



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2024-002133
& UI-2024-2135
First-tier Tribunal Nos: EA/07443/2021
& EA/08095/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 6 January 2025

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

RIZWANA KOUSAR
MUHAMMAD HAIDER NAEEM

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: The Sponsor

For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 20 December 2024

DECISION AND REASONS

1. The appellants appeal, with permission, against the decision of the First-tier Tribunal dismissing their appeals against the respondent's refusal to issue them with an EEA Family Permit under the Immigration (European Economic Area) Regulations 2016 ("EEA Regulations").

2. The appellants are nationals of Pakistan and are mother and son, born on 7 April 1983 and 16 May 2014 respectively. They applied for EEA Family Permits as the extended family members of Riaz Ali Din Bibi, the first appellant's brother, who was a Spanish national living in the UK with leave to remain under the EUSS. The

applications were refused on 10 March 2021 on the grounds that the respondent was not satisfied that they had provided sufficient evidence to show that they were related to the sponsor or that they were dependent upon the sponsor. The respondent was not satisfied that they were family members of the sponsor and considered that the applications failed to meet the requirements of regulation 8 of the EEA Regulations.

3. The appellants appealed against that decision. They elected not to have an oral hearing of their appeal and the appeals were therefore considered on the papers by the First-tier Tribunal.

4. In a decision promulgated on 8 January 2024, First-tier Tribunal Judge Beg accepted that the first appellant and the sponsor were brother and sister but did not accept that the issue of dependency had been made out. The judge recorded the first appellant's evidence in her statement, that she had been dependent upon the sponsor since 2013 following an incident on 5 October 2013 when her house was robbed and her husband and mother-in-law killed, when she was at her brother's house. She was pregnant at the time and her son, the second appellant, was born after the incident. Her father was unable to support her as he was 80 years of age and so her brother, the sponsor started supported her. Her father died in 2016 and from then on she lived in her brother's house. She stated that there was no one else to support her because her other siblings were struggling. She had kidney disease and was currently receiving specialist treatment. The appellant produced some money transfer receipts and from January 2021 she opened a bank account and received remittances into that account. The judge recorded further that the sponsor's evidence, in his statement, confirmed that he supported the appellants.

5. The judge accepted, from the evidence, that the first appellant was not an active taxpayer and that she was not working, and noted her income and expenditure table and receipts for expenses. The judge accepted that the sponsor had been sending funds to the appellant and her son periodically for a number of years. However she found there to be no credible explanation as to how the sponsor had been able to pay for the appellant's specialist kidney treatment as he had limited funds left over each month after paying his outgoings. The judge noted that the first appellant had provided no details of her other siblings in Pakistan and that, whilst she referred to them struggling, it was unclear how many there were and whether they worked or were also supported by the sponsor. The judge noted that the appellant had never been a member of the sponsor's household in Pakistan. She found there to be no corroborative evidence that the first appellant's other siblings were unable to provide any financial support for her and her son. She did not find that there was a genuine assumption of responsibility by the sponsor for the appellants, given that they had a number of close relatives in Pakistan, and she found there to be insufficient evidence of the existence of a situation of real dependency. She accordingly found that the requirements of the EEA Regulations were not met and she dismissed the appeals.

6. The appellants sought permission to appeal Judge Beg's decision on the grounds that she had incorrectly applied the test for dependency set out in Reyes v Secretary of State for the Home Department (EEA Regs: dependency) [2013] UKUT 314 and had erred by speculating on what other assistance she might be receiving.

7. Permission to appeal was refused in the First-tier Tribunal, but was granted on a renewed application in the Upper Tribunal on the grounds that it was arguable that the judge erred in its application of the correct test as to dependency "by seeking reasons why the appellant could not be supported by others".

Hearing and Submissions

8. The matter came before me for a hearing. The sponsor appeared before me for the appellants and Mr Tan appeared for the respondent. The sponsor was assisted by an interpreter in the Urdu language. I heard submissions from both parties.

9. Mr Tan submitted that the judge had considered the appropriate authorities when addressing the issue of dependency and properly found that the burden of proving real dependency had not been discharged. The judge's focus on the lack of evidence of any wider family was relevant to the appellants' overall circumstances and she was entitled to find that it was not credible that the sponsor paid for the appellant's medical treatment. The judge considered all the evidence in the round and, given that this was a papers appeal, was not assisted by oral evidence that may have addressed some of her concerns.

10. The sponsor, in response, submitted that his sister was dependent upon him and that he did not understand why the judge did not find that to be the case. He said that he had been supporting her since before she was married and had arranged her marriage and supported her since her husband died. He explained about the robbery at her house where her husband and his mother died. He said that he was the only one looking after her. Their parents had passed away and there was only him and her and her son in the family, and no one else. He just wanted to support her so that she could give her son a better life.

Analysis

11. As I explained to the sponsor at the hearing, it was not for me to re-hear the case again, but my role was to consider whether or not Judge Beg had made any material errors of law in her decision. The sponsor's submissions were, however, essentially a re-statement of the case and an assertion that he could not understand why the judge had found that his sister was not dependent upon him. Essentially it was an attempt to provide oral evidence when only a papers hearing had previously been requested. Clearly the grounds had been prepared by someone else and the issues therein were not, therefore, expanded upon or particularised any further.

12. Permission was granted in relation to this appeal to the Upper Tribunal on the grounds that the judge had arguably erred by seeking reasons why the appellants could not be supported by others. However that was not what the judge was doing. Rather, her concern was that she did not have a true and full picture of the appellants' circumstances in Pakistan and could not be satisfied, therefore, that their essential needs were not being met by other family members so that the funds remitted by the sponsor were simply additional funds. The reason why she considered that she did not have a full picture of the appellants' circumstances in Pakistan was because there was inconsistent evidence before her as to whether the appellants had any family members in Pakistan. The first appellant was relying upon a Family Registration Certificate which showed only two family members, namely herself and the sponsor, so implying that she did not have any other siblings. However in her statement the first appellant referred to other siblings, stating at [9] of her statement that her other siblings were struggling themselves and were not in a position to support her. Not only has there been no explanation for that inconsistency, but the sponsor's submissions raised further questions as he stated that there was only himself and the appellants in the family.

13. As Mr Tan submitted, the judge was not assisted by any oral evidence when she was determining the appeal, since the appellants had requested a decision on the papers. Had there been an oral hearing it may be that the matter could have been explained and resolved, and the judge's concerns allayed. However the appellants chose not to provide such an opportunity and the judge was therefore only able to make her decision on the limited evidence she had before her. She had a proper reason to be concerned, given the inconsistent evidence of the appellants' family circumstances and, as Mr Tan submitted, that was a matter which was relevant to the question of dependency.

14. Furthermore, this was not a case where the judge had expressed the relevant test incorrectly or had specifically misapplied it, as the grounds suggest. She set out the appropriate caselaw and she directed herself in clear terms on the correct test and the evidence which was required to satisfy that test. She noted at [30] and [32] the need for there to be a situation of real dependence and at [37] that the appellants had to demonstrate that the funds they received were necessary to enable them to meet their basic needs. Given the inconsistent evidence about the appellants' family situation in Pakistan and the suggestion that there were other siblings, but an absence of evidence of their circumstances and their lack of ability to provide her with support, it seems to me that the judge was perfectly entitled to conclude that the required dependency upon the sponsor had not been properly demonstrated.

15. In the circumstances, for the reasons properly given, the judge was entitled to conclude that the appellants had not demonstrated that they were family members of the sponsor for the purposes of the EEA Regulations. She was entitled to find that they could not meet the requirements of the EEA Regulations 2016 and that they were not entitled to an EEA Family Permit. The decision that the judge reached was accordingly entirely open to her on the evidence before her and I uphold her decision.

Notice of Decision

16. The making of the decision of the First-tier Tribunal did not involve a material error on a point of law requiring it to be set aside. The decision to dismiss the appeals stands.

Signed: S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 20 December
2024