



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2022-006342
UI-2022-006343
First-tier Tribunal Nos:
EA/09634/2021
EA/09632/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 01 November 2023

Before

UPPER TRIBUNAL JUDGE PITT

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

USMAN SHARIF
MUHAMMAD SHARIF
(NO ANONYMITY ORDER MADE)

Respondents

Representation:

For the Appellant: Ms S Cunha, Senior Home Office Presenting Officer

For the Respondents: Mr G Brown, Counsel, instructed by Central Chambers Law Solicitors

Heard at Field House on 16 October 2023

DECISION AND REASONS

1. This is an appeal against the decision issued on 11 August 2022 of First-tier Tribunal Judge Cohen which allowed the appeals of the respondents against the refusal of entry clearance as dependent family members of an EEA national.
2. For the purposes of this decision I refer to the respondents as the appellants and to the Secretary of State for the Home Department as the appellant, reflecting their position before the First-tier Tribunal.

3. The first appellant was born on 15 April 1989 and is a national of Pakistan. He is the son of the second appellant and brother of the EEA sponsor. The second appellant applied for entry clearance on 30 April 2020 and his application was refused on 20 April 2021. The second appellant's application was refused as it was not accepted that he had shown that he was dependent on the sponsor for his essential financial needs. The Entry Clearance Officer considered that there was insufficient documentary evidence of money transfers and the sponsor's bank account and that the transfers shown were over a limited period only. It was also not accepted that the sponsor was a qualified person exercising treaty rights in the UK.
4. The second appellant was born on 1 January 1954 and is a national of Pakistan. He is the father of the first appellant and father of the EEA sponsor. The second appellant for entry clearance on 30 November 2020. His application was refused on 26 April 2021. The application was refused as it was not accepted that he was related as claimed to the EEA sponsor.
5. The EEA sponsor in this matter is Mr Muhammed Sher Abbas, an Italian national exercising treaty rights in the UK.
6. The appellants' linked appeals came before First-tier Tribunal Judge Cohen on 7 January 2021. The First-tier Tribunal accepted in paragraph 10 of the decision that the two appellants were related as claimed to the sponsor. The Entry Clearance Officer has brought no challenge to that finding.
7. The judge also made the following finding on financial dependency in paragraph 12 of the decision:

"12. Furthermore, the appellant has submitted documentation to indicate that he has remitted substantial funds to the appellant's (sic) in Pakistan over a period of time. The appellant's (sic) bank statements have been supplied to me together with the sponsor's bank statements. I note that the appellant's (sic) have no other substantial source of income. Based on the evidence before me, I am satisfied that the appellant's (sic) rely upon the sponsor for their essential living needs".
8. The decision makes no further findings on the issue of financial dependency. There is no consideration of whether the sponsor is exercising Treaty rights. It is not entirely clear from the decision that the judge appreciated that the reasons for refusal for the two appellants were on entirely different bases.
9. The respondent was granted permission to appeal to the Upper Tribunal against the decision of the First-tier Tribunal on 9 November 2022. The respondent's grounds maintain that the decision erred in law in failing to make reasoned findings with reference to the material evidence concerning financial dependency and also failed to make a finding on

whether the sponsor was exercising Treaty rights and was in a position to support the appellants.

10. Before me, the parties were wholly in agreement as to the proper disposal of this matter. Ms Cunha accepted that the finding of the First-tier Tribunal that the second appellant was related as claimed to the sponsor was not challenged. Where that was the only reason for refusal and the First-tier Tribunal had found for the second appellant, the decision of the First-tier Tribunal was not in error and should be maintained. Mr Brown agreed. I was also in agreement with the view of the parties. I therefore find that there is no error in the decision of the First-tier Tribunal concerning the appeal of the second appellant, Mr Muhammad Sharif. His appeal is therefore allowed.
11. The parties were also in agreement that the decision of the First-tier Tribunal was in error where it failed to address correctly the material evidence on financial dependency of the first appellant on the sponsor and failed to make a decision on whether the sponsor was a qualified person exercising Treaty rights or could afford to support the first appellant. Mr Brown conceded for the first appellant that the decision of the First-tier Tribunal was in error, should be set aside and had to be re-made entirely.
12. Again, I was in agreement with the views of the parties on the appeal of the first appellant. I find that the decision of the First-tier Tribunal discloses an error of law regarding the findings on finance and whether the sponsor was exercising Treaty rights and whether the sponsor could afford to support the first appellant. The decision must be set aside entirely regarding any findings made on the appeal of the first appellant. It was my view that where there were no extant findings and, as indicated by Mr Brown, there would be oral evidence provided by the sponsor and potentially further documentary evidence, it was a case which was appropriate to be re-made in the First-tier Tribunal.
13. The decision of the First-tier Tribunal on the appeal of Mr Usman Sharif, the first appellant here, is therefore set aside to be re-made and the re-making will take place in the First-tier Tribunal.

Notice of Decision

The appeal of the First-tier Tribunal concerning the second appellant, Mr Muhammad Sharif, (UI-2022-006343 and EA/09632/2021) does not disclose an error of law and shall stand. His appeal is allowed.

The decision of the First-tier Tribunal in the appeal of the first appellant, Mr Usman Sharif, (UI-2022-006342 and EA/09634/2021) discloses an error of law, is set aside and will be re-made in the First-tier Tribunal.

S Pitt

Appeal Numbers: UI-2022-006342
UI-2022-006343
First-tier Tribunal Numbers: EA/09634/2021
EA/09632/2021

Judge of the Upper Tribunal
Immigration and Asylum Chamber

25 October 2023