



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2022-006021

First-tier Tribunal Nos: EA/05520/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 12 September 2023

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

Bashir Begum
(Anonymity Order not made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 24 August 2023

DECISION AND REASONS

1. The appellant appeals, with permission, against the decision of the First-tier Tribunal dismissing her appeal against the respondent's decision to refuse her application for an EU Settlement Scheme (EUSS) Family Permit.

2. The appellant is a national of Pakistan born on 1 January 1957. She applied on 20 December 2021 for an EUSS Family Permit as the family member of a relevant EEA citizen, namely her grandson, the sponsor, Tasawar Mehmood Hanif, a Spanish national. Her application was refused on 24 May 2022 on the grounds that she had failed to provide evidence to prove that she was dependent upon the relevant EEA

national sponsor and that she therefore failed to meet the eligibility requirements for an EUSS family permit as a dependent grandparent.

3. The appellant appealed against the respondent's decision and requested a decision on the papers. Her appeal came before First-tier Tribunal Judge Meyler on 20 October 2022. The judge referred to the evidence before her noting that the claim made in a letter of support dated 15 June 2022, in regard to evidence of dependency being provided, was not accompanied by any documentary evidence. As such, in the absence of any documentary evidence to support the assertions made by the appellant and the sponsor, the judge found that the appellant had failed to show that she was dependent upon the sponsor and had therefore failed to show that she was the family member of a relevant EEA citizen. The judge accordingly dismissed the appeal, in a decision promulgated on 21 October 2022.

4. The appellant sought, and was granted, permission to appeal to the Upper Tribunal on the grounds that the judge had failed to consider the bundle of documentary evidence which had been emailed to the Tribunal on 21 June 2022. A copy of the email of 21 June 2022 and the accompanying documentary evidence was produced with the IAFT-4 form applying for permission to appeal.

5. Prior to the hearing, having initially advised the Tribunal that he would be attending the face-to-face hearing in the Upper Tribunal, the sponsor requested an adjournment on the grounds that he wanted to attend but would be out of the country on holiday. The adjournment request was refused on the grounds that the sponsor had initially indicated that he would be attending and, in the absence of evidence of when his holiday was booked, it was not apparent that that had been arranged prior to receipt of the notice of hearing. Further the hearing before the First-tier Tribunal had been on the papers with no appearance by the sponsor at an oral hearing.

6. There was therefore no appearance on behalf of the appellant at the hearing. Mr Tan appeared for the respondent.

7. I advised Mr Tan that I had evidence from the sponsor indicating that he had sent an appeal bundle by email on 21 June 2022. That evidence was provided together with the application for permission on form IAFT-4. Mr Tan submitted that it was not clear if the email address to which the appeal bundle had been sent was the correct email address for service on the First-tier Tribunal. He accepted that if the bundle had been properly filed with the First-tier Tribunal on 21 June 2022, there would have been procedural unfairness, since the judge had not had the bundle before her when she made her decision despite it having been filed prior to the hearing. He accepted that the appeal bundle contained evidence which was relevant to the issue of dependency and that it needed to have been considered by the Tribunal. As such, if the appeal bundle had been sent to the correct email address, the matter ought to be remitted to the First-tier Tribunal.

8. I have attempted to make enquiries myself to ascertain if the sponsor had sent the appeal bundle to the correct email address and I have been unable to elicit a clear response. Certainly there is evidence that an appeal bundle was prepared and sent by the sponsor to an email address, ostensibly to the First tier Tribunal, on 21 June 2022. In the circumstances I am prepared to give the sponsor the benefit of the doubt and accept that a bundle was properly filed with the First-tier Tribunal but had not reached the judge when she made her decision. As Mr Tan conceded, the bundle contained documentary evidence which was potentially relevant to the issues before the judge and there was therefore procedural unfairness in so far as the decision was made

without sight of that evidence, albeit through no fault of the judge herself. Whilst the judge may well have found that evidence insufficient to demonstrate the relevant dependency, it cannot be said that that was the only outcome that could be reached on that evidence. In the circumstances, in the interests of fairness, the matter must be considered afresh before another judge.

Notice of Decision

9. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside.

10. The appeal is remitted to the First-tier Tribunal to be dealt with afresh pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(a), before any judge aside from Judge Meyler.

11. Should the appellant require an oral hearing at which the sponsor may attend and give evidence in addition to the documentary evidence, rather than the papers determination previously requested, the required additional fee will need to be paid.

Signed: S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

24 August 2023