



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-004085

First-tier Tribunal No: EA/52488/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 22 May 2023

Before

UPPER TRIBUNAL JUDGE HANSON
DEPUTY UPPER TRIBUNAL JUDGE ROBERTSON

Between

MUHAMMAD SHAFIQ
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs Sood instructed by ALC Solicitors.

For the Respondent: Ms Young, a Senior Home Office Presenting Officer.

Heard at Birmingham Civil Justice Centre on 2 May 2023

DECISION AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Mather ('the Judge'), promulgated on 1 June 2022, in which the Judge dismissed the appellant's appeal against the refusal of an Entry Clearance Officer (ECO) to grant him an EEA Family Permanent to enable him to join his brother ('the Sponsor'), a Greek national, in the UK as an extended family member.
2. The Judge's findings are set out from [20] of the decision under challenge. Having had the opportunity of reviewing the evidence made available the Judge concludes at [25] that the limited amount of evidence provided in isolation did not prove the appellant was financially dependent on the sponsor. The Judge refers to expecting to see further evidence covering a longer period prior to the application being made.
3. The Judge noted the Sponsor's evidence that the appellant's wife and three children will remain in Pakistan and that the Sponsor will continue to send money to support them and that the appellant would obtain work in the UK and send money back. The Judge noted the Sponsor's evidence that the appellant had never worked, that his English was poor, and that there were no letters or emails from prospective employers confirming they were willing to provide

- employment to a 45-year-old man who had never worked, had poor English, and what he would expect to earn [27].
4. The Judge noted the Sponsor has a wife and three children to support and that whatever his earnings are, he is in receipt of Working Tax Credits. The Judge found the Sponsor was unable to explain the reasons for a significant difference in the average balance in his accounts in the two periods split by the missing statements that the Sponsor chose not to produce. The Judge was therefore not satisfied the appellant may not become a burden on the public purse if he allowed to enter the UK.
 5. At [29] the Judge writes *“Looking at the evidence produced I am satisfied that the Appellant has not addressed the challenges raised in the Refusal Letter and the Respondent was entitled to conclude that in all the circumstances, they would not exercise the discretion available to them to issue a family permit”*.
 6. Permission to appeal was initially refused by another judge of the First-tier Tribunal but granted on a renewed application by Upper Tribunal Judge Rintoul on 14 November 2022.
 7. In a Rule 24 reply dated 21 December 2022 the respondent opposes the appeal.

Discussion and analysis

8. The starting point in this appeal is to consider exactly why the application for the Family Permit was refused. In the decision dated 27th May 2021 the ECO writes:
 - You state that your brother is a Greek national. You have provided evidence that your sponsor holds a Greek passport.
 - On your application you state that your sponsor has resided in the UK since April 2016 and that you are financially dependent on him. As evidence of this you have provided sporadic money transfer remittance receipts from your sponsor to you, however, it is noted that these began in April 2019. Unfortunately, this limited amount of evidence in isolation does not prove that you are financially dependent on your sponsor. I would expect to see substantial evidence of this over a prolonged period, considering the length of time your sponsor has been resident in the United Kingdom.
 - I would also expect to see evidence which fully details yours and your family’s circumstances. Your income, expenditure and evidence of your financial position which would prove that without the financial support of your sponsor your essential living needs could not be met.
 - Home Office records show that your sponsor has a wife and at least 3 dependent children. The submitted evidence shows that from his employment earns a net income of approximately £1087.00 per month. Due to his low income, your sponsor also receives state benefits of over £277.00 per month, namely, Working Tax credits. I am therefore not satisfied that it is sustainable for your sponsor to financially support you, along with his own family in the UK. Therefore, after considering these factors, there is a risk that if you did arrive in the United Kingdom that you may become a burden on the public funds system of this country.
9. The hearing before the Judge took place on 16 May 2022. The Judge specifically records at [8] that the appellant had submitted a witness statement dated 25 January 2022 and also refers to various other documents provided in support of the appeal at [10]. The evidence of the Sponsor in his witness statement before the Judge is dated 24th January 2021. We are satisfied that the Judge considered the evidence with the required degree of anxious scrutiny. The submission made on the appellant’s behalf that points found against the appellant by the Judge had been resolved by the appellant in a witness statement has no merit when that statement is a further statement from the Sponsor dated 25 April 2023,

- containing information/evidence that was not before the Judge and substantially post-dates the decision under challenge. The same applies to the document headed "Schedule of money transfers" which was clearly not before the Judge who comments upon the lack of documentary evidence to support the claimed dependency.
10. The Judge was aware of the decision of the Upper Tribunal in Dauhoo (EEA Regulations - reg 8(2) Mauritius [2012] UKUT 79 (IAC) which found an applicant needs to prove the following to establish themselves of an extended family member:
 - a. Prior dependency and present dependency;
 - b. Prior membership of a household and present membership of a household;
 - c. Prior dependency and present membership of a household;
 - d. Prior membership of a household and present dependency.
 11. Submissions were made to us by Mrs Sood that the appellant succeeded on the basis he had prior membership of a household and present dependency.
 12. The Judge in the determination at [5] recorded "In relation to the dependency which is the sole issue in this case...". The skeleton argument relied upon by the appellant at the hearing asserts that the appellant is dependent upon his Sponsor both by virtue of money sent to meet his essential needs and also that the appellant was residing in the Sponsor's accommodation. It was therefore a case advanced on the basis of prior membership of a household and present dependency when referring to the Dauhoo possibilities.
 13. We do not find on the basis of the evidence made available to the Judge has erred in coming to the conclusion that the evidence provided was not sufficient to enable the appellant to establish alleged dependency, i.e. payments being received from the Sponsor to meet his essential needs.
 14. Even if the appellant had provided evidence to support his claimed dependency, the ECO clearly undertook the required holistic assessment of the facts as a whole before concluding that it was not appropriate to exercise discretion in the appellant's favour by granted an EEA Family Permit. That was upheld by the Judge at [29].
 15. Mrs Sood was asked about this during the hearing as the skeleton argument she has failed, dated 28 April 2023, only challenges the Judge's findings on dependency. Her reply was to state it can be inferred from the skeleton argument that this aspect of the decision was challenged, but we do not find that to be so. Even if it is, it appears to be no more than a disagreement with the manner in which the decision was made.
 16. Regulation 12 (4) of the Immigration (EEA) Regulations 2016 ('the 2016 Regulations') reads:
 - (4) An entry clearance officer may issue an EEA family permit to an extended family member of an EEA national (the relevant EEA national) who applies for one if—
 - (a) the relevant EEA national satisfies the condition in paragraph (1)(a);
 - (b) the extended family member wants to accompany the relevant EEA national to the United Kingdom or to join that EEA national there; and
 - (c) in all the circumstances, it appears to the entry clearance officer appropriate to issue the EEA family permit.

17. Regulation 12 (4) (c) clearly entitles the ECO to consider the financial situation of the Sponsor together with all other relevant material. It was noted the sponsor's family are in receipt of benefits through Working Tax Credit, which is not disputed, and that the evidence before the Judge did not support the claim that the appellant will be able to support himself by finding employment. There is nothing irrational in the way in which the ECO exercised discretion in light of the facts as known with the application, or in the decision of the Judge at [29] in upholding that aspect of the refusal.
18. Having considered the material with the required degree of anxious scrutiny for ourselves, we find the appellant has failed to establish legal error material to the decision of the Judge to dismiss the appeal.

Notice of Decision

19. No material legal error is made out in the decision of the First-tier Tribunal. The determination shall stand.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

2 May 2023