



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-001415

First-tier Tribunal No: EA/09209/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 9th of November 2023

Before

UPPER TRIBUNAL JUDGE RIMINGTON

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT
(NO ANONYMITY ORDER MADE)

Appellant

and

MS ARSHIA SADAF AHMAD
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: The sponsor attended to advise and assist with the appellant's case

For the Respondent: Mr Parvar, a Home Office Presenting Officer

Heard at Field House on 23 October 2023

DECISION AND REASONS

Introduction

1. The appellant appeals to the Upper Tribunal (the tribunal) with permission of FTT Judge Reeds, who, on 1st September 2022, identified potentially material errors of law in the decision of the Judge of the First-tier Tribunal J G Raymond (the judge).

Background

2. The appellant was refused an EEA family permit. She claimed to be a "family member" of an EEA national, as defined by regulation 7 of the Immigration (European Economic Area) Regulations 2016 (2016 Regulations), which includes the spouse or civil partner, direct descendant or dependents of the EEA member.

Such persons may apply to the ECO for the issue of an EEA family permit pursuant to regulation 12 of the 2016 Regulations. There is a right of appeal against the refusal of such a permit, pursuant to regulation 36 of the 2016 Regulations. The civil standard of proof applied to the consideration of the appellant's application for a family permit which was to be decided at the date of the application.

3. The background to the application in this case was that the sponsor, the appellant's son, Mohammed Hassan, is an Irish national having been granted Irish citizenship in 2017. On 9th November 2020 the respondent granted him indefinite leave to remain (ILR) under the E U Settlement Scheme (EUSS) with leave under Appendix EU. By these provisions those EEA nationals who were exercising "Treaty rights" in the UK were entitled to continue to exercise those rights provided certain conditions were satisfied. Following the U.K.'s departure from the European Union and the end of the transition period on 31.12.20 those rights are essentially preserved.
4. The respondent refused the application under the 2016 Regulations through her ECO at Doha because the respondent did not accept that the appellant was a "dependent" "family member" as defined by regulation 7 of the 2016 Regulations. The appellant was provided with information as to the types of documents she should provide to the ECO in support of her claim to being a dependent of an EEA national under regulation 7. This information was necessary to show the financial dependency she claimed. Essentially, what was needed was that the appellant had the financial support of the family member concerned. The respondent noted that there were money transfer remittance receipts from the sponsor to the appellant but that these were for a limited period of only two months. This evidence in isolation was insufficient to prove her financial dependency. The judge also had a number of concerns over a property situated in Pakistan from which the sponsor claimed to derive income and was by no means persuaded that the sponsor's income was as stated. The sponsor had been unable to establish the precise sources of his income. It seemed more likely to the judge that the family income was in fact derived from the father.
5. On 10th of May 2021 the appellant appealed against the ECO's refusal utilising form IAF- 6.
6. The appeal came before the judge, who was sitting at Hatton Cross, on 4 October 2021. His decision was promulgated on 5 November 2021. In his decision the judge did not accept that a property containing seven bedrooms had indeed fallen into the ownership of the sponsor and there was a lack of relevant financial remittances over a lengthy a period of time in two months - there being only two remittances or transfers made in November 2020. Also, the judge was unable to establish the sponsor's source of income, whether it was from when he was briefly in the UK or from his purported present employment in Pakistan. There was no way of linking the limited transfers with the personal circumstances of the sponsor. Furthermore, the sponsor's siblings (the appellant's other three children) were apparently enjoying an expensive lifestyle in Pakistan and the judge considered that it was likely that the father sustained that lifestyle. He is a barrister who was "still very much a presence in their lives". Accordingly, the judge dismissed the appeal under the EEA regulations.
7. Permission to appeal was initially refused, as it was evident to the appeal judge, Judge Chohan, that there was evidence before the judge to justify his conclusions.

However, permission to appeal was granted on a renewal application. Upper Tribunal Judge Reeds thought that the judge may have erred in his factual consideration/understanding of the property to which reference was made in the documentary evidence and above. This was, arguably, relevant to the issue of dependency. Secondly, she noted the absence of presenting officer and considered it arguable that matters should have been clarified with the sponsor/witness to enable them to respond. Finally, Judge Reeds that the sponsor had three British citizen children which she thought might have been relevant to the grant of a family permit. All grounds were thought to be arguable by her.

The hearing

8. At the hearing we heard submissions first from Mr Parvar. The sponsor attended on behalf of the appellant but we explained the limitations on a person who was acting, essentially, as a “McKenzie friend”.
9. According to Mr Parvar, the application was made under regulation 7 (family member) of the 2016 regulations. This was raised as it seems to be suggested by the appellant or her sponsor that regulation 11 (right to admission to the UK by an EEA national who produce a valid identity card) might also be relevant. Regulation 11 was not relied on in the application to the ECO and therefore should not be considered on this second appeal. It had not been considered by the judge as it had not been raised.
10. The respondent submitted that the judge had not erred. The judge considered the oral and documentary evidence at paragraph 5 *et seq* and recorded the receipt of evidence via CVP from the appellant who was in Pakistan. He was, said Mr Parvar, entitled to reach the conclusion he reached at paragraph 23, that there was no evidence of ownership of the seven bedroom property in Pakistan. The judge pointed out that there were assertions by local estate agents etc but that these pieces of evidence were inadequate. The property is at Nazimuddin Road, F-11/4, Islamabad. Also the judge had been entitled to refuse to consider new evidence presented on behalf of the appellant. The tribunal was invited not to consider post-decision evidence not presented before the FTT including a new letter dated 29 March 2022-the appeal in this case having been dismissed in November 2021. The judge’s findings cannot be said to be wholly unsupported. Overall he reached conclusions open to him on the evidence. The sponsor could not possibly be receiving free accommodation in the circumstances he outlined. As to failing to make a finding in relation to the sponsor, who was an Irish national, in a dependency case it is supposed to be “the other way around”-by which we understood Mr Parvar to mean that it is more common for dependency to be established by a son from his parents. The respondent did not accept that there was any failure to put matters to the appellant. There has been no request for a copy of the proceedings. The judge had been entitled to probe the case and ascertain whether it made sense. It was inevitable that the FTT would consider the documents - the judge had been entitled to look critically at those documents provided. The ECO did not accept dependency, believing the appellant’s case to be lacking in detail. That was one of a number of credibility issues which the judge had to resolve. It is clear that credibility was in issue from the refusal letter. The judge did consider some new documents which went to the issue of dependency. The judge was considering a number of different factors and was entitled to take into account all the information provided. The refusal did take a point about the sponsor’s employment (see refusal at fifth bullet).

11. There is a rule 24 response from the respondent pointing out that it was not possible to raise a new matter at this late stage. The Rule 24 response makes the point that the new evidence was not provided to the FTT.
12. The appellant did not directly address the tribunal as the sponsor was not entitled to represent the appellant, but we have full regard to the grounds of appeal, the grant of permission by Judge Reeds and the documents submitted at or shortly before the hearing of the appeal in the tribunal. However, those documents which we have read consisted of the following:
 - 1) A document headed “sponsor’s views”;
 - 2) Additional bank statements for an account held with Standard Chartered which post-date the decision.
13. The sponsor’s views in so far as they are evident, and the additional bank statements, post-date the decision. Evidence not before the FTT cannot be used to criticise the decision.

Discussion

14. The grounds appear to be those dated 29th March 2022 which raised the following matters:
 - 1) The failure of the judge to consider matters under regulations 11(5)(e) and 15 and the issue of the appellant as carer of minor British nationals as raised in the grounds of appeal;
 - 2) The approach to the evidence of house ownership and free accommodation was perverse;
 - 3) The judge’s alleged failure to make a finding on the basis of membership of the same household as an Irish national;
 - 4) The judge entitlement to conclude that the appellant had failed to show the required dependency or whether he misunderstood the documents/misapplied the facts and reached erroneous conclusions;
 - 5) Whether the judge should have raised any additional concerns with the sponsor at the hearing and whether that hearing was conducted fairly in the circumstances.
15. Ground (1). Notwithstanding reference was made in the grounds of appeal to the appellant’s position as carer, the application was made to the ECO under regulation 7 as a dependent family member. It was not made on the basis that the appellant was the primary carer of British nationals. We note that the issue of whether the appellant was the “primary carer” of British nationals was only raised as new matter in the grounds of appeal to the tribunal as to which reference has been made. Further to s85 of the Nationality and Immigration Act 2002 there was no indication that the appellant had given consent for the consideration of a new matter and the judge cannot consider a new matter unless the Secretary of State has given consent. That had not occurred. We thus find no error of law on this basis.

16. Grounds (2)-(5). It is not arguable that the judge was not permitted to make findings on the credibility of the documentation which was put before the First-tier Tribunal. The judge is obliged to consider and make findings on the reliability of the documentation and the appellants are aware of the provisions of the 2016 Regulations and the fact that the documentation will be under scrutiny. The documentation emanated from the appellants and they would be fully conversant with their contents.
17. The threshold for perversity is very high and not made out here bearing in mind the findings actually made by the judge.
18. The judge having set out the evidence in full and directed himself properly at [21] relying on **ECO Manilla v Lim (2015) EWCA Civ 1383**, applying **Reyes v Migrationsverket (Case C- 423/12)**.
19. At the heart of the judge's findings was the credibility of the appellant's evidence which the judge properly dealt with "holistically". Having looked carefully at all the issues and in particular the issue of dependency, the judge concluded there was a lack of reliable evidence to support the appellant's dependency on the sponsor. This is clearly set out in the decision from [22] onwards. There was no evidence, as recorded, that the father and mother (appellant) had divorced and it was not accepted that the property (indeed two properties) would have been given to one child only (the sponsor) without provision for the mother and remaining family members. Those conclusions came from the evidence provided by the appellant. The evidence presented by the appellant was that she had lived in the present property from 2011 and yet, as the judge observed, she lived in one room only but the property was said to have been transferred to the sponsor in 2019. This ownership, however, was only said to be verified by letter dated 28th September 2021 from the 'Union Council 2019 F-10 & F-11' and a further letter from a property dealer at 'Dream Property Estate', [6]. The judge referred to these letters and regarded them merely as 'assertions' of ownership. That finding is unarguably open to him on the basis that the function of the Union Council was not independently evidenced and there did not appear to be any more cogent official documentation provided. The judge found contradictions in the evidence such that the sponsor claimed to own two houses, without verification, and yet his mother lived in one room only [22]. Simply put, the judge did not accept this property was available to the sponsor on the evidence presented by him as the judge did not accept that the sponsor owned the property. There was an adequate opportunity to present evidence to show the ownership of the property concerned. As Mr Parvar submitted, the sponsor could not provide free accommodation if it was not accepted he owned the property. Similarly the appellant could not show dependency on this basis.
20. We do note that from the appellant's oral evidence at [18] the judge recorded that 'the father supports her but he does not come to the house'. There was no challenge to that.
21. Further, despite the matter being clearly set out in the ECO refusal letter stating 'We would expect to see evidence which fully details yours and your family's circumstances, such as 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', there was simply a lack of evidence as to the sponsor's personal circumstances and the source of his income. The

refusal letter of the ECO clearly relates to both the appellants and sponsor's circumstances. The lack of relevant evidence before the First-tier Tribunal is demonstrated by the attempt of the sponsor to produce evidence of his income before us which had not been provided to the FtT. Additionally, the judge stated that there was no evidence that the sponsor owned a second property as claimed [23].

22. In our view there was no unfairness in the judge's decision which was one he was entitled to come to on the evidence presented to him - the evidence being sufficient to discharge the civil standard of proof, the burden resting on the appellant.
23. The grounds of appeal to this tribunal also raise issues of fairness of the manner in which the hearing was conducted. The appellant was given a full opportunity to submit evidence in support of her appeal. We repeat the application was made under Regulation 7 and Regulation 11 relates to right of admission and the issue of a family permit to a family member Regulation 15 relates to the right of permanent residence. The requirements relating to a family member needed to be fulfilled first and those additional regulations had not, as stated above, been raised before the judge.

Conclusion

24. We consider the criticisms of the FTT to be unjustified and the decision the FTT came to did not contain a material error of law.

Notice of Decision

The appeal against the decision of the FTT is dismissed.

W.E.HANBURY
Judge of the Upper Tribunal
Immigration and Asylum Chamber

3rd November 2023

