



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002187

First-tier Tribunal No: EA/10096/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 16 June 2023

Before

UPPER TRIBUNAL JUDGE HANSON
DEPUTY UPPER TRIBUNAL JUDGE ROBERTSON

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

AAMENA SALIMBHAI RANGREJ
(NO ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr P Lawson, Senior Home Office Presenting Officer
For the Respondent: Mrs Shehnaz Mhd Akhtar Khan, the Sponsor

Heard at Birmingham Civil Justice Centre on 6 June 2023

DECISION AND REASONS

1. Mrs Rangrej is a citizen of India whose date of birth is 14 January 1996. Her appeal is against the decision of the Secretary of State to refuse her application for a family permit pursuant to Regulation 8 of the Immigration (European Economic Area) Regulations 2016 (the Regs) to join her husband, Mr Javed Mhd Akhtar Khan, and her mother-in-law, the Sponsor, who is a Portuguese national exercising Treaty rights in the UK. Her appeal was heard by First-tier Tribunal Judge Freer (“the Judge”).
2. In his decision, the Judge allowed Mrs Rangrej’s appeal, and the Secretary of State sought, and was granted, permission to appeal against that decision, and that appeal was first listed for hearing on 19 January 2023 before Upper Tribunal Judge Hanson and Deputy Upper Tribunal Judge Robertson (the panel)
3. By a decision promulgated on 31 March 2023, the panel found that decision of the Judge involved the making of a material error of law and

set it aside with directions for the appeal to re-listed in the Upper Tribunal before the panel for a resumed hearing.

4. In the error of law decision, the reasons for setting aside the Judge's decision are at paras 6 – 10, in which it is written:

“6. The Judge identifies within the decision a number of fundamental shortcomings in the evidence relied upon by Mrs Rangrej. The burden was upon Mrs Rangrej to show the decision of the ECO was wrong in law and that she could meet the requisite test.

7. The shortcomings do not support Mrs Rangrej's claim. Before us today the persons present on behalf of Mrs Rangrej indicated they had further available information from India and one questions why, if such information could be so readily obtained for the purposes of the error of law hearing, it was not obtained earlier in accordance with the directions.

8. The Court of Appeal have made it abundantly clear that appellate judges should not interfere with the decisions of judges below unless there is a clearly identified legal error material to the decision being challenged.

9. Appeals within the First-Tier Tribunal are adversarial in nature. Such appeals are evidence led. As the Upper Tribunal reminded us in *Basnet* (validity of application - respondent) [2012] UKUT 00113(IAC) “a party that asserts the fact should normally be the one who demonstrates it”.

10. Good judge craft requires a decision-maker to make clear finding supported by adequate reasons which bear a direct relationship to the evidence that the judge has considered. The problem in this appeal is that when one looks at that evidence, particularly as reported by the Judge, there appears a disconnect between the Judge's findings and the evidence. It is clear that in regard to a number of core findings the Judge speculates about what the evidence may actually show. Conjecture in the absence of a direct relationship between the finding and the evidence is a legal error. We find such error to be material as it infects the core finding of the Judge that the relevant test has been met.”

5. In setting aside the decision of the Judge, it was directed that “The positive findings relating to the date of the marriage, sending remittances from the UK to Mrs Rangrej, and the Sponsor's status as an EEA national exercising treaty rights in the UK, shall be preserved findings” (para 11(a)).
6. Mrs Rangrej was directed “to send to the Upper Tribunal and to the Secretary of State's representative an updated, consolidated, indexed, and paginated bundle, containing all the documentary evidence she seeks to rely upon in support of her appeal.” Additional evidence was provided by Mrs Rangrej prior to the hearing.
7. The starting point for the appeal is to consider why the application for a family permit was refused. In the notice of refusal dated 16 February 2021 (the Notice), the ECO writes:

- You have provided a marriage certificate indicating that you married the son of your sponsor on 17/11/2020. You now state that you are financially dependent on your sponsor. As evidence of this you have provided three money transfer remittance receipts from your sponsor to you. Your sponsor has resided in the UK since at least September 2017 according to the employment letter from Fashion House dated 05/03/2020.
 - However, it is noted that these transfers are dated immediately prior to your application. Unfortunately, this limited amount of evidence in isolation does not prove that you are financially dependent on your sponsor. I would expect to see substantial evidence of this over a prolonged period, considering the length of time your sponsor has been resident in the United Kingdom.
 - In addition to money transfer receipts, this office would also expect to see evidence which fully details yours and your family's circumstances. 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. No such evidence has been provided in support of your application.
 - From the information available it appears that your sponsor also supports your husband although it is not evident whom she supports from the available information. The submitted evidence shows that they earn a net income of approximately £1,061 per month having recently started working for Cables Online as indicated by the employment letter dated 18/11/2020. Your sponsor also receives state benefits namely, Job Seekers Allowance and Universal credits. It is not clear from the bank statement provided in isolation what level and frequency these payments take and the reasons why you are in receipt of these credits. I am not satisfied that it is sustainable for your sponsor to financially support you, along with their own family in the UK. Therefore, after considering these factors, there is a risk that if you did arrive in the United Kingdom that you may become a burden on the public funds system of this country.
8. The resumed hearing, which was a face-to-face hearing, took place on 6 June 2023. The Sponsor, who had submitted a witness statement which is signed but not dated, attended the hearing with her daughter, Mrs Sazmin Khan, who is the sister-in-law of Mrs Rangrej. We had witness statements from Mrs Khan, Mrs Rangrej, Mr Khan, Mr Mohammed Akhtar Sharif Khan (who is the Sponsor's husband), Mr Intekhab Mohammed Akhtar Khan (who is the Sponsor's son), Mr Gulamsamdani Biben (who is Mrs Rangrej's father), and Mr Mohamad Firoz (who is the brother of Mrs Rangrej.) We note that it was the Sponsor and Mrs Khan who attended the hearing before the Judge, and that it was Mrs Khan who gave evidence during that hearing, although the Sponsor was present to show her support for the appeal (see paras 18 - 19 of the Judge's decision).
9. At the resumed hearing, the Sponsor gave evidence assisted throughout by a Gujarati speaking interpreter. Mrs Khan, who remained in the hearing room throughout, assisted her mother, and then made submissions on behalf of Mrs Rangrej.
10. It was made clear to the Sponsor and Mrs Khan that a number of witness statements were submitted, and in many of them it was stated that Mrs Rangrej's application had been refused "due to some minor

issue” but that the application was refused due to two major issues, these being:

- a. Dependency, that is, proof that Mrs Rangrej was dependent on the Sponsor; and
- b. Affordability, that is, whether the Sponsor could afford to maintain Mrs Rangrej and her own family in the UK.

11. We made clear during the hearing that we were aware that the marriage between Mrs Rangrej and Mr Khan was an arranged marriage, that we accept that there will be no history of support before the marriage took place, and that culturally the husband and his family would care for Mrs Rangrej after marriage. However, the appeal is an EEA appeal, which turns on evidence and goes wider and deeper than the fact that Mrs Rangrej and Mr Khan are married. Dependency and affordability must be established by evidence.

12. We note that the Sponsor and Mrs Khan are not independent objective witnesses, and nor are the other witnesses who submitted witness statements but did not attend the hearing; they all have a strong interest in the outcome of the appeal. As such, assertions made by them as to dependency and affordability should be supported by evidence which is reasonably available to them (TK (Burundi) [2009] EWCA Civ 40), and their evidence will be tested against the documentary evidence provided.

Dependency

13. As to dependency, we bear in mind the Judge’s finding that the date of marriage was the legal start date for dependency and that since that date “there has been no interruption in the flow of monthly payments since that date so that dependency is unbroken.” He also states: “I find that at the date of hearing the payments are regular, uninterrupted and have continued for a significant period of time” (para 36 of the decision). However, it is unclear from this finding if it was the Sponsor upon whom Mrs Rangrej was dependent, and it appears that this finding was made on the basis of oral rather than documentary evidence (see paras 18 – 19 and 26 of the Judge’s decision).

14. The Sponsor’s witness statement evidence was that Mrs Rangrej was the responsibility of her own family before she was married, and that after marriage responsibility was transferred to her (the Sponsor) and her family. She does not actually state in her witness statement that she was the one who had assumed responsibility for the maintenance of Mrs Rangrej; she said that “she became the responsibility for us to look after” (witness statement para 3). Mrs Rangrej states in her witness statement that “after marriage dependency was changed from my mother to my in laws responsibility” (para 2). In his witness statement, Mr Khan states that his wife “got dependent on us after she got married” (para 2). We

also note the oral evidence recorded by the Judge in his decision at para 26, that the Sponsor “has been sending money to support the basic needs of (Mrs Rangrej). The amount is £100 every month and sometimes more. The period is now well over one year”.

15. As to the evidence provided for the resumed hearing, apart from the Western Union receipts provided for the purposes of the application (approximately 5 remittance receipts for the period October 2020 to February 2021), we did not have any other Western Union remittance receipts before us.
16. We have Mrs Rangrej’s bank statement from the Bank of Baroda for the period 1 September 2022 to 30 November 2022 (the bank statement), and her “Transaction Details” document (the transaction details document) for the period 23 October 2022 to 23 January 2023. It was noted during the hearing, in relation to the bank statement and transaction details documents that funds were being deposited into her account by a number of individuals, and then being paid to many individuals from her account. For example:
 - a. There was a Western Union transfer of 9,885.66 Indian rupees (INR) into Mrs Rangrej’s account on 3 January 2023 and a transfer out on the same day of 9,000 INR to a ‘Riswanbiban’. The Sponsor stated that Riswanbiban was her younger brother, later confirming that he lives in India.
 - b. A Biben Juber deposited 15,000 Indian rupees (INR) into Mrs Rangrej’s account on 25 December 2022. The Sponsor stated that Biben Juber was “her cousin brother”, that is her maternal uncle’s son. She stated that he had borrowed the money from her (the Sponsor) to go to Qatar, and she had told him to send it to Mrs Rangrej rather than her. When asked what Mrs Rangrej did with that money, the Sponsor stated “I kept the money in India”.
 - c. A Allahrakhu Faquirbai deposited 58,727.15 INR into Mrs Rangrej’s account on 26 November 2022. The Sponsor was not sure who this was but said that it could be Mrs Rangrej’s maternal uncle. When later asked about him in cross-examination, she stated that it was Mrs Rangrej’s brother’s father-in-law, that his family lived in Africa and they were sending money for him.
17. We note that there are a number of regular payments out of Mrs Rangrej’s account to ‘Riswanbiban’, and deposits from many different people. The Sponsor stated during the hearing that Mrs Rangrej’s mother does not have a bank account, and that other people also send funds to Mrs Rangrej to be passed on to others because they trust her to make sure that the funds are passed on. She stated, however, that the money she sent to Mrs Rangrej was for her. She also stated that she sometimes sent funds for her younger brother, Riswanbiban as and when he needed them. We find that it is difficult to identify what funds were sent to Mrs

Rangrej for her own use, and which were sent for others. The Sponsor was asked how funds for Mrs Rangrej could be identified, and she said that the money coming in was for bills and that they had provided those to us. These, however, do not identify which funds were sent to Mrs Rangrej for her own use; it only identifies that funds were spent.

18. We also have bank statement evidence from the Sponsor and Mr Khan, Mrs Rangrej's husband. As stated previously, Mrs Rangrej's bank statement covers the periods 1 September 2022 to 30 November 2022 and the transaction details document covers the period 23 October 2022 to 23 January 2023. The Sponsor's bank statement evidence covered the periods 20 May 2022 to 19 June 2022, 21 November 2022 to 19 December 2022, 20 January 2023 to 19 February 2023, and 20 February 2023 to 19 March 2023. The overlap between these is for the period 21.11.2022 - 19.12.2022, and for 3 days from 20.1.2023. As to the Western Union Funds that left the Sponsor's account, her bank statement evidence shows the following:

- a. On 22 November 2022, there was a transfer for £71.90 (p 158). There was one Western Union Deposit into Mrs Rangrej's account, but this was on 19 November 2022, not on or after 22.11.2022. It is not possible for Mrs Rangrej to have received it before it was sent.
- b. On 6.12.2022 there was a transfer of £109.90. There are a number of debits and credits into Mrs Rangrej's account in and around that period (see pp 161 - 162), but there is no corresponding entry either within the transaction details document or her bank statement of that Western Union payment.
- c. There was a Western Union transfer into Mrs Rangrej's account on 5.11.2022 of 10,792 INR and an immediate transfer out to Riswanbiban, but no bank statement from the Sponsor to cover this period;
- d. There was a Western Union transfer into Mrs Rangrej's account on 3 January 2023 of 9,885.66 INR (see p 160), and an immediate transfer out to Riswanbiban, but no corresponding Western Union debit from the Sponsor's account is provided.

19. These transactions show that whilst Western Union payments are made out of the Sponsor's account, these do not necessarily go to the account of Mrs Rangrej, or are not necessarily for her use if they are to be forwarded to Riswanbiban. These transactions also show that the Western Union transfers into Mrs Rangrej's account are not necessarily from the Sponsor. It would have been open to the Sponsor and Mrs Rangrej to supply Western Union remittance receipts (they had clearly provided them around the date of the application and therefore knew that it was a reliable form of evidence), but these were not provided. The evidence provided to us did not support the assertion of the Sponsor that she sent funds to Mrs Rangrej by Western Union transfers on a regular

basis, and we so find. We find that there is no reliable evidence before us that Mrs Rangrej is supported by the Sponsor.

20. In submissions, Mrs Khan stated that Mrs Rangrej was supported by Mr Khan, the Appellant's husband, not just the Sponsor. She stated that there were transfer from "Remitly" from Mr Javed. We note that the following:
- a. Mr Khan's bank statements only cover the same period as the bank statement and transaction details document of Mrs Rangrej for the period 24 December 2022 to 23 January 2023. During this period, there are no transfers via "Remitly".
 - b. There are numerous transfers via "Remitly" into Mrs Rangrej's account, but there is no detail given as who sent them.
 - c. Again, it was open to Mrs Rangrej, the Sponsor and the Sponsor's family to provide the Remitly remittance receipts to show who had sent them and to whom, but these were not provided.
21. On the evidence before us, we cannot find that regular remittances have been maintained to Mrs Rangrej from the Sponsor or her family. We also note that even if it had been shown that Mr Javed sent funds to Mrs Rangrej, who is his wife, it would not show that she was dependent on an EEA national, because he is not an EEA national.
22. We were provided with three receipts for goods bought in India. These were translated and dated 29 April 2023, 1 February 2022, and 1 March 2023. As Mrs Rangrej lives with her mother it was not clear if these covered the expenses of her mother as well, or, given our findings in relation to dependency, how the payment for the goods was funded. There is also a statement of property rental, by Mrs Rangrej's mother, from Shahi Jumma Masjid Trust, but no evidence of how much rent is paid. We do not have any real detail of how much Mrs Rangrej's mother earns from her shop (we were told it is no more than 100 INR), but we have nothing from Mrs Rangrej or her mother as to her actual earnings. We have only been told it is a small shop and they do not earn much. We were also told that Mrs Rangrej's father maintained her prior to his divorce from her mother, which happened a long time ago, and after that she was living with and maintained by her mother. But we were also told that Mrs Rangrej's father provided for her expenses "when she visited him". The evidence provided in relation to circumstances in India, in particular how Mrs Rangrej and her mother are maintained, is vague.
23. We find that it has not been established that Mrs Rangrej is dependent on the Sponsor for the purposes of Reg 8 of the Regs. The appeal would fail on this point alone.

Affordability

24. However, the Secretary of State did raise the issue of affordability in the Notice. There was no evidence before us of the Sponsor's income at the date of decision, other than as set out in the notice of refusal. There is no recorded evidence of the Sponsor's income in the decision of the Judge. The bank statement evidence of the Sponsor for the period 20 May 2022 to 19 June 2022 and 21 November 2022 – 19 December 2022 shows payments in of £315.16 – 327.19 weekly, which would be a net figure of approximately £1,365 per month.
25. However, the documentary evidence of current earnings is by way of a letter from Sim Fashion, dated 14 April 2023, which confirms that the Sponsor has been employed by Sim Fashion LTD on a full-time permanent role since December 2022 but there is no indication within this letter, of the annual salary. There are payments into the Sponsor's bank account, described as 'Wages' from "Simi Fashion" on 4 February 2023 of £997.50, and on 4 March 2023 of £789.00, so less than £1,000 per month. The evidence the Sponsor gave of her outgoings was that these were over £1,000 per month (rent of £600, gas and electricity was variable but about £300, Council tax £156, and water rates of £40), so there is a significant shortfall. Her oral evidence was that her children gave her money towards her expenses, but that she used her own money to maintain Mrs Rangrej. It can be seen from the bank statement evidence of the Sponsor that her children do send money to her, and in fact there is also a deposit in from Mr Firoz, who is Mrs Rangrej's brother, and it can be seen that she would need these funds to meet her expenses. She also stated that she did not maintain anyone else in the UK, although she did send funds to her younger brother in India when he needed them. However, there is little leaving her account by way of Western Union transfers to Mrs Rangrej, therefore it is not established that she has sufficient income to maintain Mrs Rangrej.
26. Regulation 12 (4) of the Immigration (EEA) Regulations 2016 ('the 2016 Regulations') provides:
- (4) An entry clearance officer may issue an EEA family permit to an extended family member of an EEA national (the relevant EEA national) who applies for one if—
 - (a) the relevant EEA national satisfies the condition in paragraph (1)(a);
 - (b) the extended family member wants to accompany the relevant EEA national to the United Kingdom or to join that EEA national there; and
 - (c) in all the circumstances, it appears to the entry clearance officer appropriate to issue the EEA family permit.
27. Regulation 12 (4) (c) entitles the ECO to consider the financial situation of the Sponsor together with all other relevant material. In the Notice it was stated that the Sponsor was in receipt of Jobseekers

Allowance and Universal Credits. There was nothing irrational in the way in which the ECO exercised discretion in light of the facts as known at the date of decision. However, we have to consider whether this still applies. Whilst the Sponsor is not in receipt of benefits, it is clear that she has difficulty managing her own expenses on her current income, that her children contribute towards her expenses, and that there is no reliable evidence that she is supporting Mrs Rangrej in India. We note that Mrs Rangrej has completed her beautician's course, but there is no evidence before us that she would be able to contribute to the household costs on arrival in the UK. We find that there remains a risk that if she did arrive in the UK she may become a burden on the public funds system of this country.

28. Having considered the evidence with the required degree of anxious scrutiny, we find that Mrs Rangrej has not established that she is dependent on the Sponsor or that on arrival in the UK the Sponsor can afford to maintain her.

Notice of Decision

29. We re-make the decision to dismiss Mrs Rangrej's appeal.

M Robertson

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

9 June 2023