



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-001022

First-tier Tribunal No: EA/07395/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 4 September 2023

Before

UPPER TRIBUNAL JUDGE HANSON

Between

SOBIA ZAFAR
(NO ANONYMITY ORDER MADE)

Appellant

and

AN ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr Mustafa instructed by AWS Solicitors
For the Respondent: Mr Tan, a Senior Home Office Presenting Officer.

Heard at Manchester Civil Justice Centre on 5 July 2023

DECISION AND REASONS

1. In a decision promulgated on 31 May 2023 the Upper Tribunal found material error of law in the decision of the judge of the First-tier Tribunal who allowed the appellant's appeal. The matter comes back before the Upper Tribunal to enable it to substitute a decision to either allow or dismiss the appeal.
2. The appellant, a citizen of Pakistan, applied to join her EU national sponsor as an extended family member. In the refusal of the EA Family permit dated 29th March 2021 it is written:

You are claiming to be dependent upon your EEA sponsor and have provided the following evidence: money transfer remittance receipts.

In order for this department to establish your dependency we must be satisfied that you need the financial support from the EEA national to meet your essential needs.

It is noted that you have provided 6 money transfers from 2019 to 2020 stating that these amounts have been sent to your mother by your EEA sponsor.

The fact of transferring money is not evidence that it is needed by the recipient. We would expect to see evidence which fully details yours and your family's circumstances, such as

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.

Guidance states that financial dependence should be interpreted as meaning that you need the financial support of the EEA national in order to meet your essential needs in the country where you are present – not in order to have a certain level of income. You have not demonstrated that the money you have received is used in any way to support you in meeting your essential needs, as you have not furnished any details regarding your income and outgoings.

Home Office records show that due to her low income, your sponsor also receives state benefits of over £1334.06 per month, namely, Universal credits. I am therefore not satisfied that it is sustainable for your sponsor to financially support you, along with her 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.

On that basis you do not meet the requirements of Regulation 8(2)(b) and your application is refused.

3. The appellant has provided a number of additional documents in support of the appeal all of which have been considered in detail.
4. The EU national Sponsor, whose name has appeared in the proceedings as Petruta Dumitrache, was cross-examined by Mr Tan.
5. There are within the bundle bank statements in the name of Mrs A Hassan and Mr M U Hassan, and later statements in the name of Mrs P Hassan. The Sponsor claimed the later related to her.
6. The Sponsor was asked whether she had changed her name by deed poll which she confirmed she had to Amina Hassan, although when asked whether she had any evidence to corroborate this claim she did not.
7. Mr Tan also referred her to a Pakistan ID card at page 105 of the appellant's appeal bundle issued on 21 October 2019 in the name of Petruta Dumitrache, whose named husband is Murtaza Ul Hassan.
8. The Sponsor was asked about occupation of the property in which she lives with her husband and about the evidence now available that two grandparents also appear to be living in the same property who are not working. The Sponsor confirmed they do live in the property she occupies with her husband.
9. The Sponsor was asked about an entry in the bank statements showing a large sum of money being transferred and the source of such funds. The Sponsor confirmed she had borrowed the money which she stated was £6,000 in total. When it was put to the Sponsor that one of the bank statements showed in excess of £6,000 being transferred she claimed she was not sure, but it was £6,000 on the first occasion but could be more but that she had forgotten.
10. The appellant's relative, Mr Hassan was then asked questions on his evidence.
11. Mr Hassan was asked why there had been a change on the names of the bank accounts, and he referred to the fact there had been borrowing, although when asked how much he claimed it was to help his father and other things that had been paid back. When asked how much he claimed it was a sum different to that given by the Sponsor.

Discussion and analysis

12. The appellant's case advanced by Mr Mustafa is that it had been proved there are sufficient funds in the account in the Sponsor's name. It was submitted the name of the Sponsor is now as claimed and that the address on the bank

statements in what is said to be her new name is that claimed as the home address.

13. It was submitted that the criteria for admission are satisfied, assessing the issues regarding dependency and the issues of concern in the refusal notice had been addressed.
14. It was submitted that Directive 38/2004/EC did not say the circumstances of the sponsor are relevant. It was repeated that sufficient evidence had been provided and the case law supports the appellant's claim that Member States must not put barriers in the way of EEA rights. His final submission was that the appeal should be allowed.
15. The Free Movement Directive, as 38/2004/EC is more commonly referred, lays down (a) conditions governing the exercise of the right of free movement and residence within a territory of the Member States by Union citizens and their family members, (b) the right of permanent residence in the territory of the Member States for Union citizens and their family members, and the limits placed on the rights set out in (a) and (b) on grounds of public policy, public security or public health – Article 1.
16. A person who satisfies the definition of a family member of an EU national has a right to enter another Member State to reside with the EU national. Article 3 sets out the beneficiaries of the Directive in the following terms:.

Article 3

Beneficiaries

1.This Directive shall apply to all Union citizens who move to or reside in a Member State other than that of which they are a national, and to their family members as defined in point 2 of Article 2 who accompany or join them.

2.Without prejudice to any right to free movement and residence the persons concerned may have in their own right, the host Member State shall, in accordance with its national legislation, facilitate entry and residence for the following persons:

- (a) any other family members, irrespective of their nationality, not falling under the definition in point 2 of Article 2 who, in the country from which they have come, are dependants or members of the household of the Union citizen having the primary right of residence, or where serious health grounds strictly require the personal care of the family member by the Union citizen;
- (b) the partner with whom the Union citizen has a durable relationship, duly attested.

The host Member State shall undertake an extensive examination of the personal circumstances and shall justify any denial of entry or residence to these people.

17. It is settled law that the national authorities are entitled to specify the requirements for entry of an extended family member, such as the appellant, being facilitated and the issue of a residence card. That is an important point for whilst a family member has a right to be issued with a residence card and entry an extended family member can only do so if their entry is facilitated by the national authorities.

18. The UK government incorporated the Directive into domestic legislation in the Immigration (European Economic Area) Regulations 2016. That version of the Regulations, as amended, was the version in force prior to Brexit and the version applicable to this appeal.
19. The provisions relating to extended family members are set out in regulation 8 in the following terms:

“Extended family member”

8.—(1) In these Regulations “extended family member” means a person who is not a family member of an EEA national under regulation 7(1)(a), (b) or (c) and who satisfies a condition in paragraph (1A), (2), (3), (4) or (5).

(1A) The condition in this paragraph is that the person—

- (a) is under the age of 18;
- (b) is subject to a non-adoptive legal guardianship order in favour of an EEA national that is recognised under the national law of the state in which it was contracted;
- (c) has lived with the EEA national since their placement under the guardianship order;
- (d) has created family life with the EEA national; and
- (e) has a personal relationship with the EEA national that involves dependency on the EEA national and the assumption of parental responsibility, including legal and financial responsibilities, for that person by the EEA national.

(2) The condition in this paragraph is that the person is—

- (a) a relative of an EEA national; and
- (b) residing in a country other than the United Kingdom and is dependent upon the EEA national or is a member of the EEA national’s household; and either—
 - (i) is accompanying the EEA national to the United Kingdom or wants to join the EEA national in the United Kingdom; or
 - (ii) has joined the EEA national in the United Kingdom and continues to be dependent upon the EEA national, or to be a member of the EEA national’s household.

(3) The condition in this paragraph is that the person is a relative of an EEA national and on serious health grounds, strictly requires the personal care of the EEA national or the spouse or civil partner of the EEA national.

- (4) The condition in this paragraph is that the person is a relative of an EEA national and would meet the requirements in the immigration rules (other than those relating to entry clearance) for indefinite leave to enter or remain in the United Kingdom as a dependent relative of the EEA national.
- (5) The condition in this paragraph is that the person is the partner (other than a civil partner) of, and in a durable relationship with, an EEA national or the child (under the age of 18) of that partner, and is able to prove this to the decision maker.
- (6) In these Regulations, “relevant EEA national” means, in relation to an extended family member—
 - (a) referred to in paragraph (2), (3) or (4), the EEA national to whom the extended family member is related;
 - (b) referred to in paragraph (5), the EEA national who is the durable partner of the extended family member.
- (7) In paragraphs (2), (3) and (4), “relative of an EEA national” includes a relative of the spouse or civil partner of an EEA national.
- (8) Where an extensive examination of the personal circumstances of the applicant is required under these Regulations, it must include examination of the following—
 - (a) the best interests of the applicant, particularly where the applicant is a child;
 - (b) the character and conduct of the applicant; and
 - (c) whether an EEA national would be deterred from exercising their free movement rights if the application was refused.

20. The submission by Mr Mustapha that there is no requirement for enquiry into the means of the Sponsor in the Directive is factually correct, but suggesting by implication or otherwise that this means there is no power for the decision maker to undertake such an investigation is incorrect.

21. Regulation 12(4) of the 2016 Regulations provides that an EEA family permit may be issued to an EFM of an EEA national if three conditions are met, being:

- The EEA national is residing in the UK in accordance with the 2016 regulations, or will be travelling to the UK within six months of the date of application and will be residing in the UK in accordance with the regulations.
- the extended family member wishes to accompany the EEA national to the UK would join them there.

- in all the circumstances, it appears to be appropriate to issue the EEA family permit.
22. Modernised Guidance provided to caseworkers is available in the publication entitled Free Movement Rights: extended family members of EEA nationals, version 7.0 published on 27 March 2019.
 23. The guidance divides the process of considering an application by an EFM into four stages. Stage 1 requires consideration of the status of the EEA sponsor, Stage 2 consideration of the relationship, Stage 3 qualifying conditions, and Stage 4 an extensive examination of personal circumstances.
 24. The final category of “any other reasons” advises the decision-maker that they must consider if there are any other reasons why it is not in the interests of the public good to issue the applicant with a registration certificate or residence card. I find under this category that if there is evidence of a real risk of an applicant becoming such a burden on the social system of the UK, which may form part of the consideration of whether discretion should be exercised in an applicant’s favour.
 25. I do not find it made out the decision-maker was not entitled to consider the specific points raised in the refusal.
 26. In relation to proof of dependency and affordability, a number of issues arose during the hearing in relation to the evidence of financial means. It is not disputed that in terms of accommodation the original claim regarding suitability of accommodation and affordability of the appellant included information relating to the number of individuals who live in the household the appellant would join. It appears from the evidence that two further people now reside in the household, namely grandparents, which reduces the available accommodation and may give rise to issues of affordability, although it is not suggested the property will become statutorily overcrowded.
 27. There is the issue of the EEA national sponsor’s name which she has maintained throughout these proceedings as that recorded in the header to this decision, yet with a different name appearing on the bank statements relied upon in support of the claim that sufficient funds are available. Mr Tan asked the Sponsor whether there is evidence of the alleged change of name deed but there is not. Although Mr Mustapha urge me in his submissions to accept what the Sponsor had said in relation to this matter the Sponsors Pakistan Origin Card still contains her original details. The claim that those bank statements relate to the EU national as a result of a legal change of name has not been substantiated.
 28. Of more concern in relation to the financial information is that there is clearly evidence of money moving between bank accounts, including an unidentified bank account, and the evidence of funds being supplemented by loans which may be suggestive of the fact that without such loans there is insufficient other income coming into the household to meet the needs of the appellant if permitted to enter the UK without recourse of public funds. I accept the submission of Mr Tan that the financial situation is not clear.
 29. The evidence was that the appellant continues to study with no evidence from her or anything to show she was working or able to make a financial contribution. If the appellant enters the UK intending to continue her studies that will increase the burden upon the finances of those in the UK.
 30. I do not find that the appellant has established that she is able to satisfy the requirements of the Regulations sufficient to warrant a grant of Residence Card as an extended family member of EEA national. There is no evidence in the appeal that the EEA national will not continue to exercise her rights of free movement as she currently does if the application is refused.

31.The only ground of appeal available to the appellants is that the decision is in breach of her rights under the EU Treaties. My jurisdiction is limited to expressing that conclusion. I do not find the appellant has established a breach of Treaty rights.

32.The appeal is dismissed.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber
25 August 2023