



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-001306
First-tier Tribunal No:
EA/04664/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 18 August 2023

Before

UPPER TRIBUNAL JUDGE LESLEY SMITH
DEPUTY UPPER TRIBUNAL JUDGE FARRELLY

Between

MRS SHARNDEEP KAUR
(NO ANONYMITY DIRECTION MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr R Ahmed, Counsel instructed by Charles Simmons Solicitors

For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

Heard at Field House on Thursday 13 July 2023

DECISION AND REASONS

BACKGROUND

1. The Appellant appeals against the decision of First-tier Tribunal Judge Beg promulgated on 18 October 2021 (“the Decision”) dismissing her appeal against the Respondent’s decision dated 18 August 2020 refusing her an EEA Family Permit as the extended family member of an EEA national exercising Treaty rights in the UK under the Immigration (European Economic Area) Regulations 2016 (“the EEA Regulations”). The EEA (Spanish) national concerned is the Appellant’s father-in-law (“the Sponsor”). The Appellant’s husband, the son of the Sponsor is also living

in the UK. The Sponsor has a limited right to remain in the UK under the EU Settlement Scheme. The Appellant continues to live in India.

2. The Respondent refused the Appellant's application on the basis that he was not satisfied that the Appellant was dependent on the Sponsor as, although some payments were made by the Sponsor, the remainder came from the Appellant's husband and his brother. The Respondent was therefore not satisfied that the Appellant required the funds sent by the Sponsor to meet her essential living needs. The Appellant also lives with the Sponsor's mother for whom she cares. Since the Decision, entry clearance has been granted to the Appellant's child to join her father in the UK, based on her status as the dependent of the Sponsor.
3. The Judge found that, although the Sponsor sent money to India, the Appellant also received funds from her husband to meet her essential living needs. She found that the earnings of each family member in the UK had to be separately considered and that the Appellant's husband was able to support the Appellant from his earnings alone. She therefore rejected the Appellant's claim to be dependent on the Sponsor and dismissed the appeal.
4. The Appellant appeals on three grounds as follows:
Ground 1: the Judge erred in finding that the Appellant was not dependent on the Sponsor as the Sponsor had been sending money to India since March 2020 and the Appellant said that she used that money for "food, clothing and other necessities".
Ground 2: the Judge was wrong to find that the Appellant was not dependent on the Sponsor simply because her husband was also sending her money. The Appellant "is allowed to have more than one source of financial support".
Ground 3: the Judge was wrong to find that the Appellant was not dependent on the Sponsor because she had other sources of income. The Appellant did not have to show that she was dependent on the Sponsor's funds for all her needs.
5. Permission to appeal was refused by First-tier Tribunal Judge Nightingale on 8 December 2021 in the following terms so far as relevant:

“..3. The grounds are misconceived with regard to the contents of paragraph 11. That is not a paragraph in which findings are made, but, rather, a summary of the evidence. The Judge goes on to consider the case of **Reyes** and the need to show the existence of a real dependence in addition to fact of the funds sent. The Judge was entitled to conclude that in circumstances where the appellant received funds from her husband, also working in the United Kingdom, it had not been established that she relied on the funds sent by the sponsor, as opposed to her husband, to meet her essential living costs.

4. The grounds disclose no arguable error of law.”
6. Following renewal of the application for permission to appeal to this Tribunal, permission was granted by Upper Tribunal Judge Norton-Taylor on 14 June 2022 as follows:

“..2. The grounds make reference to the grant of entry clearance to the appellant’s young child. It appears this occurred in February 2022. That development is immaterial to the question of whether the judge arguably erred in law.

3. Taking the three grounds together, I am satisfied that there is an arguable challenge in this case. The judge was correct to state that the mere provision of funds by an EEA national is not of itself sufficient to meet the dependency test. Having said that, the sponsor’s evidence was that funds provided by him did go to the appellant’s essential needs and there is no clear finding by the judge to indicate that that evidence was unreliable. Further, whilst the appellant’s husband may also have provided funds which contributed to her essential needs, the two sources of income were not necessarily mutually exclusive in terms of the dependency test. It is arguable that the judge has not made a relevant finding, or that she has erred in her approach. I note that at [15] the judge finds that the appellant’s husband was ‘able’ to support her: yet the dependency test is not simply about ability, but rather what in fact was in place.

4. Whilst I am granting permission, it does not of course follow that any errors made out will be material. It is for the appellant to establish that there was evidence before the judge capable of demonstrating that any funds provided by the sponsor had in fact been necessary in order to (at least partially) meet her essential needs.”

7. The Respondent filed a Rule 24 Reply dated 29 September 2022 seeking to uphold the Decision.
8. The matter comes before us to decide whether the Decision does contain an error of law. If we conclude that it does, we must then decide whether the Decision should be set aside in consequence. If the Decision is set aside, we must then either re-make the decision in this Tribunal or remit the appeal to the First-tier Tribunal for re-determination.
9. We had before us a core bundle of documents relating to the appeal to this Tribunal, the Appellant’s and Respondent’s bundle before Judge Beg and also the Appellant’s skeleton argument before the First-tier Tribunal.
10. Having heard from Mr Ahmed and Mr Avery, we indicated that we intended to reserve our decision and provide that in writing which we now turn to do.

DISCUSSION

11. We begin with the paragraphs of the Decision which set out the evidence and the Judge’s findings on the dependency issue as follows:

“9. The appellant stated in her witness statement dated 21 July 2021 that she is married to Manpreet Singh who is living in the United Kingdom with his father who is a Spanish national. She stated that she is emotionally and financially dependent upon her family and has a daughter who was born on 19 December 2020. Her husband visits her and their daughter. Her husband’s grandmother is also in India. She stated that her husband gave her funds sent by her father-in-law for her financial support. She stated that she does not have any other source of income in India and lives with her

husband's grandmother who is also dependent upon the family in the United Kingdom.

10. The sponsor, Bahadur Singh Kaur stated in his witness statement, dated 2 August 2021, that the appellant is his daughter-in-law. He stated that both his sons Manpreet Singh and Jaspreet Singh were sponsored to Spain as his dependents in 2007. They joined him in the United Kingdom in February 2016. He stated that he is employed as a shopfront assistant earning £1400 per month. His wife works as a sweet maker and has a monthly income of £650. He stated that his son Manpreet works with Johal Powder Coating Ltd and has a weekly income of approximately £300. He stated that the appellant is financially and emotionally dependent upon him and his wife.

11. In evidence the sponsor said that he has been financially supporting the appellant since her marriage to his son on 20 March 2020. He said he sends the appellant approximately £100 each month which she uses for food clothing and other necessities. He went on to state that he, his wife and his two sons send money to the appellant. He confirmed that the appellant's husband sends her money once a month depending on how much she needs. She is always able to ask for more if required.

12. In **Reyes v Sweden [2015] EUECJ C-423/12** at paragraph 25 the court held that it is not enough simply to show that financial support is in fact provided by the EU citizen to the family member. The court referred to **Centre Public d-Aide Sociale De Courcelles v Leban (case 316/85) [1987] ECR 2811** where the court referred to the existence of a situation of real dependence which must be established.

13. I find that whilst the sponsor has sent funds to the appellant, it is also clear from his evidence and from the appellant's own witness statement that she also receives funds to meet her essential living needs from her husband who has employment in the United Kingdom.

14. Mr Uddin submitted on behalf of the appellant that the sponsor's family income is the whole household's income. I find however that each member of the sponsor's family in the United Kingdom, that is his wife and two sons all earn separate amounts of income from separate employments.

15. In taking the evidence as a whole, I do not find that the appellant is dependent upon the sponsor to meet her essential living needs. I find that her husband is able to support her from his own employment. He sends money to her in India and has also taken money to her when he has visited her. Consequently, I find that the appellant does not meet the requirements of Regulations 8(2)(b) of the Immigration (European Economic Area) Regulations 2016."

12. There is no error made by the Judge in her self-direction. She clearly recognised at [12] of the Decision the question which she had to answer. She directed herself appropriately as to the legal principles which apply.

13. We should also say that we have considerable sympathy with the difficulties facing the Judge in deciding this case. The Judge was correct to reject the submission that all the income of the family in the UK could be treated as one and as that of the Appellant. The situation in this case was complicated not only by the multiple sources of income in the UK but also the multiple targets of those sources in India. This was the appeal of the daughter-in-law of the Sponsor, but she was also caring for her own daughter as well as the Sponsor's mother. The issue was whether the

Sponsor's funds were being used to support the Appellant's needs or, for example, were being sent to support the Sponsor's mother.

14. The Judge's task was not made any easier by the vagueness of the witness evidence. As the Judge rightly pointed out, that an EEA national is sending funds back home does not establish dependency. The Appellant had to show that those funds were being used to provide for her essential living needs. It might be said that in circumstances where the Appellant's husband was, according to the Judge's record of the evidence, sending money each month, the amount of which was dependent on his wife's needs, the fact that the Sponsor sends £100 each month does not show that this was being used for the Appellant's needs. As we repeat, the Appellant is looking after the Sponsor's mother. It may be that the £100 is to support the Sponsor's mother and not the Appellant herself.
15. The Appellant's witness statement provides no evidence as to the use to which the funds are put. She does not break down the receipt of funds between those coming from her husband and those from the Sponsor nor specify how those are individually or even cumulatively used. The Sponsor's statement is similarly vague as to the amount of funds sent and the use to which they are put.
16. Ultimately, however, we have concluded that there are two errors which are made out by the Appellant's grounds.
17. First, the Judge had evidence from the Sponsor that he sends £100 per month which he said was used by the Appellant for food, clothing and other necessities. The Judge did not say that she rejected that evidence. She might well have found that, even if that were true, it made no difference if there was no detailed evidence showing how the funds were used to meet the Appellant's essential needs, but she made no such finding.
18. Second, although it was entirely open to the Judge to find that the Appellant was supported by her husband and not the Sponsor and therefore could not satisfy the requirements of the EEA Regulations, she did not make that finding. She found at [15] of the Decision that the Appellant's husband could support the Appellant from his own income but did not find that this was the position in fact.
19. For those reasons, we are satisfied that an error of law is made out. It may be that those errors would ultimately make no difference to the outcome unless the evidence is improved as to the source and use of the funds from the various parties. However, we are unable to say at this stage that they could make no difference. Accordingly, we conclude that the errors are material.
20. Mr Ahmed agreed with our observation that, if we were to find an error of law, the appeal should be remitted. The issue of dependency is likely to involve some findings about the credibility of the evidence. In any event,

all findings of fact will need to be re-made. Mr Ahmed also pointed out that there have been some changes in the factual background, particularly concerning the Appellant's child which will need to be considered. We repeat what we said above about the current state of the Appellant's evidence and the need for more detailed evidence on the next occasion.

21. For the foregoing reasons, we conclude that there are errors of law in the Decision which affect or may affect the outcome of the appeal. We set aside the Decision in its entirety. We remit the appeal to the First-tier Tribunal for re-hearing before a Judge other than Judge Beg.

NOTICE OF DECISION

The decision of Judge Beg promulgated on 18 October 2021 contains errors of law which are material. We set that decision aside and remit the appeal to the First-tier Tribunal for re-hearing before a Judge other than Judge Beg.

L K Smith

Upper Tribunal Judge Lesley smith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

31 July 2023