



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2022-003278
UI-2022-003279
UI-2022-0032380
First-tier Tribunal Nos: EA/08630/2021
EA/08631/2021
EA/08675/2021

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 13 July 2023**

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

**Faiza Manzoor
Horiya Waqas
Arman Waqas
(NO ANONYMITY ORDER MADE)**

Appellants

and

Entry Clearance Officer

Respondent

Representation:

For the Appellant: Mr I Ranjha of Sky Solicitors

For the Respondent: Ms S Rushforth, Senior Home Office Presenting Officer

Heard by remote video at Field House on 28 June 2023

DECISION AND REASONS

Background and Chronology

1. By a decision of the Upper Tribunal dated 21.10.22, the three appellants, citizens of Pakistan, have been granted permission to appeal to the Upper Tribunal against the decision of the First-tier Tribunal (Judge Wilding) promulgated 31.3.22 dismissing their linked appeals against the respondent's decision(s) of 29.3.21 to refuse their applications made on 12.12.20 for an EEA Family Permit to enter the UK as Extended Family Members (EFMs) of their sponsoring family member, a Spanish national exercising Treaty rights in the UK, pursuant to Regulation 8 of the Immigration (EEA) Regulations 2016, as amended. The

sponsor is the brother of the first appellant and the uncle of the second and third appellants.

2. The applications were refused because the Entry Clearance Officer was not satisfied that the appellants were financially dependent on the sponsor. In a very short decision comprising only three short paragraphs of reasons, the First-tier Tribunal Judge noted that no evidence had been provided to address or rebut the reasons for refusal decision and that they failed to discharge the burden of proof to show that they met the requirements of the Regulations. Accordingly, the appeal was dismissed.
3. In summary, the grounds assert that the First-tier Tribunal (i) failed to consider the correct period of dependency, up to the date of the application; (ii) erred in considering the applications in circumstances where the respondent did not comply with the obligation under Rule 23(2)(e) of the Tribunal Procedure Rules 2014 to produce the remittance evidence on which the respondent's decision was based; and (iii) erred in failing to explain its reasoning adequately as to the absence of any evidence of dependency.
4. In considering the grant of permission, Upper Tribunal Judge Keith considered that there was no arguable merit in the first two grounds; the judge did not err in relation to the relevant period, and it was evident that the First-tier Tribunal had been provided with the remittance records and other evidence relied on by the appellants. Permission was, therefore, refused on the first two grounds.
5. Judge Keith considered that only the third ground had any arguable merit, stating: "...it is arguable that the FtT has then failed to explain why at [7] he considers that the appellants have not produced "any evidence" by way of documentation. It raises at least the arguable point that the FtT has failed to consider the relevant remittance evidence. Permission is granted in respect of this element of the grounds only."
6. During the night before the date listed for the hearing, the appellants' instructed legal representatives made a very late application (email at 22:03) for an adjournment, on the basis that no interpreter had been requested and no skeleton arguments submitted, said to be through an oversight by a former employee. They were advised in response at my direction that the application would have to be made at the outset of the appeal hearing and that no interpreter would be required as the hearing would be limited to the error of law issue only (so that no evidence would be required).
7. At the outset of the hearing, Mr Ranjha renewed the adjournment application, adding to the grounds that he wanted to obtain a copy of the respondent's bundle as he was not clear as to what evidence was before the First-tier Tribunal. However, I pointed out that permission had been refused on that ground on the basis that the First-tier Tribunal had all evidence provided by the appellants with the application. As to an interpreter, Mr Ranjha accepted that this was an error of law hearing but argued that if an error was found and the hearing became a remaking, there would need to be evidence. I confirmed that this hearing would not progress beyond the error of law stage and that if a remaking was required, the matter would be adjourned to enable evidence to be given with an interpreter, if necessary. Ms Rushforth opposed the adjournment application on all grounds, pointing out that the issue was very narrow and simple, so that no skeleton argument was necessary.
8. In relation to the argument as to there having been an administrative oversight, and the issue of a skeleton argument, I noted that this matter has been listed for hearing since the notice issued by the Upper Tribunal on 15.6.23. I also noted

from the case file that the legal representatives were aware of the fact that the appeal was pending as on 21.4.23 they sent an email request for an update as to when the matter would be listed. If it was intended to serve a skeleton argument, more than ample time was available to do so without waiting for the notice of hearing before doing so.

9. Having considered the application and the submissions of both parties, as well as the Tribunal's overriding objective to deal with cases fairly and justly, I was not satisfied that it was in the interests of justice, which include fairness to both parties, to adjourn this simple matter in which there is but a single and simple issue to be resolved.
10. It follows from the limited grounds on which permission was granted that the sole issue is whether the First-tier Tribunal Judge erred in law by stating at [7] of the decision that no evidence had been submitted and, therefore, considering no such evidence.
11. Properly read, the observation of the judge in the short decision was not that no evidence had been produced, but rather that no further evidence had been produced to address or rebut any of the Entry Clearance Officer's stated reasons for refusal. The judge added that there was no explanation as to why the first appellant's husband was not proposing to travel with the other family members. The judge also stated at [6], "I am not satisfied that the appellants have given a clear narrative of their domestic circumstances, in particular the first appellant has not produced any evidence to show how her family cope with the money sent to them by the UK sponsor."
12. I am satisfied that the assertion at [7] of the decision that the appellants had not produced "any evidence by way of documentation, or witness statements from either the first appellant, her husband or even her brother in the UK, has failed to meet the burden of proof on them," is strictly accurate. The sentence needs to be read as a whole; it is not an assertion that there was no evidence submitted with the application, or before the First-tier Tribunal, or an indication that the judge did not consider any of the evidence, but rather that there was no further evidence to address the concerns raised by the Entry Clearance Officer and reflected by the Judge in the short decision.
13. I am satisfied beyond any doubt that the judge did consider all the limited evidence that was available, including the remittance evidence, but was correct and certainly not in error of law to observe that no further evidence had been adduced to address the concerns raised. This included the fact that there was no evidence regarding the family's financial situation in Pakistan. Some of the collection slips suggested that the husband was employed in 'agriculture,' and not unemployed as claimed. Further, there was no evidence that the family resided in a property owned or provided by the sponsor.
14. I am satisfied that all the evidence was before the First-tier Tribunal and carefully considered before any findings were made. These concerns raised by the Entry Clearance Officer were all perfectly reasonable; issues which could have been addressed within the appeal process and produced by the appellants before the First-tier Tribunal appeal hearing. They had been put on notice of the gaps in the evidence by the Entry Clearance Officer's refusal decision. However, nothing further was produced in evidence, so that the judge was left to consider only that evidence which had been submitted with the application and considered by the Entry Clearance Officer, nothing more and nothing less.
15. On that rather limited and unsatisfactory evidence, the judge was undoubtedly entitled to conclude that the appellants had failed to discharge the burden of

proof which was on them to demonstrate that they would be genuine visitors to the UK.

16. It remains open to the appellants to make a fresh application, taking care to address the concerns raised and to fill the identified evidential gaps in the supporting evidence. However, the grounds do not demonstrate any error of law in the making of the decision of the First-tier Tribunal. Despite it being remarkably short, it is adequately reasoned and the findings made and conclusions reached were open to the judge on the limited evidence before the Tribunal.
17. In all the circumstances, I find no error of law in the decision of the First-tier Tribunal.

Notice of Decision

The appeal of each appellant to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal stands as made and the appeal of each appellant against the respondent's decision(s) remains dismissed.

I make no order for costs.

DMW Pickup

DMW Pickup

Judge of the Upper Tribunal
Immigration and Asylum Chamber

28 June 2023