Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: EA/00696/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 28 September 2018	**On 8th April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE BAGRAL

Between

HALEEMA BIBI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Ell, instructed by Zenith Solicitors
For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

ERROR OF LAW

Background

1. The Appellant, with permission, appeals against the decision of First-tier Tribunal Judge Robson (hereinafter referred to as the "FtTJ") who, in a decision promulgated on 7 December 2017 dismissed her appeal against the decision of the Respondent to refuse her application for an EEA Family Permit as confirmation of a right to reside in the United Kingdom as a dependent family member of her daughter-in-law, Rita [M] (hereinafter

"the Sponsor"), a Portuguese national pursuant to Regulation 7 and 8 of the Immigration (European Economic Area) Regulations 2006 (hereinafter referred to as the "EEA Regulations").

2. The Appellant is a citizen of Pakistan. On 1 April 2016 the Appellant made an application for an EEA Family Permit as a dependent of the Sponsor who is married to her son.

3. In a decision made on 30 December 2016 the Respondent refused that application. The Respondent's reasons for reaching that conclusion is set out concisely by the FtTJ at [18] to [20] as follows:

> "In addition to the aforementioned money transfer documents and pay slips, it appears that the Appellant had furnished bank statements which showed little in savings or disposal income to support her in another country as well as the family in the United Kingdom. The Respondent had noted that the Appellant had recently sold some property, indicating that she had assets of her own to rely on and in a previous visa application to visit her son, she had provided bank statements showing funds of her own and stated that she received income from agricultural land and property in Pakistan and, indeed, was proposing to meet her own expenses in the United Kingdom. In the light of that evidence, the Respondent took the view that it was not clear why the sons in the United Kingdom could not support the Appellant financially and to send money to her in Pakistan were that to be needed.
>
> The Respondent was not satisfied that the Appellant was wholly or mainly financially dependent on the Sponsor or that if she was, that it was a dependence of necessity rather than choice and therefore the Respondent was not satisfied that the Appellant was an extended family member in accordance with Regulation 8(2) of the European Regulations.
>
> Equally, whilst medical documentation had been furnished, there was no mention in the letters of support that the Appellant was unable to either care for herself or to receive the appropriate care in Pakistan if required, with financial assistance from her sons."

4. The FtTJ heard oral evidence from the Sponsor and the Appellant's son. While the FtTJ noted an inconsistency between their evidence he did accept the evidence that the Appellant had undergone surgery resulting in the amputation of two toes and the lower right leg. He also accepted that funds had been sent to the Appellant by her son and the Sponsor and that the Appellant was currently cared for by her husband's cousin. A summary of his findings is set out at [58] as follows:

> "(i) Although I accept the Appellant has undergone surgery resulting in an amputation of her lower right leg, there is no evidence before me, be it medical or otherwise, as to what her current needs are, be it either in terms of caring or treatment.
>
> (ii) There is no evidence before me that the cousin is unwilling to continue the care that is being offered or that such care as is necessary could not be continued by the use of another provider.

> (iii) There is no evidence before me that the Appellant is wholly financially dependent on the European worker (I accept that the daughter-in-law is a European Worker) or her spouse.
>
> (iv) I find that on the evidence before me, the current arrangement can continue in terms of accommodation, funding and communication."

5. The FtTJ thus concluded that the Appellant did not satisfy the EEA Regulations and dismissed the appeal.

6. On 18 December 2017 grounds of appeal were lodged on behalf of the Appellant. The grounds aver that the FtTJ erred in not finding the evidence of witnesses credible; gave inadequate reasons for rejecting the evidence; failed to apply a structured approach to the issue of proportionality under Article 8 of the ECHR and made a material misdirection in law in his consideration of the EEA Regulations.

7. Permission to appeal the decision was granted by the First-tier Tribunal on 2 May 2018 on all grounds save for the ground relating to Article 8 as this was not before the FtTJ.

8. A brief Rule 24 response was filed by the Respondent on 21 June 2018 opposing the appeal.

9. At the hearing before the Upper Tribunal, the representatives made helpful and succinct submissions. In amplifying the grounds of appeal, Mr Ell argued that the FtTJ had failed to make findings in respect of key issues in the appeal. He submitted that there was no engagement with the issue of whether funds were remitted to meet the Appellant's basic needs and the reasons given were unclear and inadequate. Mr Diwnycz submitted that the FtTJ's findings were open to him on the evidence and that Appellant's challenge to them was a mere disagreement. In reply Mr Ell submitted that the FtTJ's reasoning at [55] was inadequate and at [58] failed to apply the correct test.

Error of Law

10. According to the application, the Appellant applied for an EEA Family Permit as a family member of an EEA national. The application was considered by the Respondent by reference to Regulation 7 and 8 of the EEA Regulations. The grant of permission observed that the FtTJ did not set out in his decision those provisions in full and, whilst that would have been helpful, they are referred to briefly at [7] and it is apparent that the FtTJ was aware that the key issue before him was the question of whether the Appellant was dependent on her son and Sponsor.

11. While the FtTJ observed that there was an absence of evidence relating to the sale of the Appellant's property and of her actual outgoings, he did accept at [54] the evidence of the Appellant's son and Sponsor that monies were sent to the Appellant as and when required. The FtTJ then jumped to answering the question of dependency at [58 (iii)] against the

Appellant on the basis that there was *"no evidence…that the Appellant is wholly financially dependent on the European worker…or her spouse".* The difficulty with that analysis in my view is two-fold. First, I agree with Mr Ell that there is an obvious misdirection in law. The question was not whether the Appellant had established that she was *"wholly financially dependent"* on her son and Sponsor, but whether she required their financial support in order to meet her basic needs: *Reyes v Migrationsverket (Case C- 423/12).* That, in my view, is an apparent failure to analyse the accepted evidence within the correct legal framework. It may well be the case that the FtTJ was misled by the wording of the Respondent's refusal and it does not appear that he was given any assistance by the representatives then before him but, nevertheless, a material error has been made.

12. Second, in view of the FtTJ's acceptance that monies were remitted to the Appellant, I agree that no cogent reasons are given as to why this did not meet the test of dependency as defined. The analysis at [54] is unclear and the FtTJ's reference to the lacuna in the evidence at [55] is not sufficient to discharge the duty to provide reasons in view of the accepted evidence. The evidence of the Appellant's son recorded at [35] and [54] was that the monies paid for treatment, medication and food. This would clearly meet part of the Appellant's essential needs. I agree with Mr Ell that it is not at all clear whether the FtTJ accepted or rejected that evidence, and the criticism that the FtTJ failed to engage with any consideration as to the evidence of what that money was used for is made out.

13. For these reasons, I am satisfied that the decision of the First-tier Tribunal involved the making of an error on a point of law and the decision of the First-tier Tribunal is set aside. I must then consider whether to remit the case to the First-tier Tribunal, or to re-make the decision myself. In reaching my decision I have taken into account paragraph 7.2 of the Senior President's Practice Statement of 25 September 2012 and consider that it is appropriate to remit the matter to the First-tier Tribunal as the appeal will have to be reheard in its entirety. The parties will be advised of the date of the First-tier Tribunal hearing in due course.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law; the decision is set aside, no findings are preserved, and is remitted for a fresh hearing before the First-tier Tribunal (not Judge Robson) on a date to be fixed.

No anonymity direction is made.

Signed Date 14/02/2019

Deputy Upper Tribunal Judge Bagral