



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002676
UI-2022-002677
First-tier Tribunal No: EA/07910/2021
EA/07913/2021

THE IMMIGRATION ACTS

Decision & Reasons Promulgated
On 12 March 2023

Before

UPPER TRIBUNAL JUDGE GLEESON
DEPUTY UPPER TRIBUNAL JUDGE JARVIS

Between

GULSHAN SHAHEEN ASHRAF
GHULAM ABBAS
(NO ANONYMITY ORDER MADE)

Appellant

and

THE ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr M. Moriarty, Counsel instructed by Central Chambers Law Solicitors

For the Respondent: Ms A. Nolan, Senior Home Office Presenting Officer

Heard at Field House on 9 February 2023

DECISION AND REASONS

Introduction

1. The Appellants are both nationals of Pakistan and first cousins. Appellant 1 applied to enter the United Kingdom under Appendix EU (Family Permit) of the Rules on the basis that he is a *family member of a relevant EEA citizen* as defined at Annex 1 to that Appendix: in this instance, his father, who is a German national (“the Sponsor”).

2. Appellant 2 applied under reg. 8 of the 2016 EEA Regulations on the basis of his dependency, as an extended family member of the Sponsor.
3. These applications were refused by the Entry Clearance Officer (“the ECO”) on 25 January 2021 and 1 March 2021 respectively; the Appellants appealed to the First-tier Tribunal.

The First-tier Tribunal decision

4. Relevant to our consideration of the Appellants’ appeal against the decision of the Judge are the following findings within the decision:
 - a. The Sponsor’s income was just about sufficient to establish that he was economically active to a low level and therefore a qualified person for the purposes of the 2016 EEA Regulations.
 - b. The evidence did not establish that the sponsor would be able to support the Appellants in the United Kingdom.
 - c. The evidence of remittances sent to the Appellants in the bundle shows recent regular monthly payments of £100.
 - d. In respect of Appellant 1, at the appeal hearing he supplied a bank statement showing transactions dating back to November 2017; the bank transfers were for amounts which varied greatly and did not all relate to the amounts provided by the Sponsor; the bundle also contained receipts from a grocery store and a pharmacy.
 - e. The Judge concluded that the Sponsor’s evidence about Appellant 1’s circumstances was “very vague”. In respect of Appellant 1, the Judge remarked that if he had been studying until the age of 26 as was claimed, it would be expected that he would have good qualifications which would enable him to work - the Sponsor was so vague as to appear to be “withholding detail”.
 - f. The ECO had, in Appellant 2’s case, obtained records from the government of Pakistan showing that he was a registered taxpayer and that Appellant 2 had simply not addressed this reason for refusal in his case.

Permission to appeal

5. Permission was granted by First-tier Judge Dempster in the following terms: “[despite] the limited evidence provided by the appellants in support of their appeal, it is arguable that the judge had undue regard to the expectation that both appellants would be expected to work given their qualifications and there is thus an arguable error of law.”

Rule 24 response

6. The Respondent’s rule 24 response (dated 23 June 2022) supported the findings of the First-tier Tribunal and asserted that the Judge was entitled to dismiss the appeal.

The error of law hearing

7. In the error of law hearing, Mr Moriarty developed his skeleton argument dated 6 February 2023 and the original grounds of appeal drafted by different counsel.
8. Mr Moriarty emphasised that the theoretical ability of a person to find work in the home country is not directly relevant to the question of reliance or dependence on the Sponsor for most or all of their essential needs. Mr Moriarty drew attention to the fact that the refusal accepted that there had been recent remittances sent by the Sponsor to the Appellants.
9. Mr Moriarty also argued that the Judge's conclusions about the Sponsor's own financial circumstances in the United Kingdom and his ability to maintain the Appellants was not materially relevant to the question of their dependency upon him under Annex 1 or the Regulations.
10. Mr Moriarty added that the ECO was not represented at the appeal hearing and whilst that did not mean that the Respondent was conceding the issues, that nonetheless there was no direct challenge to the evidence of the Sponsor.
11. In response, Ms Nolan relied upon the rule 24 response and directed our attention to the Judge's criticism of some of the documentary evidence and indeed the oral evidence of the Sponsor. Ms Nolan argued that such assessment was entirely in keeping with the "close scrutiny" advised by the Upper Tribunal in Moneke and others (EEA - OFMs) Nigeria [2011] UKUT 341 (IAC), as later endorsed by the Court of Appeal in Latayan v The Secretary of State for the Home Department [2020] EWCA Civ 191 at [24].
12. Ms Nolan also emphasised that Appellant 2 simply had not responded to the Respondent's reliance upon the evidence from the government of Pakistan which showed that he was a taxpayer.
13. At the end of those submissions we gave a preliminary indication that we were likely to find no material error of law. Mr Moriarty asked to make submissions in reply to those of Ms Nolan, arguing that it was not clear from the First-tier Tribunal decision what part of the appellant's evidence (oral or written) was 'vague'. Having heard him, we reserved our decision.

Findings and reasons

14. We have considered Mr Moriarty's arguments and those raised in the grounds of appeal carefully but have still, nonetheless, concluded that they do not make out any material unlawfulness in the relatively succinct decision of the Judge. Appeal to the Upper Tribunal is on a point of law: the Upper Tribunal can interfere with findings of fact only in very limited circumstances: see Perry v Raleys Solicitors [2019] 2 WLR 636, [2019] UKSC 5 at [63-64].
15. We consider that the Judge's findings of fact and credibility were open to him on the evidence and that there is no error therein at the level of an error of law, or at all. The Judge was entitled to find that dependency was not established, for the reasons given at [17]. He saw and heard the sponsor give evidence and gave proper reasons for placing little weight thereon: see WN (Surendran; credibility; new evidence) Democratic Republic of Congo [2004] UKIAT 00213 and the Court of Appeal's decision in Secretary of State For the Home Department v Maheshwaran [2002] EWCA Civ 173.

16. The Judge's self-direction on dependency at [12] is clear and cogent. He directed himself that money transfer receipts can be sufficient evidence of financial dependency and that dependency does not have to be of necessity; the person in question did not have to be dependent on the Sponsor for the meeting of all of their essential needs in order to be dependent for the purposes of the Regulations: see Latayan.
17. There is no material error of law in the Judge's approach to the evidence of dependency.
18. The Judge did not find against the Appellants on the basis that they could nonetheless find work as they were educated; the Judge in fact found that the Sponsor's evidence about their personal circumstances in Pakistan was vague. We reject Mr Moriarty's submission that it was not clear if the vague evidence was the oral evidence given by the Sponsor or the evidence in the witness statement. In our view [4 & 5] are particularly clear in respect of what questions were asked of the Sponsor at the beginning of the hearing: the vagueness identified by the Judge in the Sponsor's evidence was in relation to his oral evidence. No proper reason has been provided for displacing that conclusion.

Notice of Decision

19. We therefore conclude that the decision by the First-tier Tribunal did not involve any error on a point of law and the appeals are therefore dismissed.
20. The decision of the First-tier Tribunal stands.

I P Jarvis

Deputy Upper Tribunal Judge
Immigration and Asylum Chamber

27 February 2023