



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000529
First-tier Tribunal No:
EA/05148/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 19 October 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

Mr Muhammad Aslam
(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: Mr C Bates (Senior Home Office Presenting Officer)

Heard at Manchester Civil Justice Centre on 6 September 2023

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Ficklin, promulgated on 26th January 2023, following a hearing at Manchester on 24th January 2023. The hearing was conducted on the papers only. In the determination, the judge allowed the appeal of the Appellant, whereupon the Respondent Secretary of State 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, and was born on 1st January 1963. He appealed against the refusal of entry clearance in order to enter the UK under the European Union Settlement Scheme (EUSS) Family Permit, in a decision made by the Respondent Secretary of State dated 24th March 2022.

The Appellant's Claim

3. The Appellant's claim is that under the regulations he was a relevant family member of the Sponsor, Mr Muhammad Farooq Bibi, who was the Appellant's son-in-law, and a citizen of Spain living in the United Kingdom, and that he was dependent upon him.

The Judge's Findings

4. There were two issues before the judge. First, whether the Appellant and the Sponsor were related as claimed. The Sponsor claimed to be married to the Appellant's daughter, Fouzia Farooq. The Respondent noted that the birth certificate provided for the daughter showed her name as Fouzia Khanam, and other documents referred to her as Fouzia Farooq. Second, the other issue before the judge was whether the Appellant was dependent upon his sponsoring alleged son-in-law for his "essential needs". The judge, however, declared that, "The only live issue in this appeal is whether the Appellant is a relevant family member for the purposes of the Immigration Rules", and that given that the Appellant's Grounds of Appeal point out "that his daughter took her husband's name upon their marriage", he had no difficulty in concluding that "Fouzia Khanam and Fouzia Farooq are the same person, ie the Appellant's daughter" (paragraph 10). The judge then went to say that "The Respondent has not raised any other grounds of refusal" (paragraph 10). The appeal was then allowed.

Grounds of Application

5. The grounds of application state that the judge misdirected himself. He had "failed to have regard to the second matter raised in the refusal letter of 24 March 2022 regarding evidence of financial dependency on their EEA sponsor" (see paragraph 1 of the grounds). That made it quite clear that the Appellant had "not provided evidence to show that you cannot meet your essential living needs without financial or other material support from the relevant EEA or Swiss citizen ...". Given that the Appellant's application was made on 17th November 2021, which was after the transition period, the judge was required to consider that the Appellant was financially dependent on the EEA Sponsor. This he had not done.
6. Permission to appeal was granted by the First-tier Tribunal on 16th February 2023.

Submissions

7. At the hearing before me on 6th September 2023 the Appellant was not legally represented, but had in attendance his son-in-law, Mr Muhammad Farooq Bibi, who was assisted by the interpreter by the name of Mr Azhar. Given that it was the Secretary of State's appeal, Mr Bates began by submitting that there were plainly two issues before the judge, namely, dependency and the relationship. The judge did identify both these issues earlier (at paragraphs 2 and 5). It is just that he did not then consider the dependency issue. Indeed, he went on to say (at paragraph 9) that the only live issue before him was whether the parties were related as claimed. That was plainly not so.
8. Secondly, and in any event, there was a wholly inadequate form or reasoning for the finding of the Appellant being dependent on the Sponsor with practically no analysis of this question by the judge.

9. For his part, Mr Muhammad Farooq Bibi, submitted that he had been sending money regularly and that things were very bad now in Pakistan so that it was clear that the Sponsor was sending monies precisely in order to service the Appellant's essential needs. He went on to say that he had all the receipts of remittances on his mobile phone.

Error of Law

10. I am satisfied that the making of the decision of the judge involved the making for an error on a point of law such that the decision must be set aside. The judge had stated earlier in his determination that, "The Appellant's case is that he is the Sponsor's father-in-law and is dependent on him" (paragraph 5). Thus, it was clear that both the matter of the precise relationship between the parties as well as the Appellant's dependency upon the Sponsor were questions that had to be determined by the judge. However, the judge went on to say that, "The only live issue in this appeal is whether the Appellant is a relevant family member ..." (paragraph 9). This was not the only live issue. It was also not the case that, "The Respondent has not raised any other grounds of refusal" (paragraph 10). In the circumstances, the judge was wrong to have allowed the appeal.

Re-Making the Decision

11. I have remade the decision on the basis of the findings of the original judge, the evidence before him, and the submissions that I have heard today. In **Moneke (EEA Regulations - OFMs) Nigeria [2011] UKUT 341 (IAC)** it was noted (at paragraph 41) that, "dependency is not the same as mere receipt of some financial assistance from the sponsor". Yet, in this appeal, the only evidence is that of financial remittances being made and no evidence referred to regarding the use of those monies in order to service the Appellant's essential living needs. Furthermore in **Reyes (EEA Regs: dependency) [2013] UKUT 314**, it was made clear that whether a person qualified as a dependant under the EEA Regulations was to be determined at the date of decision on the basis of evidence produced or, on appeal, at the date of the hearing on the evidence produced to the Tribunal. The test of dependency was a purely factual test. It should be construed broadly to involve a holistic examination. The dependency must be in the present and not in the past. The term dependency, on the other hand, must not be interpreted so as to deprive the provision of its effectiveness. Yet, even if I take a broad approach, I cannot be satisfied that the Appellant is dependent on the Sponsor on the basis of the remittances produced alone. This appeal therefore falls to be dismissed.

Notice of Decision

12. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is dismissed.

Satvinder S Juss

Judge of the Upper Tribunal
Immigration and Asylum Chamber

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18th October 2023