



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006218
First-tier Tribunal No:
EA/04172/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 30 April 2023

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

JUNAID BASHIR
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No representative

For the Respondent: Mr E Terrell, Senior Presenting Officer

Heard at Field House on 18 April 2023

DECISION AND REASONS

Introduction

1. The Appellant, a citizen of Pakistan, appeals against the decision of First-tier Tribunal Judge Reed (the Judge), promulgated on 22 November 2022, following a hearing on 25 October 2022. By that decision, the judge dismissed the Appellant's appeal against the Respondent's refusal to issue her with a family permit pursuant to the Immigration (European Economic Area) Regulations 2016 (the 2016 Regulations).

2. The Appellant claimed that she was a dependant on her uncle, a Dutch citizen (the Sponsor), and was therefore an extended family member pursuant to regulation 8 of the 2016 Regulations. The Respondent was not satisfied that dependency had been established.

The judge's decision

3. At all material times, the Appellant had not been legally represented. At the hearing before the Judge, the Sponsor attended and gave live evidence.
4. At [27] of her decision, the Judge recorded that the Sponsor stated that the Appellant was "married with five children". This was completely at odds with the rest of the evidence, which indicated that the Appellant was in fact single and did not have any children. On the basis of this apparent inconsistency, the Judge found that the Appellant had not demonstrated dependency and the appeal was accordingly dismissed.

The grounds of appeal

5. The Appellant drafted her own grounds of appeal, asserting that the Judge had been wrong to state that she was married with five children. She claimed that the Sponsor's evidence had been that it was her father (the Sponsor's brother) who had been married with five children, including the Appellant herself.
6. Following the grant of permission by the First-tier Tribunal, the Respondent provided a rule 24 response, dated 13 January 2023. In this, she confirmed that she was not opposing the Appellant's appeal to the Upper Tribunal. Having considered a detailed minute of the hearing taken by the Presenting Officer, the Respondent took the view that the

Judge may have misheard the Sponsor's evidence, or that there had been some other misunderstanding relating to the Appellant's marital status.

The hearing

7. At the hearing before me, Mr Terrell maintained what was said in the rule 24 response and provided me with a copy of the Presenting Officer's minute. That is indeed a detailed note and it makes no mention of any discrepant evidence having been provided by the Sponsor. As stated in the rule 24 response, such a stark inconsistency is highly likely to have been recorded in the minute.
8. I had in advance attempted to obtain a recording of the hearing, but this had not been possible. I was, in all the circumstances prepared to proceed on the basis of the Respondent's position, as adopted in the rule 24 response and confirmed by Mr Terrell at the hearing before me.

Conclusions

9. In the particular circumstances of this case, I am satisfied the Judge did err by misunderstanding or potentially misrecording the Sponsor's evidence as to the Appellant's personal circumstances. The error was plainly decisive of the appeal and therefore the Judge's decision must be set aside.
10. I considered whether the appeal should be retained in the Upper Tribunal rather than being remitted. It is apparent that there needs to be a complete reassessment of the evidence in this case with extensive fact-finding. It is also appropriate to give the Appellant the opportunity to provide more up-to-date evidence. In light of this, remittal is the appropriate course of action.

Notice of Decision

11. The decision of the First-tier Tribunal involved the making of an error of law and it is set aside.
12. The appeal is remitted to the First-tier Tribunal (Birmingham hearing centre) for a complete rehearing with no preserved findings of fact. The remitted hearing shall not be conducted by Judge Reed.

Directions/Instructions to the Appellant

- (1) The Appellant has the chance to provide more information in support of her case. She must think carefully about providing information of claimed dependency between October 2022 and now. Any more information she does want to provide must be sent to the First-tier Tribunal and the Respondent as soon as possible. The First-tier Tribunal may send out its own direction/instructions about the provision of more information. If it does, the Appellant must read these very carefully.

H Norton-Taylor

**Judge of the Upper Tribunal
Immigration and Asylum Chamber**

Dated: 26 April 2023