



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000090

First-tier Tribunal No: EA/11790/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 14 September 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

Mr Imtiaz Ahmed
(NO ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: No legal representation

For the Respondent: Ms A Ahmed (Senior Home Office Presenting Officer)

Heard at Field House on 31 July 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Turner, promulgated on 28th September 2022, following a hearing at Birmingham on 22nd September 2022. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Pakistan, who was born on 16th February 1990. He appealed against the decision of the Entry Clearance Officer dated 22nd June 2021 refusing his application for an EEA family permit to join his sponsoring brother, Mohammed Asif Javed in the United Kingdom pursuant to the Immigration (EEA) Regulations 2016 (hereafter “the Regulations”).

The Appellant’s Claim

3. The Appellant’s claim was that he was the brother of a Belgian national, Mr Muhammed Asif Javed, and provided his brother’s Belgian passport and identity card. He claimed to be financially dependent on his sponsoring brother. He provided five money transfer remittances receipts from his sponsor to him. The Respondent did not accept that the Appellant was dependent in the way alleged on his sponsoring brother. The act of transferring money in itself was not evidence that it was needed by the recipient of those monies. In this case the Appellant had disclosed only five money transfer remittances receipts and even these transfers started immediately before the date of the application within the last two months. The Respondent expected to see more evidence which fully detailed his and his family’s circumstances, including his income, expenditure, and evidence of his financial position.

The Judge’s Findings

4. The judge had evidence before him that the Appellant’s sponsoring brother claimed to have been living in the UK since December 2020, and to be providing support to the Appellant, who lived in property belonging to the Sponsor in Pakistan. He claimed that as a result of the COVID pandemic over the last eighteen months, the Appellant was in need of the Sponsor’s financial support for his day-to-day essential needs given the high inflation in Pakistan and the unavailability of jobs there.
5. The judge looked at the evidence to support the Appellant’s claim and noted that “The Appellant has not produced a formal bundle” but that “He has however produced some documentation which I have considered”, and this consisted of the reasons for refusal letter, letter from the Sponsor, Sponsor’s passport, family registration certificate, Appellant’s birth registration certificate, money transfer documents and untranslated documentation” (at paragraph 10). The judge then observed how the only issue taken against the Appellant in this matter was “whether he has evidenced that he is dependent upon his Sponsor” (paragraph 12). Although there was some financial support in the form of remittance receipts the judge agreed with the Respondent that “the simple act of sending money to the Appellant is not sufficient in itself to evidence that the Appellant is dependent upon this to meet his essential living needs” (paragraph 13). The judge held that, “I do not consider that the Appellant has provided sufficient evidence to

address any of the concerns raised in the Reasons for Refusal letter ...” (paragraph 17). The appeal was dismissed.

Grounds of Application

6. The Appellant furnished detailed grounds of appeal dated 23rd January 2023 but the First-tier Tribunal rejected the application on the grounds that the Tribunal’s decision was promulgated on 28th September 2022 and the Appellant’s grounds were received only on 18th November 2022. The appeal was out of time by three weeks and two days. The First-tier Tribunal observed that the Appellant maintained that his Sponsor’s email was hacked on or around 10th September 2022 and that attempts to recover the contents including with the help of experts proved unsuccessful. He had provided a copy of an email he sent to the Tribunal dated 17th November 2022 which set out these matters with a new contact email address and requesting an update on his case. However, the First-tier Tribunal went on to observe, “The grounds do not include any evidence of the original contact email address having been hacked and attempts made to recover the email account” (at paragraph 3).
7. Permission to appeal, however, was granted by the Upper Tribunal on 15th February 2023 on the grounds that it was arguable that the Appellant’s bundle was not before the First-tier Tribunal, given that the judge refers to “some documents” and lists a few, but these documents do not accord with those in the bundle.

Submissions

8. At the hearing before me on 31st July 2023, the Appellant was represented by his sponsoring brother, Mr Muhammed Asif Javed who gave evidence that he had given his email account (masifjaved@gmail.com) to a friend in Pakistan to use in sending over documents. This email account had been hacked on 10th September 2022. He got in touch with a company in Pakistan to recover his account. They failed to do so. The hearing date had been set for 21st November 2022, but the appeal was called forward and heard on 28th September 2022, without his having received any further notice of the hearing or directions for provision of documents. This is because by that stage his email account had been hacked and so he was unable to receive anything. However, the Appellant’s bundle had first been sent on 20th March 2022, consisting of 116 pages, and then again on 17th July 2022.
9. In cross-examination, the witness was asked by Ms Ahmed whether he could point in his hacked account to the “send” section to show that an email had indeed been sent out with the full bundle on 17th July 2022. He was unable to do so. Instead, he maintained that the hearing had been called for without any notification to him.

No Error of Law

10. The decision of the First-tier Tribunal did not involve the making of an error on a point of law, such that it ought to be set aside. My reasons are as follows. Under Rule 21(7)(b) of the Tribunal Procedure (Upper Tribunal) Rules it is clear that “the Upper Tribunal must only admit the application if the Upper Tribunal considers that it is in the interests of justice for it to do so”. I am not satisfied that it is in the interests of justice to admit this application.

11. The Sponsor, who accepted at this hearing was the person who had documents sent over to him by his Appellant brother in Pakistan, for forwarding over to the Tribunal Services, has failed to demonstrate that these documents actually were sent. An audit of his email trail from the hacked account which he has been able to set out (at masifjaved@gmail.com) would have been the easiest way to demonstrate that the bundle had indeed been sent as alleged.
12. The failure to do so even after such a protracted period of time can only lead to the conclusion that the bundle was not so sent. The First-tier Tribunal did not admit the Appellant's application for permission to appeal because it was out of time and there was no error in doing so (see **Bhavsar (late application for PTA: procedure) [2019] UKUT 196**). As the application was not admitted I have applied Rule 21(7) and have not considered it to be in the interests of justice to admit the application.

Notice of Decision

13. There is no material error of law in the judge's decision. The determination shall stand.

Satvinder S. Juss

Judge of the Upper Tribunal
Immigration and Asylum Chamber

12th September 2023