



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/01645/2020

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre
On 20 October 2021

Decision & Reasons Promulgated
On 16 November 2021

Before

UPPER TRIBUNAL JUDGE HANSON
UPPER TRIBUNAL JUDGE KEBEDE

Between

AFFAN LATIF

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

Respondent

Representation:

For the Appellant: Mr M Biggs, instructed by Mamoon Solicitors

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

DECISION AND REASONS

1. The appellant is a Pakistan national born on 27 March 2000. He appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse to issue him with an EEA family permit to enter the UK as an extended family member of an EEA national under the Immigration (European Economic Area) Regulations 2016.

2. The appellant applied for an EEA family permit on 20 December 2019 to join his paternal uncle Munawar Hussain, a Dutch national, whom the appellant claimed had

lived in the UK since 1 September 2004 and upon whom he claimed to be financially dependent.

3. The respondent refused the appellant's application on 24 January 2020 as it was not accepted that he was an extended family member in accordance with regulation 8(2) of the EEA Regulations. The respondent was not satisfied that the applicant was dependent upon his sponsor. The respondent noted that he had supplied money transfer receipts dated 18 July 2019 to 4 January 2020 showing transfers to himself from his sponsor. It was not accepted that that limited amount of evidence was sufficient in itself to show that the appellant was financially dependent upon his sponsor. The respondent would have expected to see substantial evidence over a prolonged period of time. In addition the respondent was not satisfied that the money transfers had genuinely taken place as the Western Union official verification website confirmed that the transfers did not exist. The respondent, furthermore, would have expected to see evidence detailing the appellant's and his family's circumstances and financial position to prove that his essential living needs could not be met without the financial support of the sponsor, but there was no such evidence. The respondent noted that the sponsor had a wife and at least four dependent children and had regard to his income and receipt of state benefits of over £1099 a month. It was not considered sustainable for the sponsor to financially support the appellant in Pakistan, given his low income and his need for public benefits to meet his own essential needs and those of his family in the UK and the respondent considered there to be a risk that the appellant may become a burden on the public funds system in the UK.

4. The appellant appealed against that decision. In his grounds he submitted that the Western Union transfer receipts were evidence that the sponsor supported him in Pakistan. He was a non-working full-time student and had never worked in his life. The sponsor paid towards his living, education and other essential living needs. He would not become a burden on the state as his visa conditions would not allow him to have recourse to public funds.

5. In an ECM Review on 14 April 2020, an Entry Clearance Manager noted that the appellant had not provided any further evidence to demonstrate that he was financially dependent upon the sponsor and had provided no evidence to demonstrate his personal circumstances. It was reasonable to expect him to have produced some supporting evidence to demonstrate that he could not meet his essential needs without the financial support of the sponsor. The ECO's decision was maintained.

6. Prior to the hearing of the appellant's appeal, directions were made by the First-tier Tribunal for the submission of documentary evidence. The appeal was then listed for hearing on 11 January 2021. However on that day the case was adjourned by First-tier Tribunal Judge McClure in order to give the appellant an opportunity to counter the assertions made by the respondent as to the Western Union money transfer receipts being false. That assertion was based upon documentation from Western Union produced by the respondent on 8 January 2021. Further directions were made by Judge McClure for the appellant to file and serve evidence.

7. The appellant's appeal then came before First-tier Tribunal Judge Bannerman on 2 February 2021. The sponsor gave evidence before the judge and referred to evidence in the form of a letter he had received and produced, from Western Union. The sponsor explained that the appellant was the youngest of six brothers. He lived with his mother in a house in Sargodha which he (the sponsor) owned, having inherited it from his father. The appellant's brothers, who were all married, lived with their in-laws in Sargodha and were unable to support him as they were all struggling financially. The sponsor said that he only supported the appellant. The appellant was in his third semester at college and intended to go to university afterwards and had never worked. The sponsor said that he paid for the appellant's food, clothes, travel, college and basic needs. His mother could not support him and she was receiving minor support herself from her brother in Sargodha who was a farmer and a poor man. The sponsor gave an estimate for the appellant's essential needs and the amounts he would send to him every month. He confirmed that he had a wife and four children who were dependent upon him and that he was now doing two jobs earning £1600 in total and was no longer taking benefits, which had resulted in a reduction in his income. He gave details of his expenditure. The sponsor said that his brother, the appellant's father, lived with him in the UK and he supported him with food and medicines but not financially.

8. Judge Bannerman had concerns about the sponsor's evidence, noting that there was no evidence to support his claim that he owned the house where the appellant was living in Pakistan. He did not consider the evidence about the sponsor reducing his income to be convincing and he did not find it credible that the sponsor would reduce his income by £400 a month. He considered that that showed an intention by the sponsor to remove himself from the state benefit system in order to be able, at the hearing, to address the matter of the appellant becoming a burden on the state. The judge noted that there was inconsistent evidence about the timeline for obtaining the emailed letter from Western Union as the sponsor was claiming to have requested it four or five days before it was received whilst the letter talked of it being requested the previous day. The judge also noted that the letter from Western Union was markedly different from an additional letter, purportedly from the same source, which had been produced to the Tribunal that day during the course of the hearing. The judge also found unconvincing the fact that the sponsor guessed the amount the appellant needed each month and that there was no evidence of the appellant's income and expenditure. The judge considered there to be no indication that the appellant had a complete inability to earn any income for himself in Pakistan in addition to undertaking his college course and neither did he consider it convincing that there was no support available from the appellant's siblings who worked in Pakistan and lived nearby or from his mother's brother who provided some support to his mother. The judge found there to be no evidence that the appellant was living in a dwelling provided by the sponsor and did not accept that the appellant had a true dependency upon the sponsor. He accordingly found that the requirements of the regulations were not met and he dismissed the appeal in a decision promulgated on 2 March 2021.

9. Permission was sought by the appellant to appeal to the Upper Tribunal on the following grounds: that the judge had misdirected himself in considering the question of

dependency by failing to consider the evidence showing that the appellant was in full-time education and that the sponsor was responsible for paying his college fees; that the judge had relied upon a Western Union letter produced during the hearing, when no such letter was produced as the hearing was conducted remotely; and that the judge had failed to apply the test for dependency set out in Reyes (Judgment of the Court) [2014] EUECJ C-423/12.

10. Permission to appeal was granted in the First-tier Tribunal on 5 May 2021. The respondent filed a rule 24 response resisting the appeal.

Hearing and Submissions

11. The matter was then listed for hearing and came before us. There was some preliminary discussion about the evidence before the First-tier Tribunal and in particular the documentation from Western Union produced by the respondent on 8 January 2021, as referred to in the directions of First-tier Tribunal Judge McClure on 21 January 2021, and the letters from the Western Union referred to by Judge Bannerman at [11], [31], [32], [35] and [41] of his decision.

12. Mr Tan produced a copy of a Document Verification Report dated 8 January 2021 which he believed to be the document referred to by Judge McClure, in which the Western Union receipts were said to be false. Mr Biggs confirmed that he had the same document. Mr Biggs produced, in addition to his skeleton argument, an email from his instructing solicitors to the First-tier Tribunal dated 2 February 2021 attaching a letter dated 12 January 2021 from Western Union and addressed to the sponsor. Mr Biggs confirmed that the First-tier Tribunal had before it a 45 page bundle which had been served on the Upper Tribunal on 19 October 2021.

13. We then rose for all parties to consider the documents and the evidence and for Mr Biggs to take further instructions. Mr Tan then produced a further letter from Western Union dated 12 January 2021 and addressed to the sponsor which he said had been sent to the respondent from the appellant's representatives and stored in the respondent's electronic folder on 12 January 2021. It seemed, therefore, that the two letters which Judge Bannerman was comparing at [41] of his decision were that letter and the letter attached to the email produced by Mr Biggs.

14. Mr Biggs advised us that the letter he had handed up, attached to the email of 2 February 2021, had been sent to the Tribunal, and he noted that it had been sent in the morning for the afternoon's hearing before Judge Bannerman. However he was unable to explain why the respondent had the other letter from Western Union and why the judge referred to that as being in the appellant's bundle. Mr Biggs advised us that there was still uncertainty about the evidence before the First-tier Tribunal but he was not instructed to seek an adjournment and was prepared to proceed if the Tribunal felt that it was able justly to dispose of the appeal. Mr Tan was also content to proceed on the same basis.

15. Having given careful consideration to the evidence now available we considered there to be no reason for, or purpose to, an adjournment and we were satisfied that we were able fully and fairly to dispose of the appeal. We were entirely satisfied that the Western Union letter produced by Mr Biggs, as attached to the email of 2 February 2021 addressed to the First-tier Tribunal, was the letter referred to by Judge Bannerman at [41]. We were, likewise, satisfied that the Western Union letter produced by Mr Tan was the other letter referred to by the judge at [11], [31], [32], [35] and [41]. The appeal then proceeded and Mr Biggs made his submissions.

16. Mr Biggs relied and expanded upon his skeleton argument, addressing the three grounds. With regard to the first ground he submitted that the judge had failed to consider material evidence at pages 28 to 30 of the appellant's appeal bundle, namely a letter from the appellant's college and receipts for payment of fees confirming that the sponsor was responsible for paying for the appellant's college studies. He submitted that that evidence was material to the assessment of dependency and, in light of the relevant caselaw, namely Reyes and Moneke and others (EEA - OFMs) Nigeria [2011] UKUT 341, was sufficient to demonstrate the dependency when considering all the factual circumstances. There was therefore a material error of law which vitiated the judge's decision. As for the second ground, there was still uncertainty about the letter provided by Mr Tan and whether it was before the judge, as it was not in the appellant's appeal bundle. It was also not clear that the other letter, although received by the Tribunal on 2 February 2021, was before the judge at the time of the hearing. Furthermore, the judge was wrong to say the two letters were markedly different when they were not. They were consistent with the two different logos on the money transfer receipts. There were therefore sufficient difficulties with the judge's reasoning to find his decision irrational or legally erroneous. As for the third ground, Mr Biggs submitted that the judge, whilst he referred to a correct authority in relation to the issue of dependency, had not applied the correct approach. His reasoning at [43] about the appellant's ability to find work was incompatible with the guidance in the cases of Lebon [1987] EUECJ R-316/85 as well as Moneke and Reyes, as was his finding at [44] about support being unavailable from other sources. As for the judge's findings at [40] about the sponsor removing himself from the public benefits system, the sponsor was entitled to provide support from his benefits and there was therefore no reason why he would have lied about his reasons for reducing his income. The judge's reasoning was limited to financial dependency, but it was clear from Reyes that that was an error. The appellant was entitled to obtain essential support from various sources including the sponsor. The judge had failed to consider the appellant's relationship to the sponsor and the fact that he was a student, which were matters relevant to the assessment of dependency. The judge's decision ought therefore to be set aside and re-made with fresh fact-finding.

17. Mr Tan submitted that there were clearly two letters from Western Union before the judge. The reference to one of the letters being in the appellant's bundle arose from the sponsor's evidence, as recorded at [11], and the submissions from the appellant's representative as referred to at [32], but it was not really relevant whether the letter was in the bundle or served separately. The judge was entitled to have concerns about the two letters due to the differences in the logo and address and the appearance of the annex.

There were also some typos in the body of the letters which would not be expected of a company such as Western Union. There was therefore no substance to the challenge in ground 2. With regard to the third ground, the decision should be read as a whole as it was clear that the judge had rejected the appellant's case on the grounds of credibility and had found the evidence unreliable. It was not a case of misapplication of the law but a case of a claim which was not believable overall. As for ground 1, the college letter and receipts were only a small part of the evidence and the receipts did not actually show that the sponsor had paid the fees.

18. Mr Biggs reiterated the points previously made in response and asserted again that the judge had failed properly to appreciate the concept of dependency and had erred in law.

Discussion

19. Turning first of all to the second ground, we appreciate Mr Bigg's acceptance that that was not his strongest ground given his inability to obtain clear instructions. We agree that he was in some difficulty in light of the evidence he had provided to us which confirmed that a letter from Western Union dated 12 January 2021 was emailed to the First-tier Tribunal by his instructing solicitors in the morning of 2 February 2021 for the hearing that afternoon. We have no doubt that that was the letter to which Judge Bannerman was referring at [41] and we do not accept that any uncertainty arises in that regard. The original grounds seeking permission, at [6], were accordingly clearly wrong in denying that such evidence had been produced. As for the second Western Union letter referred to by the judge, we again have little hesitation in concluding that that was the letter Mr Tan helpfully produced before us. Although it is not entirely clear how it came before the Tribunal, Mr Tan was able to confirm that it was sent to the Secretary of State's electronic storage folder by the appellant's representatives and it was then forwarded to the Tribunal, whether by the respondent or by or on behalf of the appellant. It seems that it was the sponsor's evidence, recorded at [11], and the appellant's representative's submission, recorded at [32], that led the judge to refer to the letter appearing in the appellant's bundle, but whether or not it was separate to the bundle does not detract from the fact that the letter formed part of the evidence before the judge. Accordingly we have no hesitation in concluding that there were two Western Union letters dated 12 January 2021 before the judge and that there were issues arising from the two letters which properly led him to have concerns about their reliability, as expressed at [41]. We reject the assertion in the grounds at [9] that the judge made a mistake of fact in that regard.

20. As for the judge's adverse findings arising from the two letters, we consider that those were properly made. At [41] Judge Bannerman found the two letters to be "utterly markedly different" and referred to differences in the designation and logo. It is apparent, when viewing the two letters, that the logos for Western Union are entirely different and that the address given at the top right-hand corner in Englewood USA differs significantly. Mr Tan also pointed out the fact that the letters both contain typos (paragraph 4 refers to the "Unites States" and the penultimate paragraph states "if it is inaccurate of incomplete"), and that the annex to the letters differed in that the one he had submitted contained the logo and address for Western Union whilst the other did not,

although he accepted that that was not a matter the judge noted or relied upon. Mr Biggs disputed the suggestion of striking differences, referring to the money transfer receipts which had different logos for the receipts for money sent and for money received consistent with the different logos in the two letters. However that in turn failed to address the document verification report which found the receipts to be fake and the transfers invalid. There was likewise no response to the judge's adverse finding arising from the discrepancy between the sponsor's claim to have requested the letter from Western Union four to five days before receipt and the fact that the letters referred to the request being made the previous day, which was a further matter the judge was entitled to consider as undermining the reliability of the evidence.

21. As Mr Tan submitted, there were other areas of concern raised by the judge, including the lack of any evidence to support the sponsor's claim that the appellant was living in a family home which he owned (at [39]) and the appellant's repeated failure to provide evidence of his income and expenditure together with the sponsor's guesswork in that regard (at [42]), neither of which had been addressed or undermined in the grounds of challenge. In addition the judge had concerns about the sponsor's motivation and intention in reducing his income to remove himself from the public benefits system and about the evidence as to the lack of other family support from the appellant's siblings and uncle in Pakistan, all of which were matters which he was entitled to take into account. Although Mr Biggs submitted that the latter were matters which did not form part of the test of dependency in Reyes and Moneke, we agree with Mr Tan that the judge was nevertheless entitled to have regard to them as part of his overall assessment and his concerns about the credibility of the claims being made before him.

22. As for the first ground, namely the judge's failure to consider the evidence of the sponsor paying the appellant's college fees as a material indication of dependency, we again agree with Mr Tan that that evidence takes the appellant's case no further when considering the overall credibility concerns arising from the documentary and oral evidence. The judge was in any event perfectly aware of the sponsor's evidence that he paid for the appellant's college studies, as he recorded at [17], and of the point being made that the appellant was studying and had not worked. The fact that he did not specifically address the evidence at pages 28 to 30 of the appellant's bundle did not, in our view, mean that he did not take it into account in his overall assessment. He gave clear and cogent reasons for finding the sponsor's evidence as a whole to be unreliable. In addition, as Mr Tan submitted, the receipts at pages 29 and 30 do not actually show that the sponsor had paid the fees and there was no evidence to show that he had, other than a sentence in the letter from the college at page 28. Aside from the judge's own concerns about the unreliability of the documentary evidence we note that that letter at page 28 gives an incorrect date of birth for the appellant, a matter we accept has not previously been raised or put to the appellant but which serves only further to support the judge's general concerns. We therefore disagree with Mr Biggs that there was a material omission made by the judge in his consideration of the sponsor's role in relation to the payment of college fees.

23. In relation to the last ground, we agree with Mr Tan that this was not a case of the judge misapplying the relevant caselaw and applying the wrong approach to the test of dependency, as Mr Biggs asserts, but is simply a matter of the judge rejecting the appellant's case overall as unbelievable. We cannot see how anything material arises from matters such as the judge's consideration of the appellant's ability to earn an income at [43] when it is clear that his decision was based upon an overall assessment of the evidence as unreliable and lacking in credibility. There was nothing inconsistent in such an approach with the 'holistic examination', the 'examination of all the factual circumstances' and the 'wide-ranging fact-specific approach' advocated in Reyes.

24. For all of these reasons we consider that the grounds of appeal do not disclose any errors of law requiring the judge's decision to be set aside. For the reasons fully and cogently given the judge was entitled to make the adverse findings that he did, he was entitled to reject the appellant's claim of dependency on his sponsor and he was entitled to conclude that the requirements of Regulation 8 were not met.

DECISION

25. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. We do not set aside the decision. The decision to dismiss the appeal stands.

Signed: *S Kebede*
Upper Tribunal Judge Kebede

Dated: 21 October 2021