied the application. There are five shipping receipts from a company called ‘elo’ based in Faisalabad, dated 28 April 2020 (x2), 15 May 2020, 2 June 2020 and 13 August 2020.
24. Observing the description of items on the shipping receipts, thirteen (13) items specifically refer to their being for women including a bra, a pair of shoes, a necklace and three bracelets. Thirty-one (31) items are referenced as being for children, including a child’s watch and a toy submarine. Seven (7) items are referenced as being for a baby, including two romper suits.
25. I am satisfied that the failure to receive the respondent’s bundle could only affect the appellant in terms of fairness if upon considering the documents within the bundle that he himself provided with his initial application he would seek to withdraw reliance upon them. However, the shipping receipts are addressed to his home address, as confirmed by the sponsor, and it would be a matter for the Judge to consider the credibility of any effort to evade the adverse impact of this evidence. Whilst addressing the issue of the nail polish remover, I observe that the appellant provides no reasons within his grounds of appeal as to his purchases of items for women, children and babies despite their reference at [12] of the decision. I have concluded that the silence in the grounds of appeal is because the appellant has no answer to the finding made by the Judge that the evidence as a whole does not establish to the requisite standard that the appellant is dependent on his sponsor for his essential needs. In reaching this conclusion, I observe the document at page 105 of the appellant’s bundle which purports to identify almost all of the sponsor’s monthly remittance of 35,000 PKR being spent on essential items, leaving a few rupees left over, in comparison to the two receipts dated 28 April 2020 which

identify 10,603.08 PKR being spent on 46 items, primarily clothing for men, women and children.

26. I raised with Ms Newton the reference by the Judge to “infer” at [12]. Upon considering this paragraph, I conclude that the Judge was referencing potential possibilities as to why the items were being purchased – either for relatives who are not his dependents or running an informal business – neither of which support the appellant’s contention that he is receiving support from his sponsor for essential living needs. I accept that the primary finding of fact as to essential needs is identified at [16]
27. I am satisfied that the appellant cannot succeed in his contention that the Judge did not consider all relevant documents. The Judge confirmed at [16] that he considered the evidence as a whole and there is no good reason advanced establishing that this is not an accurate statement of fact. There is no requirement for a judge to recite and review each individual piece of documentary evidence filed in an appeal. Whilst the Judge accepted that the sponsor was making significant financial payments to the appellant both prior to and after the application for an EEA Family Permit was made, for the reasons detailed above the Judge gave lawful and adequate reasons for concluding that the material support received from his sponsor was not being used by the appellant to meet his essential needs at the date of application.
28. The fact that the sponsor, and through him the appellant, did not receive the bundle was not material to the outcome of the appeal before the Judge. It did not cause unfairness requiring the Judge’s decision to be set aside.
29. In the circumstances, the appeal is properly to be dismissed.

Decision

30. The making of the decision of the First-tier Tribunal sent to the parties on 21 January 2024 did not involve the making of a material error on a point of law.
31. The decision of the First-tier Tribunal is upheld. The appeal is dismissed.

Case No: UI-2024-002476
First-tier Tribunal No: EA/02117/2023
D O'Callaghan
Judge of the Upper Tribunal
Immigration and Asylum Chamber

8 October 2024