



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-000239
First-tier Tribunal No:
EA/05613/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 21 May 2023

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

ENTRY CLEARANCE OFFICER

Appellant

and

MUHAMMAD ARIF MALIK
(NO ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Ms A Ahmed, Senior Home Office Presenting Officer

For the Respondent: The Sponsor, Mr Aftab Ali

Heard at Field House on 2 May 2023

DECISION AND REASONS

Introduction

1. The claimant is a citizen of Pakistan born on 28th May 1982. He applied for an EEA family permit to come to the UK as the dependent paternal cousin of Mr Aftab Ali, a citizen of Italy, on 1st December 2020. The application was refused on 30th March 2021. His appeal against the decision was allowed by First-tier Tribunal Judge Sweet in a determination promulgated on the 12th October 2021.
2. Permission to appeal was granted by Upper Tribunal Judge Rimington on 2nd March 2023 on the basis that it was arguable that the First-tier judge

had erred in law in finding that the sponsor was a qualified person without finding that he was exercising Treaty rights, and by simply finding he was an Italian citizen with indefinite leave to remain who had provided a letter from his accountant stating he was self-employed. It is also found to be arguable that the decision in relation to dependency is insufficiently reasoned.

3. The matter came before me to determine whether the First-tier Tribunal had erred in law, and if so to decide if any such error was material and whether the decision needed to be set aside.

Submissions - Error of Law

4. In the grounds of appeal for the Secretary of State it is argued that there was a failure to give adequate reasons for findings on material matters. It is argued that there should have been corroborating evidence in the form of receipts for what the remittances were used for in Pakistan by the claimant; and independent corroborating evidence of the sponsor being self-employed from HMRC; and further there should have been consideration as to whether the claimant would have been an unreasonable burden on the social assistance system of the UK.
5. Ms Ahmed added that in oral submissions there was an unlawful failure to consider the genuineness of the application, in the context of the entry clearance officer having raised concerns in the refusal notice that the sponsor had sponsored other dependent relatives. She argued that overall the reasoning of the First-tier Tribunal was slim to the point of being unlawful.

Conclusions- Error of Law

6. I find that it is clear that the First-tier Tribunal believed the evidence that the sponsor was exercising Treaty rights as a self-employed taxi driver (which is set out at paragraph 7 of the decision which provides an account of the evidence of the sponsor) as the sponsor is found to be a credible witness at paragraphs 11 and 12 of the findings section of decision, at which point the First-tier Tribunal also place reliance on the fact that there was a letter from the sponsor's accountant stating that he is self-employed. I find that adequate reasons are given for finding that the First-tier Tribunal Judge accepted that the sponsor was exercising Treaty rights. There is no requirement that corroborating evidence from HMRC should have been produced, and it was rationally open to the First-tier Tribunal to believe the oral evidence of the sponsor particularly given the supporting evidence from the accountant.
7. I also find there are sufficient reasons given at paragraph 11 of the decision for finding that the claimant is dependent in terms of retained EEA law on the sponsor. It was open to the First-tier Tribunal to find the evidence of the sponsor credible with respect to transfers sent to the claimant, which, it is recorded in the decision, did not stand alone as there was also evidence in the form of bank statements showing money

transfers through Ria Financial. It is clear that evidence was given by the sponsor about the use by the claimant of the money for household bills and medicine, and that it was accepted that the claimant's parents died in 2004/5 and that the claimant lived for free in a house provided by the sponsor. In these circumstances it was open to the First-tier Tribunal to find that the claimant was dependent on the sponsor, as the findings made clearly concluded that the appellant relied upon the sponsor for his essential living needs.

8. There was no statement in the refusal notice that the claimant was refused because of concerns about an unreasonable burden on the social assistance system of the UK, and as the Secretary of State did not attend the hearing before the First-tier Tribunal there was no reason why this was an issue which should have been addressed at the hearing or which required findings to be made about it. It is also notable that the Barclays Bank statement for the sponsor shows that he had over £13,000 in his account at all times in the six month period covered by the statements in 2020/2021.
9. The grounds of appeal do not assert any wider failing to consider the genuineness of the application by the First-tier Tribunal, but this issue was raised by Ms Ahmed so I will deal with it for completeness. The original refusal notice linked the concerns about the genuineness of the dependency to the lack of evidence of the sponsor's employment in the UK. As the First-tier Tribunal resolves this issue in favour of the claimant I do not find that the Tribunal needed to do make any other findings in the context only of an assertion that the sponsor had "previously sponsored numerous applications for family permits" particularly given there were no further particulars and given that the sponsor explained in evidence (as recorded at paragraph 7 of the decision) he had sponsored his other dependent siblings, a couple of whom had been granted and two applications remained outstanding, and in the context of his substantial savings.

Decision:

1. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.
2. I uphold the decision of the First-tier Tribunal allowing the appeal.

Fiona Lindsley

Judge of the Upper Tribunal
Immigration and Asylum Chamber

2nd May 2023