



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-002784

First-tier Tribunal Nos: EU/52906/2023
LE/02205/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 18th of September 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

**Zakya Mubarak Salem AWADH
(NO ANONYMITY ORDER MADE)**

Appellant

and

Entry Clearance Officer

Respondent

Representation:

For the Appellant: Mr A Chohan, Citadel Immigration Lawyers Limited

For the Respondent: Mr M Parvar, Home Office Presenting Officer

Heard at Field House on 13 August 2024

DECISION AND REASONS

1. This is an appeal against a decision of First-tier Tribunal Hillis dated 15 April 2024, refusing an appeal by the Appellant against a decision of an Entry Clearance Officer to refuse to issue a family permit under Appendix EU. The application for the family permit was made on 3 February 2023; the decision to refuse the application was made on 30 March 2023.
2. The refusal raised issues in respect of dependency. The relevant parts of the decision letter are in these terms:

“You state on your application that you are financially dependent on your sponsor and that he arrived in the United Kingdom on 01/12/2015.

As evidence of your dependency upon your relevant EEA Citizen sponsor or their spouse or civil partner, you have provided the following evidence - 8

money transfers dated between 04/05/22 and 03/01/23. Unfortunately, this limited amount of evidence in isolation does not prove that you are financially dependent on your sponsor. I would expect to see substantial evidence of this over a prolonged period, considering the length of time that your sponsor has been resident in the United Kingdom.

It is noted that you have not provided any evidence of your own domestic circumstances in Yemen. 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.

On that basis I am not satisfied that you are a dependant on a relevant EEA or Swiss citizen or their spouse or civil partner."

3. The Sponsor in this case was the Appellant's son, a Dutch national, Mr Mohamed Faruq.
4. The Appellant lodged an appeal with the IAC.
5. In the course of the preparatory stages of the appeal, no Respondent's Review was filed.
6. The appeal came before Judge Hillis on 3 April 2024 at Taylor House in the so-called 'float list'. In such circumstances it is perhaps not surprising that no Home Office Presenting Officer was available at the time of the hearing.
7. It may be seen then - there having been no Review and there being no Respondent's representative at the hearing - that there was no suggestion of any alteration of the Respondent's position from that set out in the 'reasons for refusal' letter: the Respondent's position before the First-tier Tribunal was as set out in the quotation above from the decision letter.
8. The Judge took evidence from the Sponsor. Paragraph 5 of the Decision suggests that the Sponsor was merely called in order to adopt his witness statement; necessarily there would have been no questions from a Presenting Officer, and it is not apparent on the face of the Decision that any questions were put by the First-tier Tribunal Judge. Mr Chohan, who appeared before me and - despite the misspelling of the name on the First-tier Tribunal's Decision - was also the advocate before the First-tier Tribunal, confirmed that there were no further questions put to the Sponsor.
9. The First-tier Tribunal's Decision relies heavily on the Judge's evaluation that the sources of support for the Appellant may not have genuinely come from the Sponsor. This is evident from a reading of paragraphs 10 to 12, which are in these terms:

"10. The Sponsor's banks statements contain debit entries for payments made to No1 Currency West on 6th July, 2022, 7th September, 2022, 5th October, 2022, 3rd November, 2022 and 6th December, 2022 for a total of GB£1,636 during that five-month period. The receipts for visa debits at AB5 to AB57 total GB£2,836 but do not indicate what those payments were in respect of.

11. *The bank statements show that the Sponsor's net earnings paid into his account for the period was GB£13,054. The credit balance on 1st July, 2022 was GB£1,761 and the balance on 30th December, 2022 was GB£1,473. I, therefore, conclude in the absence of evidence, to show where the funds in excess of the Sponsor's earnings came from, that the Appellant has failed to show that her Sponsor is the genuine source of the funds she purports to receive from him.*
12. *The Western Union Money transfer document in English shows significant sums of money being transferred to the Appellant with the Sponsor being recorded as the sender of the money on 30th January, 2023, 2nd November, 2023, 14th June, 2023, 19th June, 2023, 3rd July, 2023 and 27th July, 2023 totalling £3,794. I conclude that there is no reliable evidence before me that the Appellant's Sponsor is the source of the funds which have been sent to the Appellant in these money transfers."*
10. As recognised in the grant of permission to appeal, it is difficult to follow the 'Decision and Reasons' in all regards. Perhaps the best that can be said is that it appears that the Judge made a calculation from the figures recited, to the effect that the transactions indicated that the Sponsor had other sources of income or other sources of money going into his account beyond his actual employment - and drew an inference from such calculations that this meant that it had not been demonstrated that he was the person providing the support for the Sponsor.
11. This assessment is challenged in the Grounds of Appeal.
12. The grant of permission makes some criticism of the clarity of the grounds, but distils them into three essential points, as set out at paragraph 3, in these terms:

"However, doing the best I can it is arguable that, in assessing the evidence, the FtT Judge materially erred in:

 - *focussing heavily on concerns he had about issues relating to the Sponsor's income sources (which had not been raised by the Respondent) without affording the Sponsor any opportunity to comment on them;*
 - *failing to have sufficient regard to the Sponsor's evidence or providing adequate reasons as to why it was rejected;*
 - *placing too much weight on what was said to be the lack of provision of a schedule and evidence as to accommodation as if these were specific evidential requirement (the proposed address where the Appellant would live in any event being given)."*
13. The last bullet point is a reference to paragraph 13, which to some extent reflects the 'reasons for refusal' letter in stating that:

"...neither the Sponsor nor the Appellant has provided a schedule of their monthly expenses. There is no evidence before me of the accommodation that it is intended the Appellant would live in if her appeal were to succeed and she was issued with a Residence Permit".

14. Mr Parvar very properly accepts on behalf of the Respondent that the matter at the first bullet point is of significant and material substance. I accept that his concession in this regard is duly and properly made. Independently, in my own judgment, it seems to me manifest that the Judge has introduced an issue in respect of the source of the Sponsor's funds that quite simply did not feature in the original decision, and was not raised at any point prior to, or at, the hearing. The Sponsor and the Appellant were therefore not given any opportunity to address the matter. This was a fundamental error.
15. Whilst it might be said that the Judge's identification at paragraph 13 that there was not a schedule in respect of the monthly expenses for the Appellant, could go to the issue of the extent to which she was genuinely dependent upon the Sponsor to meet her essential living needs, the Sponsor addressed this matter to some extent in his witness statement before the First-tier Tribunal in saying in essence that the Appellant was without any source of income other than the support that he provided. That was not a matter evaluated by the First-tier Tribunal beyond the impugned observation that it had not been demonstrated that the Sponsor was the source of the funds Transferred to the Appellant. It follows that the Decision of the First-tier Tribunal cannot be preserved by reference to this brief observation at paragraph 13.
16. In all such circumstances it was common ground before me that there was material error of law; and that the only resolution is that this decision of the First-tier Tribunal needs to be set aside and the decision in the appeal remade before the First-tier Tribunal with all issues at large.
17. It will now be a matter for the Respondent as to whether or not to raise any different matters from those identified in the decision letter. As things presently stand, any suggestion that the monies that appear to be going from the Sponsor to the Appellant do not actually originate with the Sponsor is not a matter that has formally been raised against the Appellant's application or appeal.
18. I make no directions in this regard. In due course, standard directions will almost certainly suffice from the First-tier Tribunal - but it is essentially a matter for the First-tier Tribunal once seized of the proceedings.

Notice of Decision

19. The Decision of the First-tier Tribunal contained a material error of law and is set aside.
20. The decision in the appeal is to be remade before the First-tier Tribunal by any Judge other than First-tier Tribunal Judge Hillis, with all issues at large.
21. No anonymity order is sought or made.

(The above represents a corrected transcript of ex tempore reasons given at the conclusion of the hearing.)

I Lewis
Deputy Judge of the Upper Tribunal

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Immigration and Asylum Chamber

3 September 2024