



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-001652

First-tier Tribunal No: EA/13602/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 22nd of December 2023

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

Mrs Bushra Bibi
(NO ANONYMITY ORDER MADE)

Appellant

and

Entry Clearance Officer

Respondent

Representation:

For the Appellant: Mr N Abbas, sponsor
For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

Heard at Field House on 15 December 2023

DECISION AND REASONS

Introduction

1. The appellant was granted permission to appeal the decision of First-tier Tribunal Judge Prudham dismissing her appeal, in a decision promulgated on 8 February 2022. Following an error of law hearing which took place on 22 May 2023, that decision was set aside (in a decision issued on 28 June 2023), albeit the First-tier Tribunal's findings at [10] were preserved, there being no challenge brought against those findings. The appeal was retained in the Upper Tribunal for remaking.

Anonymity

2. No anonymity direction was made previously, and there is no reason for one now.

Factual Background

3. The appellant is a national of Pakistan, now aged forty-nine. On 7 June 2019, the appellant applied for an EEA Family Permit as the dependent relative of her Italian-national brother, Mr Nadeem Abbas. That application was refused by the Entry Clearance Officer (ECO) by way of a decision dated 30 June 2019.
4. The notice of decision referred to an earlier decision to refuse to issue the appellant with a Family Permit owing to insufficient evidence that she was an extended family member. The instant decision referred to the sponsor being in receipt of public funds and supporting a wife and four children from his income. The ECO was therefore not satisfied that the sponsor would be able to support the appellant and concluded that she would become a burden on the United Kingdom public funds system. Mention was made of the absence of evidence that the sponsor's stated income from self-employment had been declared, that no updated evidence had been provided, with the conclusion being reached that he was not exercising his treaty rights in the United Kingdom. The ECO rejected the claim that the appellant, her husband and four children were dependent upon the sponsor or that any funds sent were used to meet their essential living needs.
5. There was a delay in the service of the ECO's decision and ultimately, the appellant gave notice of appeal on 9 September 2021. In the intervening period, the appellant's husband sadly died.
6. The appeal before the First-tier Tribunal was considered on the papers, at the appellant's request, on 27 January 2022. While the judge accepted that the sponsor was a qualified person, based on the accounts for the 2018/2019 financial year, it was concluded that the appellant had failed to discharge the burden of proving that she was reliant on the sponsor for her essential living needs.

The error of law hearing

7. The sponsor attended the hearing in person and brought evidence which addressed the concerns of the First-tier Tribunal as to the appellant's personal circumstances. Following the hearing, the sponsor provided proof that the aforementioned evidence had been served on the First-tier Tribunal well in advance of the hearing. The decision of the First-tier Tribunal was set aside by the Upper Tribunal panel owing to a failure to consider that evidence, as set out in [17-18] of that decision.

We have carefully considered whether this error was material, and we conclude that it was. At [12], the judge notes that there is 'no evidence as to the appellant's husband, and whether he is in employment.' In addition, at [13], the judge records that there is 'no evidence to support any physical or social factors which indicate dependence.' The further grounds of appeal provided relevant information as to the appellant's circumstances which was supported by evidence, and had the judge considered this material, it could have had an impact on his findings as to the existence of dependency.

We accordingly find that the decision of the First-tier Tribunal is unsafe and set it aside except for the unchallenged finding at [10] that the sponsor was a qualified person, in that he works as a self-employed taxi driver in the United Kingdom.

Continuation hearing

8. The sponsor attended the hearing in person. He answered my questions and was comprehensively cross-examined by Ms Cunha. The sponsor explained that he was continuing to provide financial support to the appellant and that he had sent evidence to the Upper Tribunal following the error of law hearing. Those documents could not be located however the sponsor brought hard copies which Ms Cunha was able to examine.
9. Ms Cunha made submissions on behalf of the respondent. In short, she accepted that the appellant was dependent upon the sponsor for her essential living needs, that the sponsor had provided reliable evidence of the support he was providing from 2019 to date and that it was not contended that the sponsor was financially unable to provide that support. Given those concessions, I had no need to hear submissions from the sponsor. At the end of the hearing, I allowed the appeal.

Decision on remaking

10. The burden of proof is on the appellant and the standard is one of the balance of probabilities. In reaching this decision, I have had regard to all the evidence before me as well as the relevant case law including *Reyes* (EEA: dependency) [2013] UKUT 00314.
11. The consistent evidence before showed that the appellant was widowed in 2019 shortly after the application for a Family Permit was submitted. I accept the sponsor's evidence that the appellant has no other source of income apart from his remittances. The sponsor credibly explained that the appellant's home was paid for but that he was required to send funds for food, bills, clothing, medical treatment, and school fees for the appellant's twins. The appellant's husband worked abroad until becoming unwell. I accept that he had no pension or life insurance in place. Indeed, the credibility of the sponsor's evidence was not challenged by Ms Cunha. I heard that the appellant has never previously worked in Pakistan and note that she is responsible for the care of her minor children. Considering all the circumstances holistically, I find that the nature of the relationship between the appellant and sponsor is characterised by dependency and that this is understandable given the social and financial circumstances the appellant finds herself in. I conclude that there is no good reason for me to go behind the concessions made by Ms Cunha. I therefore find that the appellant is dependent upon the sponsor to meet her essential living needs.

Decision

The appeal is allowed under the Immigration (European Economic Area) Regulations 2016.

T Kamara

Judge of the Upper Tribunal
Immigration and Asylum Chamber

18 December 2023

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A **"working day"** means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is **"sent"** is that appearing on the covering letter or covering email