



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-005426

First-tier Tribunal No: EA/00199/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

25th January 2024

Before

UPPER TRIBUNAL JUDGE HANSON

Between

Ayesha Munir
(NO ANONYMITY ORDER MADE)

Appellant

and

An Entry Clearance Officer

Respondent

Representation:

For the Appellant: No appearance.

For the Respondent: Mr Diwnycz, a Senior Home Officer Presenting Officer.

Heard at Phoenix House (Bradford) on 24 January 2024

DECISION AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge C L Taylor ('the Judge') promulgated on 3 August 2023, following consideration of the merits of the appeal on the papers, in which the Judge dismissed the appeal against the refusal of an application made on 19 September 2022 for a family permit under Appendix EU (Family Permit) of the Immigration Rules, made on the basis the appellant is a family member of a relevant EEA citizen, her daughter in law (the Sponsor).
2. The appellant is a female citizen of Pakistan born on the 1 January 1963 who stated in her application:

I am applying under the EU settlement scheme family permit to join my daughter-in-law Farah Habib Akhter and my son Saad Omer. To prove my relationship I am attaching my son's birth certificate and their Marriage Certificate. My Husband and I are both supported financially by my daughter-in-law and my son. They send us money for us to meet our essential day-to-day living needs. We are very old now and we have no one to look after us in Pakistan and we require physical support which our sponsor can provide us if we can join them in the UK. Due to work commitments and our granddaughter being in school my daughter-in-law and son are unable to visit us and look after us in Pakistan. The only support which they can and are providing us is sending money to us.

Without their financial help, we would not be able to support ourselves in Pakistan as we have no one here who would support us and neither of us is capable of working.

3. The application was refused by the Entry Clearance Officer (ECO) on 30 November 2022 for the following reasons:

Reasons for Refusal

On 19 September 2022 you made an application for an EU Settlement Scheme (EUSS) Family Permit under Appendix EU (Family Permit) to the Immigration Rules on the basis you are a 'family member of a relevant EEA citizen'.

I have considered whether you meet the validity, eligibility and suitability requirements for an EUSS Family Permit, which are set out in Appendix EU (Family Permit) to the Immigration Rules (<https://www.gov.uk/guidance/immigration-rules/appendix-eu-familypermit>). You can also find out more about the requirements in the guidance on GOV.UK (<https://www.gov.uk/family-permit/eu-settlement-scheme-family-permit>).

You have not provided adequate evidence to show that you are dependent on a relevant EEA or Swiss citizen, or their spouse or civil partner, as set out in Appendix EU (Family Permit) of the Immigration Rules. Consideration has been made, based on the evidence and information you have provided, and having regard to your financial and social conditions, or health, as to whether you cannot meet your essential living needs (in whole or in part) without the financial or other material support of the relevant EEA citizen or of the spouse or civil partner.

As evidence of your dependency upon your relevant EEA Citizen sponsor or their spouse or civil partner you have provided the following evidence - various bank transfer receipts dated sporadically between 17 October 2012 to 06 August 2022, x1 Moneygram statement covering a sporadic period of 09 August 2012 to 08 September 2021 and x1 ACE statement covering a period of 06 March 2022 to 06 September 2022.

It has been noted that you have provided the corresponding evidence which suggests that you received any payments from your EEA citizen sponsor. Therefore, I cannot be satisfied that any funds that your sponsor sends to you can be accredited to meeting your essential living needs.

You have also provided various Utility bills dated sporadically between 04 May 2019 to 03 August 2022 and various store receipts dated sporadically between 30 October 2021 to 18 July 2022. Unfortunately this limited amount of documents does not evidence your own domestic circumstances in Pakistan.

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.

On that basis I am not satisfied that you are dependent on a relevant EEA or Swiss citizen or their spouse or civil partner. Therefore, you do not meet the eligibility requirements for an EUSS family permit as a dependent parent, grandparent, greatgrandparent of a relevant EEA or Swiss citizen, or their spouse or civil partner.

Your application is therefore refused.

4. The Judge sets out findings of fact from [10] of the decision under challenge, albeit that [10 - 11] summarise the content of the refusal notice.
5. The Judge expresses concern that it was unclear what transactions, if any, were being specifically referred to in bank statements provided [13].
6. The Judge notes Moneygram receipts from 8 August 2012 to 8 September 2021 had been provided, but noted the document was in Spanish and related to a period before the application, was untranslated, and did not assist with evidencing dependency [14].
7. The Judge noted the appellant had provided a link to the Central Board of Pakistan and to the appellant's CNIC number and invited the Tribunal to check

- that the appellant is economically inactive in Pakistan, but quite correctly noted it was not for the Tribunal to obtain evidence or carry out checks on behalf of the appellant. The Judge noted the appellant provided a screenshot of a search with the Federal Board of Pakistan stating the appellant is not economically active, but there was no documentary evidence to show that the CNIC numbers was that of the appellant, although her name could be seen on the search entry [15].
8. The Judge accepted a statement from ACE Money Transfers from 6 March 2022 to 9 January 2023 and that the bank statements for the sponsor correlated to entries on this document which also records the appellant as the receiver of the funds [16].
 9. The Judge accepts the appellant provided a number of historic remittance receipts which did not assist with details of the appellant's domestic circumstances in Pakistan, although it was noted she had provided receipts for the purchase of food and drink [17].
 10. At [18] the Judge writes:
 18. The appellant provided a translation of a sale deed dated 20 February 2012 for a plot of land sold to the sponsor's husband. It is unclear whether the suggestion is that the appellant lives on this land. A gas bill for a property in Jhelum, in the name of the Sponsor's husband has been provided. Bank statements are provided for the appellant, the address given for these documents is Jhelum.
 11. In summarising the key findings the Judge accepts the Sponsor sends money to the appellant and that those monies are received by her. The Judge notes the appellant's position is that she lives with her husband. The appellant claimed that her husband does not work but the Judge was not satisfied that evidence had been provided from the Federal Board of Pakistan of that, and that without documentary evidence of the appellant's husband's financial inactivity the Judge was unable to find that the appellant is dependent on the sponsor. As a result the application was refused.
 12. The appellant sought permission to appeal noting that the Judge accepted the money sent to the appellant was received by her, that the Judge was correct about the status of the appellant living with her husband, but asserts the Judge made a mistake in assessing that there was no evidence that the property in which the appellant was living was either owned by the sponsor's husband or otherwise.
 13. Permission to appeal was granted by another judge of the First-tier Tribunal the operative part of the grant being in the following terms:
 2. The central challenge in the grounds of appeal is that the judge has fundamentally misunderstood evidence which was before her. It is asserted that a deed of sale showed that her son had taken ownership of the property in which she lived with her husband. The judge is said to have wrongly concluded that the property was owned by her husband. Such an error may have had an important bearing on the central issue of whether the appellant was dependent on her sponsoring daughter-in-law. I consider it to be arguable that such a mistake of fact meets the E & R test.
 3. The remaining complaints relate to disagreements about the weight attached to various aspects of the evidence. If it is found that the appellant was living in a property owned by her son, the remainder of the evidence may have been assessed differently. I therefore grant permission for all of these points to be argued.

Discussion and analysis

14. There was no attendance on behalf of the appellant at the hearing. I am satisfied there has been proper service of the notice of hearing specifying the date, time, and venue of the hearing. The Sponsor specifically contacted the

Upper Tribunal to ask that an Urdu interpreter be provided to assist her. An interpreter was provided who attended.

15. The case was put back to 11 AM, following the conclusion of the other business in the list, to allow the Sponsor further time to attend; bearing in mind that she lives in Stockton-on-Tees in Cleveland, a distance of about 85 miles from the Hearing Centre, and the weather conditions. There was, however, still no attendance when the matter was called back on nor any communication with the Hearing Centre at Bradford or the Upper Tribunal at Field House to provide an explanation. There is, in particular, no statement that the Sponsor tried to attend but had been held up and would be late, no request for an adjournment, or any explanation at all.
16. In light of the fact there is no explanation for the Sponsor's absence, and considering the overriding objective, precious nature of judicial and tribunal hearing time in light of the pressures on resources of the Upper Tribunal, I consider it in the interests of justice to proceed to determine the appeal in the absence of Sponsor or anybody to speak on behalf of the appellant.
17. The basis of the appellants challenge is as follows:

The Appellant provided a copy of a deed of sale together with a translation showing that the Appellant's son owns the plot of land at D-347 Bilal Town, Jhelum, which is the address given by the Appellant in her application form (pages 129 to 134). This deed of sale is dated 20 February 2012. The Appellant provided the electricity bill for February 2022 to February 2023 which is in the name of her son (page 139), and the gas bill for January 2022 to January 2023 which is also in her son's name (page 143). It proves that the Appellant lives in a home owned by her son who also pays the utility bills.

Page 129 to 137 of appeal bundle proves that appellants husband himself is living in the accommodation provided by Saad Omer who is son of the appellant and her spouse. Evidence are original ownership registry and its English translation in the name of Saad Omer. It also includes Identity card of appellant's spouse and its English translation. It proves that appellant's spouse is also living in the accommodation provided by the sponsor's husband.

The appellant provided a witness statement for the appeal page 34. In it she states that her only son, Mr. Saad Omer, is married to the Sponsor. The Sponsor and her spouse had been supporting her and her spouse "over a prolonged period". She said that they provided financial support as well as a home to live in. They were responsible for the electricity and gas bills. She said that she had no source of income apart from that from the Sponsor.

The Appellant's son, Mr. Omer, provided a witness statement 38. This is in substantially the same terms as that of the Appellant.

The Appellant provided a MoneyGram statement printed in Spain on 28 February 2022 which showed transfers from his son to both appellant and her spouse Muhammad Munir from 2012 page 72. She provided a Remittance Certificate showing remittances made in 2022 and 2023 pages 73 to 76. These remittances are made monthly. She provided receipts showing remittances made from 2012 through to 2021 (pages 77 to 128) either by her or by her spouse.

Once its acknowledged that money transfer receipts had been provided covering the period 2012 to 2022 though these were made sporadically however, this does not reduce their evidential value. It is clear that the Appellant has been supported for a significant period of time by his son and the Sponsor. I find that this is evidence of dependency which goes back over a "prolonged period" as was claimed by the Appellant.

The Appellant provided a confirmation from Federal Board of Revenue of Pakistan which states that the Appellant do not have any record being Taxpayer (page 168). It proves that the Appellant is not employed as shown by the fact that she is not registered with

the Inland Revenue for tax purposes. it proves that only source of income is the money which she receives from her son and the Sponsor.

All the aforementioned details proves that Appellant lives in a home owned by her son instead of her spouse and spouse is also living in the same accommodation. The bills are paid by her son. Both she and her husband are receives financial support from her son and the Sponsor, and that she has been receiving this support since at least 2012. Although this support does not consist of similar amounts paid at regular intervals, there is no need for it to do so. It also proves that Appellant has no other source of income. She relies on the financial support of the Sponsor and her husband to meet her essential living needs.

18. I accept the address provide by appellant in her visa application form is D-347 Bilal Town, the same as appears on the Pakistan National ID Card for Seed Omer, son of Muhammad Munir, who was said to be living in Spain when the card was issued in February 2020.
19. The Sponsor is the EU national. I have seen her Spanish passport issued on 27 April 2021. It was not disputed the Sponsor lives in the UK.
20. The evidence shows the Sponsor and her husband, Mr Omer Saad, the appellant's son, have pre-settled status under the EUSS.
21. The Judge noted the appellant is married to Muhammad Munir who the appellant claimed she lives with her application form, in Pakistan, but it is not made out the Judge has committed any error of law in assessing the lack of evidence in relation to the appellant's husband's circumstances.
22. The fact monies are sent does not establish dependency as a considerable amount of money is sent from the UK to family in India, Pakistan, Bangladesh, and elsewhere in the world, by way of remittances to enable family there to share the benefit of the resources available to UK based family. Many of these allow families to improve their circumstances rather than just meet essential needs.
23. The Judge refers to a Starling Bank statement from which it is claimed the Sponsor made a number of payments to support the appellant. I note that the individual who made the payments into that account is described as a Mr Ali rather than naming the sponsor, whoever that is. I make this comment only as an observation however as it was not a matter commented upon the Judge.
24. I do not find any error the Judge made in relation to the ownership of the property to be material. That was one factor. It is not objectionably irrational to conclude that having considered the evidence as a whole the Judge's finding that the appellant had not discharged the burden of proof upon her to the required standard to establish dependency, is not a finding outside the range of those reasonably open to the Judge on the evidence.

Notice of Decision

25. The First-tier Tribunal has not been shown to have materially erred in law. The determination shall stand.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

24 January 2024