



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003925

First-tier Tribunal No: EA/04543/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 3rd October 2023

Before

UPPER TRIBUNAL JUDGE HANSON

Between

Mian Abid Aziz
(NO ANONYMITY ORDER MADE)

Appellant

and

An Entry Clearance Officer

Respondent

Representation:

For the Appellant: Mr Waqar Ahmed, Cousin of appellant.

For the Respondent: Mr Tan, a Senior Office Presenting Officer

Heard at Manchester Civil Justice Centre on 26 September 2023

DECISION AND REASONS

1. In a decision dated 2 September 2020 an Entry Clearance Officer (ECO) refused the appellant's application for an EEA family permit to join his sponsor in the United Kingdom as an extended family member of an EEA national.
2. The ECO noted the appellant claimed on the application form to be the brother of his EEA national sponsor. The ECO considered the birth certificate and Pakistan family registration certificate that had been provided with the application but concluded that as little evidential weight could be placed upon that material it was not accepted the appellant was related to his sponsor as claimed.
3. It was also not accepted that the required element of dependency had been proved or that it was appropriate for the ECO to exercise discretion in the appellant's favour.
4. The appellant's appeal against the refusal came before First-tier Tribunal Judge Cope who, in a decision promulgated on 25th March 2021, accepted the family relationship was as claimed but did not find there was sufficient proof of dependency. The appellant successfully appealed that decision which was set aside with no preserved findings.

5. The matter next came before First-Tier Tribunal Judge Mills ('the Judge') at Birmingham, on the papers, on 21 March 2022. In a decision promulgated on 29 March 2022 Judge Mills dismissed the appeal finding that the relationship had not been proved on the evidence. It is this decision which is challenged before me today.
6. Permission to appeal was refused by another judge of the First-tier Tribunal but granted on a renewed application by a judge of the Upper Tribunal, the operative part of that decision being in the following terms:
 4. The question at this stage is whether there was arguable legal error, or procedural unfairness, by the FtT in deciding the case as placed before it. Generally, evidence which was not before the FtT is irrelevant. No findings by Judge Cope were preserved. However, I think it is arguable that the crucial significance given to the absence of DNA evidence may have taken the appellant by surprise.
7. The first point to note is that it cannot be argued that the challenge to the relationship is a matter that would have caught anybody by surprise as it is clearly recorded in the ECO's decision that on the basis the material provided with the application the claimed relationship was not accepted.
8. It also cannot be argued that Judge Mills should have gone to consider whether the appellant was able to satisfy any other provision of the Immigration (EEA) Regulations 2016 despite finding the claimed relationship as brothers had not been proved, as that was the capacity in which the appellant claimed to be entitled to the grant of the family permit and there was no evidence to support any other relationship before the Judge on which more could have been expected.
9. The Judge sets out the terms of the ECO's decision from [4] of the decision under challenge.
10. The Judge sets out the wording of the grounds of appeal at [5].
11. The Judge notes at [6] that the appellant opted for consideration of the appeal on the papers and that directions were given by the Tribunal requiring service of bundles of evidence by the specified date.
12. At [7 - 8] the Judge refers to Judge Cope's decision and the challenge to that based upon a procedural irregularity which was not the fault of Judge Cope.
13. The Judge specifically notes directions being given by the First-tier Tribunal, dated 15 December 2021, directing the appellant, no later than 7 January 2022, to file with the Tribunal and serve upon the respondent all written evidence upon which they intend to rely. The Judge records at [12] that the sponsor on 26 February 2022 provided a large number of documents and made written submissions which the Judge sets out verbatim in this paragraph. The Judge makes specific reference to the documents that were available for him to consider at [13 - 14].
14. It is not made out the Judge did not consider all the evidence made available with the required degree of anxious scrutiny.
15. The Judge sets out the correct legal self-direction at [17-24] including reference to relevant case law.
16. At [21] the Judge sets out the burden of proof stating that, in relation to the claim the appellant is an extended family member of his EEA national sponsor, it rests upon the appellant.
17. The Judge's findings are set out from [25]. The Judge begins deliberations by looking at the first issue raised by the ECO, the alleged relationship. The Judge refers the birth certificates noting the concern of the ECO that the sponsor's birth certificate had only been registered in 2012 when he was already 35 years of age.
18. At [28] Judge finds no clear explanation in the papers as to why the sponsor's birth was registered so late, noting the grounds of appeal offered no explanation. The Judge notes the sponsor's letter of 24 September 2020 commented upon the

issue by arguing the documents were adequate, but that was not the finding of the Judge.

19. Having assessed the evidence the Judge finds a little weight could be attached to the birth certificates and that they did not establish the claimed relationship between the appellant and sponsor [31], that having looked at other evidence to see if it was sufficient cumulatively to prove the relationship on the balance of probabilities, that the NADRA certificates only carried little weight, that the Pakistan ID cards for both the appellant and sponsor were issued in May 2018 and April 2015 and postdated the later birth registration of the sponsor, warranting little weight being attached to this evidence.
20. The Judge draws together his conclusions at [38 – 40] in the following terms:
 38. I also find it very telling what evidence has not been provided. The sponsor is in employment with sufficient disposable income, so he claims, to have been sending hundreds of pounds to the appellant each month for several years. In those circumstances, I simply do not understand why he has not paid the relatively modest sum to obtain DNA tests and thus resolve the dispute over the relationship once and for all. The failure to do so leads me to infer that the appellant and sponsor know that such evidence would not assist their case.
 39. Taking all of the evidence in the round, and applying the civil standard of proof applicable, I find that the appellant has failed to discharge the burden of proof to show that he is related as claimed to his EEA national sponsor. In the circumstances there is no need to consider whether he has established that he is financially dependent upon the sponsor, and I decline to do so.
 40. I find that the appellant is not the extended family member of an EEA national as defined under Regulation 8, and that he is therefore not entitled to a family permit under Regulation 12. His appeal is dismissed.

Discussion and analysis

21. The grounds seeking permission to appeal claim the Judge's decision is Wednesbury unreasonable, that the Judge did not consider regulation 12 of the 2016 regulations correctly as the Judge did not consider the point the appellant is not just financially dependent on the sponsor but was also a member of the sponsor's household whenever the sponsor is in Pakistan and will be a member of the household in the UK if the family permit is granted to him. The grounds also referred to other financial documents provided.
22. It is important to read the Judge's decision as a whole. The arguments relating to the financial documents do not establish arguable legal error in the Judge's decision as he did not consider the financial claim of dependency in light of the fact the appellant failed to establish the alleged relationship, or that he had any other relationship sufficient to entitle him to succeed as an extended family member. Had the Judge found in the appellant's favour in terms of the family relationship the Judge would no doubt have gone on to consider the arguments concerning financial dependency or the allegation the appellant was a member of the sponsor's household.
23. A further development in this appeal is that following the handing down of the Judge's decision the appellant applied for DNA tests on 22 June 2022. The DNA results dated 5 July 2022 show that the appellant and sponsor are related as brothers. As noted in the grant of permission to appeal, however, the provision of post-decision evidence is rarely likely to be relevant.
24. Even if the appellant thought the relationship issue was not live following Judge Cope's decision there is nothing to show there is any justification for such a stance. The effect of Judge Cope's decision having been set aside with no preserved findings is that all matters were at large before Judge Mills, including the relationship question as that had been raised by the ECO.

25. It is not made out the DNA evidence could not have been obtained for use at the hearing before the Judge with reasonable diligence. Any claim that such evidence should be admitted in considering the error of law therefore fails the Ladd v Marshall [1054] 1 WLR 1489 test.
26. Having heard the submissions made on the appellant's behalf it is clear that the appellant disagrees with the Judge's findings, the weight he gave to the evidence, and resultant decision. That may be so, but such factors do not, without more, establish legal error.
27. Not only did the Judge consider the evidence with the required degree of anxious scrutiny, the Judge made clear findings on the evidence supported by adequate reasons. The weight to be given to the evidence was a matter for the Judge. The Judge's findings are simply that having considered the material, the appellant having been given ample opportunity to provide the evidence he was seeking to rely upon before the Judge, it was not sufficient to discharge the required burden of proof.
28. I do not find the appellant has established that the Judge's decision is outside the range of those reasonably open to the Judge on the evidence. Accordingly, as announced in court, I find the appellant has failed to establish legal error material to the decision to dismiss the appeal. On that basis I must dismiss the appeal.

Notice of Decision

29. No legal error material to the decision of the First-tier Tribunal is made out. The determination shall stand.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

27 September 2023