



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006462

First-tier Tribunal No: EA/06404/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

21st

September 2023

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

Saynab Mohamed Elmi
(NO ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr G Dingley of Counsel

For the Respondent: Ms A Nolan, Senior Home Office Presenting Officer

Heard by remote video at Field House on 13 September 2023

DECISION AND REASONS

1. The appellant, a citizen of Somalia resident in Turkey, has been granted permission to appeal to the Upper Tribunal against the decision of the First-tier Tribunal (Judge Parkes) promulgated 19.12.22 dismissing her appeal against the respondent's decision of 26.5.22 to refuse her EUSS application made on 1.11.21 for a Residence Card under Appendix EU Family Permit as the family member of an EEA national (Italian national) exercising Treaty rights in the UK. The appellant claimed to be the dependent mother of the sponsoring daughter, LM. The sole issue before the First-tier Tribunal was that of dependency.
2. In summary, the grounds argue first argue that at [2] of the decision the judge erred by considering the factual situation at the date of hearing rather than at the date of application. It is also argued that the First-tier Tribunal misunderstood the

factual matrix of the appeal and failed to take relevant evidence into account, referring to [7] and [8] of the short decision.

3. In granting permission on 24.2.23, First-tier Tribunal Judge Gibbs merely stated that the grounds identified an arguable error of law but omitted to state any reasons for reaching that conclusion.
4. The Upper Tribunal has received Mr Dingley's skeleton argument of 8.5.23, together with an application to admit further evidence under Rule 15(2A). I was not prepared to admit further evidence at this stage, as the Upper Tribunal is concerned with the evidence as it was before the First-tier Tribunal at the appeal hearing. However, I have carefully considered the skeleton argument, together with the oral submissions of both representatives, following which I reserved my decision to be given in writing, which I now do.
5. The respondent accepts that the judge erred in stating at [2] of the decision that "the relevant date for the consideration of the facts is the date of the hearing." That is incorrect and the relevant date is the date of application. However, I accept Ms Nolan's submission that in fact nothing turns on this error; it is not material in any way to the outcome of the appeal.
6. The First-tier Tribunal stated at [7] of the decision that the appellant is living with the sponsor's brother and had also lived with a friend, MJ. I agree with the grounds that this is an error of fact as the appellant is living with a distant relative, MMJ. However, I am satisfied that the error of fact is immaterial to the findings made or the outcome of the appeal. As Ms Nolan submitted, no credibility finding turns on this error.
7. The second ground is that the First-tier Tribunal made perverse or irrational findings on material matters, referring to [6] of the decision where the judge stated that there was no evidence from anyone in Somalia "to explain the situation there of how the arrangements worked," meaning arrangements for monies sent from the UK to her nephew for the appellant's benefit. The grounds point to the statement from MHM at E1 and F1 within the respondent's bundle, which purportedly addresses the support provided to the appellant by the sponsor. However, the explanation within the statement or letter is brief and uninformative. I am satisfied that the judge was entitled to voice the concern that there was no explanation as to how the arrangement worked and that any error of fact was not material to the overall adverse findings.
8. The more pertinent second point of this ground that the appellant has been living in Turkey since June 2021 and there is no requirement to prove historical dependency; short-term dependency is sufficient. However, evidence of the alleged dependency whilst in Turkey is also vague, incomplete, and inadequately explained. Whilst the grounds correctly point out that there must be a need for material support, and that the dependency can be by choice, there is nothing in the decision which indicates that the judge applied the wrong test, as suggested by or implicit from the grounds. I am satisfied that the findings on this issue were within the range of conclusions open to the judge on the evidence and no error of law is disclosed. A reading of the decision reveals that at stated at [5] of the decision, the sponsor was unable to provide answers to questions about much of the appellant's financial circumstances. Nothing in the evidence provided any adequate explanation of the appellant's financial circumstances; the overall picture remained unclear.
9. In all the circumstances, despite some minor factual errors, I am satisfied that the general conclusion that there was inadequate evidence or explanation of the sponsor's finances was open to the judge on the evidence and that this bore

directly on the dependency issue. It follows that there was no material error in the making of the decision of the First-tier Tribunal and the appeal to the Upper Tribunal must be dismissed.

Notice of Decision

The appellant's appeal to the Upper Tribunal is dismissed.
The decision of the First-tier Tribunal stands and the appeal against the refusal of EC remains dismissed.

I make no order for costs.

DMW Pickup

DMW Pickup

Judge of the Upper Tribunal
Immigration and Asylum Chamber

13 September 2023