



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Extempore decision

Case No: UI-2022-001880
First-tier Tribunal No: EA/07161/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 27 April 2023

Before

UPPER TRIBUNAL JUDGE SHEIRIDAN

Between

Mujeeb Ur Rehman
(NO ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Chohan, Counsel instructed by Apex Legal Services
For the Respondent: Mr Mullen, Senior Home Office presenting Officer

Heard at Field House on 27 January 2023

DECISION AND REASONS

1. This is an appeal against a decision of Judge of the First-tier Tribunal Hussain (“the judge”) promulgated on 20 January 2022.

Background

2. On 26 March 2021 the appellant’s application for a family permit under the Immigration (EEA) Regulations 2016 to join his cousin (“the sponsor”) in the UK was refused. The respondent gave two reasons for refusing the application. There were:
 - a. First, the respondent did not accept that the evidence established that the sponsor was exercising Treaty Rights. The respondent stated that the 2019/2020 HMRC tax calculation that had been provided was insufficient and she would expect to see evidence such as play slips, invoices and bank statements demonstrating that the sponsor is currently exercising Treaty Rights.

- b. Second, the respondent was not satisfied that sufficient documentation to establish dependency had been submitted.

Decision of the First-tier Tribunal

3. The judge found that the evidence before him was insufficient to establish that the sponsor was exercising Treaty Rights. The judge characterised the lack of evidence about the sponsor's employment as "lamentable". The judge noted the absence of evidence of earnings, including the absence of the sponsor's self-assessment for the tax year ending April 2021. The judge stated in paragraph 19 that the only evidence of the sponsor's actual earnings was in the form of bank statements for the month of October 2021 and the various sources of credit showing on that statement were not explained.
4. The judge also found that the appellant had not established dependency on the sponsor. One of the reasons given by the judge was that he was concerned about the reliability of Western Union remittance receipts issued in Spain in the English language. The judge stated that he would expect to see such receipts written in Spanish and the appellant had not explained why this was not the case.

Grounds of appeal

5. There are two grounds of appeal: the first concerns the judge's finding that the appellant is not dependent on the sponsor; the second concerns the judge's finding that the sponsor is not exercising Treaty Rights.

Dependency on the sponsor

6. The judge draw an adverse inference from Western Union receipts issued in Spain being in English. The grounds argue that this is misconceived because the receipts submitted by the appellant were from Pakistan and the UK, not from Spain. Mr Mullen accepted that the judge was mistaken about the evidence including receipts from Spain. He argued, however, that there were other sustainable reasons which were sufficient to support the judge's conclusion that dependency had not been established.
7. The judge was clearly mistaken in finding that the appellant relied on English language Western Union receipts issued in Spain. Given the significance the judge appears to have attached to this, I agree with Mr Chohan that this amounts to an error of law that undermines the judge's assessment of whether the appellant is dependent on the sponsor.

Sponsor exercising Treaty Rights

8. I now turn to the judge's finding that the evidence before him was insufficient to establish that the sponsor had been exercising Treaty Rights.
9. At the hearing Mr Chohan took me to the evidence in the bundle that was before the First-tier Tribunal relating to the sponsor's employment. He submitted that, in the light of this evidence, there was no rational basis to conclude that the sponsor was not exercising Treaty Rights. Mr Mullen's response, in summary, was that the judge was entitled to find that the evidence fell short of establishing that the sponsor was exercising Treaty Rights.

10. Very little evidence about the sponsor's earnings was provided. Tax calculation results were provided for two tax years but, as the judge observed in paragraph 19, the sponsor's self-assessment for the tax year ending April 2021 was not provided. Nor did the sponsor provide bank statements (other than for the month of October 2021) or documents showing the source of his income. Moreover, the lack of documentation was in the context of the respondent explaining in the refusal decision that tax calculations were insufficient and indicating the types of documents that could be submitted. Some judges might, perhaps, have considered that the limited documentary evidence about the sponsor's earnings, taken together with his witness evidence, was sufficient to establish that he was exercising Treaty Rights. However, given the paucity of documentary evidence it was plainly reasonably open to the judge (and not irrational) to conclude that the evidence was insufficient to establish that the sponsor was exercising Treaty Rights. Accordingly, I am satisfied that the grounds of appeal fail to identify an error that undermines the judge's conclusion that the sponsor was not exercising Treaty Rights.

Conclusion

11. The judge's finding that the appellant was not dependent on the sponsor is undermined by an error of law and cannot stand. However, the error is immaterial because the judge was entitled to find, for the reasons given, that the appellant had not established that the sponsor was exercising Treaty Rights. In the light of this finding, the appellant could not succeed irrespective of whether he was dependent on the sponsor.

Notice of decision

12. The decision of the First-tier Tribunal did not involve the making of an error of law that was material to the outcome. I have therefore decided to not set aside the decision of the First-tier Tribunal.
13. The appeal is dismissed and the decision of the First-tier Tribunal stands.

D. Sheridan

Judge of the Upper Tribunal
Immigration and Asylum Chamber

2.3.2023