



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003709

First-tier Tribunal No: EA/14659/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 18 August 2023

Before

UPPER TRIBUNAL JUDGE RIMINGTON
DEPUTY UPPER TRIBUNAL JUDGE COTTON

Between

ASMA AZIZ
(NO ANONYMITY ORDER MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Ms Loughran, counsel instructed under the Direct Access scheme

For the Respondent: Ms McKenzie, home office presenting officer

Heard at Field House on 1 August 2023

DECISION AND REASONS

Introduction

1. The appellant is a Pakistani national (born 28 November 1989). She applied on 27 November 2020 for leave to enter the UK to join her brother Muhammad Aziz (the sponsor) who is an Irish national. The respondent refused the application on 16 April 2020 under the Immigration (European Economic Area) Regulations 2016 and the appellant appealed to the First-tier Tribunal (FtT), which promulgated the decision on 6 June 2022.
2. This appeal, with permission granted by Upper Tribunal Judge Bruce, is against the 6 June 2022 decision of FtT Judge O'Garro (the judge). The judge had dismissed the appeal against the respondent's refusal to grant the appellant an EEA Family Permit as a dependent extended family member of an EEA national.

3. In the FtT decision, the judge accepted that the appellant and the sponsor were related as they claimed. The judge went on to consider whether the appellant was dependent on the sponsor and outlined the definition of dependency before reviewing the evidence. There are two paragraphs of the judge's determination that are worth reproducing here as they are directly relevant to the appeal before us.

[29] I find that the appellant has provided insufficient evidence of her personal circumstance. The appellant said she was married and her husband died in April 2020 . I have seen a document found at page A13 of the appeal bundle purportedly the death certificate of Umer Farooq Warraich and I noted there is other documents in the appeal bundle that shows Major Umer Farooq was killed in a plane crash during a flying mission. From my knowledge of the military, it takes years in the army before a person get to the position of Major yet Mr Aziz in cross-examination said that the appellant's husband was only "in the job two months." and so was not eligible for a pension. I did not find this a credible response taking into account the appellant's deceased husband's position in the army. There is no documentary evidence before the Tribunal of the appellant's entitlement or not to a widow's pension. I find this would have been a relevant piece of evidence as part of my assessment of her need for material support.

...

[31] Mr Aziz was specifically asked [who else lives in the household] in cross-examination and he said the appellant lives alone in the house in Pakistan but I do not find that credible because in my role as an Immigration Judge, I am aware that it was generally not socially acceptable for women to live alone, particularly young women, especially in rural areas. I am therefore not satisfied as to the appellant's living situation as to whether she lives independently from other family members or in a joint family situation which could mean her living costs is negligible.

4. The judge concluded that the appellant had not proved that a situation of dependency existed between her and the sponsor. The judge was not satisfied that the appellant needed the financial support of her sponsor to meet her essential needs.

Submissions - Error of Law

5. The appellant had been granted permission on two grounds of appeal. In oral submissions, the appellant addressed us first on the ground that the judge took improper judicial notice of matters. She took notice of how long it takes to become a Major in the Army (which in turn impacted on the assessment of the credibility of evidence that the appellant did not benefit from a military pension). The appellant submitted that there is no record of this having be raised in the FtT hearing, there is no indication of the judge's level of knowledge of the Pakistan military and it was procedurally unfair to take this into consideration without the appellant being given a chance to address it. The judge also requires the appellant to prove a negative by saying there is no evidence of her (non-)entitlement to a pension. The judge further erred, because the sponsor had not said that the appellant's husband had been in his job for two months, but had in fact said that he had been in his job for a few months.
6. The appellant submitted that the judge erred by taking the view that it was not credible that the appellant lived alone, especially without giving the sponsor a chance to comment on this in evidence. The judge engaged in speculation and effectively concluded that women in Pakistan never live alone.

7. The written grounds of appeal plead that the judge was wrong to conclude that the appellant did have a bank account in Pakistan because the evidence of both the appellant and the sponsor was that she has no account. In those circumstances, says the appellant, the burden of proof shifts to the respondent to prove the appellant does not have a bank account.
8. Presented as the second ground of appeal was the submission that the facts of the case pointed to an inference of dependency. The appellant submits that the judge erred by failing to consider the evidence cumulatively.
9. The final paragraph of the written grounds of appeal is a little confused, but submits that with the level of information available to the judge, it is unclear what "personal circumstances" the judge is referring to when concluding at [36] that "without the evidence showing the appellant's personal circumstances, I cannot accept that there exists a situation of real dependency".
10. The respondent submitted that the judge made no error of law. In respect of the second ground, financial dependency requires the appellant to prove broad dependency in financial, physical and social aspects.
11. The judge was entitled to take notice of the facts that she did, says the respondent: there was no objective evidence before her. With a lack of objective evidence, the judge was entitled to reject the evidence about the appellant's lack of a bank account. In any case if the judge did slip into error in this respect, it is not material as dependency is a holistic question and not solely about financial support. Further, there is no transcript of the hearing to support the assertion that the judge misheard the evidence, nor is there an application to submit further evidence.
12. If the judge did err in concluding that the appellant had not proved she lives alone, this is not material as the test the appellant has to meet is that of her essential needs being met, and she has not provided evidence to prove this.

Analysis and conclusions - Error of law

13. We remind ourselves of the approach taken in Lowe v SSHD [2021] EWCA 62, repeating Fage UK Ltd. v Chobani UK Ltd. [2014] EWCA Civ 5 at [114] and [115]:

114. Appellate courts have been repeatedly warned, by recent cases at the highest level, not to interfere with findings of fact by trial judges, unless compelled to do so. This applies not only to findings of primary fact, but also to the evaluation of those facts and to inferences to be drawn from them... The reasons for this approach are many. They include.

i) The expertise of a trial judge is in determining what facts are relevant to the legal issues to be decided, and what those facts are if they are disputed.

ii) The trial is not a dress rehearsal. It is the first and last night of the show.

iii) Duplication of the trial judge's role on appeal is a disproportionate use of the limited resources of an appellate court and will seldom lead to a different outcome in an individual case.

iv) In making his decisions the trial judge will have regard to the whole of the sea of evidence presented to him, whereas an appellate court will only be island hopping.

v) The atmosphere of the courtroom cannot, in any event, be recreated by reference to documents (including transcripts of evidence).

vi) Thus even if it were possible to duplicate the role of the trial judge, it cannot in practice be done.

*115. It is also important to have in mind the role of a judgment given after trial. The primary function of a first instance judge is to find facts and identify the crucial legal points and to advance reasons for deciding them in a particular way. He should give his reasons in sufficient detail to show the parties and, if need be, the Court of Appeal the principles on which he has acted and the reasons that have led him to his decision. They need not be elaborate. There is no duty on a judge, in giving his reasons, to deal with every argument presented by counsel in support of his case. His function is to reach conclusions and give reasons to support his view, not to spell out every matter as if summing up to a jury. Nor need he deal at any length with matters that are not disputed. It is sufficient if what he says shows the basis on which he has acted. These are not controversial observations: see *Customs and Excise Commissioners v A* [2002] EWCA Civ 1039; [2003] 2 WLR 210; *Bekoe v Broomes* [2005] UKPC 39; *Argos Ltd v Office of Fair Trading* [2006] EWCA Civ 1318; [2006] UKCLR 1135"*

14. The judge reproduces at [3] the Entry Clearance Officer's position on financial dependency. The Entry Clearance Officer did not accept that the remitted money had been shown as meeting the appellant's essential needs "as you have not furnished any details regarding your income and outgoings". We find that it was clear to the appellant that proof of money meeting her essential needs was in issue well before the FtT hearing, and that the question of dependency would be at the heart of an appeal.
15. The judge had the benefit of hearing the oral evidence in this case, and the assistance of representatives on both sides when hearing the case. We have not been furnished with a transcript of the hearing, or a statement from an advocate or other witness present when evidence was given. There is nothing to substantiate the submission made by the appellant that the judge erred in hearing that the sponsor said "two months" instead of "a few months" when discussing the appellant's husband's employment. We have no reason to conclude that the judge has erred in any way in her record of the evidence.
16. With regards to the appellant's submissions on the judge taking notice of how long a person has to be in the Army before promoting to Major, the judge took into consideration that the appellant's husband was a flight instructor at [5]. This plainly means that he was sufficiently qualified and experienced to be a pilot and, on top of that, to teach others to fly. Further, he has achieved the rank of Major. Combined together, we find it reasonable for the judge to conclude the sponsor lacked credibility when he gave evidence that the appellant's husband had only been in the job two months and so was not eligible for a pension.
17. The judge at [29] highlights that there is no documentary evidence on the appellant's husband's pension entitlement. We also consider that it is reasonable for a judge to expect to see documentary evidence on the question of a pension – or at least evidence of an attempt to obtain such material – when it is central to the questions in the appeal before her, and when the appellant's financial

dependence is plainly an issue in the case. A judge is not obliged to accept at face value the evidence of a witness, and may take into account other evidence available to her in assessing it. That must include taking into account the lack of evidence independent of the words of the witness if it would be reasonable for the party to provide some independent evidence of the topic. We consider that it is not unreasonable for the judge to expect to see – at the least – evidence of an attempt to obtain documents from Pakistan answering the question of her entitlement to a widow’s pension.

18. The appellant submits at para 4 of her skeleton argument that once the appellant had advanced that she does not have a bank account, “[t]he burden of proof in this case resides on the Respondent and he (sic) had ample time to inquire from the relevant bank as the address and information of contact was available to the Respondent”. We do not accept that the burden of proof swings from the appellant to the respondent in these circumstances. This is not a case where the respondent claims that documents are falsified and where the Entry Clearance Officer could easily verify the legitimacy of a document in evidence. The judge did take into account at [32] that there was no objective evidence before her to confirm that the sponsor’s claim that an unemployed person may not open a bank account in Pakistan. It is reasonable of the judge to look to whether a claim that could be supported by objective evidence is in fact supported. Doing so does not amount to requiring the appellant to prove a negative.
19. The appellant’s submission before us was that the judge at [31] “effectively considered that women never live alone [in Pakistan]” and that it was not put to the sponsor in those terms. In our view, the wider context of this phrase is that the judge has considered at [30] the lack of evidence on the appellant’s home situation, such as who lives in the household with her. In context it seems clear to us that albeit the judge is outlining common I knowledge of Pakistan, and sits in a specialist jurisdiction, this was not axiomatic to the decision when assessing the body of evidence before her. Moreover, we do not accept that the judge concluded that women never live alone in Pakistan, or that the judge assumed the appellant was living in a rural area. The judge simply does not say that. We consider the judge to have taken a proper approach when viewing the evidence before her in light of the lack of evidence and bearing in mind the judge’s statement that it was ‘generally’ not socially acceptable to live alone rather than never live alone. The living conditions of the appellant were clearly in issue and, in the circumstances, it was open to the judge to take the approach she did.
20. The last written submission was that the judge was unclear at [36] when she said that “without the evidence showing the appellant’s personal circumstances, I cannot accept that there exists a situation of real dependency”. Picking any sentence out of its surrounding context will allow it to be painted as lacking clarity. Given that the judge had analysed evidence on support before her, it is clear to us that the judge was here referring to the lack of wider evidence on the appellant’s essential needs. We conclude that the judge is sufficiently clear in her phrasing.
21. Finally, there is the submission of the appellant that there was evidence “clear for an inference of dependency” and the judge erred in not reaching this conclusion. The FtT accepted that the sponsor remitted money to the appellant [32] and [37], that the appellant lived in a property which is leased by the sponsor [33], and that utility bills are in the appellant’s name [30]. The judge laid

out in her judgment the facts she has taken into account in assessing dependency, whether she finds them persuasive or credible, and how they weigh in the case. Arguably, the judge could have come to a different conclusion on whether dependency was proved, but she was entitled to come to the conclusion that she did. We find ourselves drawn to the conclusion that this submission reveals nothing more sinister than the appellant disagreeing with the outcome of the case in the FtT.

22. The appellant's grounds of appeal to the Upper Tribunal passed through the gatekeeping function of the permission stage, but taking into account the full arguments before us and the entirety of the material made available, we conclude that the appellant has not demonstrated an error of law.

Notice of Decision

1. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.
2. We do not set aside the decision.

D Cotton

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

15 August 2023