



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-004463

First-tier Tribunal No: EA/05599/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 18 August 2023

Before

UPPER TRIBUNAL JUDGE REEDS

Between

ABDUL REHMAN
(NO ANONYMITY ORDER MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr T. Hussain, Counsel instructed on behalf of the appellant.

For the Respondent: Mr Diwnycz, Senior Presenting Officer

Heard at Phoenix House (Bradford) on 31 July 2023
By way of a remote hearing

DECISION AND REASONS

1. The appellant appeals with permission against the decision of the First-tier Tribunal (Judge Ross) (hereinafter referred to as the "FtTJ") who dismissed the appeal against the decision made to refuse the application for a family permit as a dependent family member of an EEA national in a decision promulgated on 1 March 2022 .
2. The First-tier Tribunal did not make an anonymity order and no grounds have been advanced on behalf of the appellant to make such an order.

3. The background to the appeal is set out in the evidence in the decision of the FtTJ and the documents. The appellant applied for a family permit as a family member of a relevant EEA citizen, namely the sponsor, a national of Spain, resident in the United Kingdom in an application made on 30 December 2020.
4. The application was refused by the Entry Clearance Officer (ECO) with reasons in the refusal dated 17 March 2021. The ECO did not accept the appellant's relationship to EEA sponsor due to the lack of direct evidence. The family registration certificate was not accepted as reliable evidence. As to the issue of dependency, the ECO acknowledged that the appellant had submitted several money transfers dated between July 2019 and February 2021 however no other documents had been provided which demonstrated the appellant's circumstances in Pakistan, such as income and expenditure, his family circumstances and his essential living needs.
5. For those reasons, the ECO was not satisfied that he was dependent on a relevant EEA citizen therefore did not meet the requirements for a family permit. The application was therefore refused.
6. The appellant appealed and following a hearing held remotely the FtTJ, in a decision promulgated on 1 March 2022, dismissed his appeal having found that the appellant had not demonstrated on the balance of probabilities that he was related as claimed nor that he was dependent upon the sponsor for his essential needs and thus did not fall within the definition of an "extended family member".
7. The appellant sought permission to appeal, and permission was refused by the FtT but on renewal on 6 December 2022 permission was granted by UTJ Jackson.
8. The appeal came before the Upper Tribunal. Mr Hussain of Counsel had made a request for the appeal to be heard by way of a remote hearing which had been acceded to by the Tribunal. Thus he provided his oral submissions by way of video link with the other participants being present in the court room. Mr Hussain relied upon the written grounds of challenge and supplemented them with his oral submissions. He relied upon the grounds of challenge set out in the skeleton argument that the FtTJ erred in law by failing to consider all of the evidence before the FTT including witness evidence relevant to the relationship and also documentary evidence in the form of birth certificates relevant to the issue of the relationship. Furthermore, the same applied to evidence provided in relation to the issue of dependency including the breakdown of receipts and expenditure. The remaining grounds related to the FtTJ's assessment that there was a lack of evidence that the appellant was unable to work, despite the reasons the dependency being irrelevant and failing to give adequate reasons for the findings made. Mr Hussain, by reference to the evidence, highlighted the documents that were available on both relevant issues, but which had not been addressed or engaged with in the overall decision reached. He therefore submitted that the

grounds demonstrated that the decision of the FtTJ disclosed the making of an error on a point of law and should be set aside.

9. Having heard the submissions made on behalf of the appellant, Mr Diwnycz on behalf of the respondent indicated that he did not seek to argue that the decision had taken into account all of the material evidence relevant to the substance of the refusal of the appeal. He accepted that there had been no reference to all the documentary evidence relevant to the issue of whether the appellant and the sponsor were related has claimed or on the issue of dependency.
10. In the light of that concession and also on the basis of the written and oral submissions, it has been demonstrated that the FtTJ's decision discloses the making of an error on a point of law and as both advocates now agree, should be set aside. In the circumstances it is only necessary to give short reasons as to why that concession was properly made.
11. As the grounds set out, the issue of whether the appellant and the sponsor were related has claimed was an issue raised in the decision letter. When addressing that issue, the FtTJ found that there had been a discrepancy in the evidence which is set out at paragraph 9. He highlighted that the application form described the EEA sponsor as being his cousin (son of mother's sister), but the sponsor's oral evidence was that the appellant was the son of his father's sister. In the light of that inconsistency the FtTJ did not find that the relationship had been established (see paragraph 11). As Mr Hussain submits, when reaching that decision, the FtTJ failed to take into account the other relevant and material evidence had been provided in the appellant's bundle. There is no dispute that there were 2, albeit short, written statements attesting to the relationship from both the sponsor and the appellant. There were also a number of birth certificates from the family members addressing the different family relationships of members of the extended family to show how the sponsor and the appellant were related. There was also a document providing reasons for the late registration of the appellant's mother's birth certificate set out in the bundle. However none of those documents were considered in the assessment of whether the sponsor, and the appellant were related has claimed. Whilst the FtTJ noted a discrepancy in the evidence, there were a number of other documents including birth certificates available which formed part of the relevant evidence which required consideration before reaching an overall decision. It is accepted by the advocates that none of those documents formed part of the FtTJ's reasoning and this amounted to an error of law, by failing to take account of all the relevant evidence available.
12. The second issue relates to that of dependency. At paragraph 13 of the decision the FtTJ referred to the appellant's evidence (in witness statement) that he received £120 per month from the sponsor, he was unemployed he had no source of income except that provided by the sponsor. There was a list of expenditure. The FtTJ concluded at paragraph 15 that the appellant was required to show that he needed the money

transfers to provide for his basic and that without those remittances, he would be unable to pay for those basic needs. If the basic needs are met from other sources he was not dependent on the sponsor. Whilst he accepted there had been remittances, the judge did not find that this was sufficient where “essential evidence” was lacking.

13. When assessing the issue of dependency, the judge considered that as there were no corresponding amounts in sterling, he did not know how much of the £120 per month was used for the appellant’s essential needs (paragraph 13). At paragraph 14, he was not satisfied that the circumstances of the appellant had been properly disclosed and that the appellant was unemployed and has never worked lacked clarity or any credible explanation.
14. As the grounds and submissions that out, in reaching that conclusion the FtTJ failed to take into account evidence relevant to establishing the factual background. Whilst the FtTJ made reference to the list of expenditure being in rupees, there was evidence in the bundle showing transfers in pound sterling but also in rupees. There are receipts in the bundle in support of the expenditure and relevant to establishing what were his essential needs. The grounds point to evidence on this issue to show that the claimed expenditure was broadly consistent with the sum set out in the witness statement but that had not formed part of the overall assessment of dependency. When looking at the decision, I am satisfied that the FtTJ does not engage with this evidence when reaching his factual assessment and analysis of the issue of dependency. That also amounted to an error of law by failing to reach a decision taking into account all the relevant evidence available.
15. The last issue relates paragraph 14 and the reference made that there was no evidence that the appellant was unable to work because of health or other reasons. In this respect Mr Hussain relies upon the decision in *Lim v ECO* [2015] EWCA Civ 1383 at paragraph 32. This was set out in the decision. It makes it clear that the reasons of the financial support were not relevant unless it was an abuse of rights case. This had not been alleged in the decision letter thus the fact that the appellant was unemployed was not a relevant factual issue. As UTJ Jackson set out in her grant of permission, the issue of how the appellant was previously supported was a credibility issue rather than any issue of dependency of choice, but in light of the other errors in assessing material evidence that had been available, the grounds of challenge as accepted by the respondent are made out. Principally there was material evidence relevant to the issues under consideration which had not been taken into account when reaching the final decision. As such, and as the parties agree, the decision is vitiated by error of law and should be set aside.
16. I have therefore considered the issue of remaking the decision. It was not possible to remake the decision at the hearing as the error of law hearing had been conducted by a remote hearing and also when the appeal had been before the FtTJ an interpreter had been provided for the

sponsor and no interpreter was present. In reaching a decision as to the venue for the hearing, I have given careful consideration to the Joint Practice Statement of the First-tier Tribunal and Upper Tribunal concerning the disposal of appeals in this Tribunal. Mr Hussain referred to the appeal being set aside and remitted.

"[7.2] The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that:-

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal."

17. Having considered the practice statement recited and the recent decision of the Court of Appeal in AEB v SSHD[2022] EWCA Civ 1512 and that of the Upper Tribunal in Begum (Remaking or remittal) Bangladesh [2023] UKUT 46, and in the light of the overriding objective I am satisfied that the appeal falls within both 7.2 (a) and (b) as the effect of the error deprived the appellant of an opportunity for that party's case to be considered by the FtT and also when considering paragraph 7.2(b) it will be necessary to undertake an assessment of all the factual evidence, oral and documentary, when reaching a decision.
18. The decision shall therefore be remitted to the FtT for a hearing on a date to be fixed.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law; the decision is set aside. The appeal shall be remitted to the First-tier Tribunal for a hearing.

Upper Tribunal Judge Reeds
Upper Tribunal Judge Reeds

1/8/23