



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2023-001046
UI-2023-001047
First-tier Tribunal Nos:
EA/07628/2022
EA/07986/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 19 October 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

(i) Mr Ditta Allah
(ii) Mrs Iqbal Begum
(NO ANONYMITY ORDER MADE)

Appellants

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellants: Mr Brown (Counsel)

For the Respondent: Mr Tan (Senior Home Office Presenting Officer)

Heard at Manchester Civil Justice Centre on 31 August 2023

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Clarkson, promulgated on 14th February 2023, following a hearing at Columbus House in Newport on 11th January 2023. In the determination, the judge dismissed the appeal of the Appellants, whereupon the Appellants subsequently applied for, and were granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellants

2. The Appellants are nationals of Pakistan and are husband and wife respectively. They are the parents-in-law of the Sponsor. They appealed against the decision of the Respondent dated 17th July 2022 refusing their applications for entry clearance under the EU Settlement Scheme ("EUSS"), and they bring these

appeals pursuant to Regulation 3 of the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020.

The Appellants' Claim

3. The Appellants relied upon witness statements of Mrs Ghaus, the Sponsor, as well as money transfer receipts, and a schedule of expenditure in support of their claim. They also submitted birth certificates, marriage certificates, passports and the EUSS documents.

The Judge's Findings

4. The judge's findings are set out from paragraphs 18 to 22 of the determination. The judge states (at paragraph 18) as follows:

"I accept on the basis of the receipts before me that the sponsor was sending on average £102 a month to the Appellants and accept that the money was sent in her name with them as the named recipients. The receipts run from September 2021 to August 2022. The bundle contains receipts from Global UKS LTD for sending the money to be collected at an Allied Bank branch, and the receipts for payments in cash at an Allied Bank. I therefore accept that these payments were made."

5. The judge went on to say, however, that "the receipts show an average payment of £102 a month" and that there was "a schedule of monthly living expenses", but these were almost twice the £102 a month that was said to be remitted (at paragraph 19). The judge went on to say that "the schedule of expenses asserts that the Appellants are sent £50,000 PKR a month but the evidence before me does not support this and I do not find that correct" (paragraph 20). The judge went on to conclude that,

"On the balance of the lack of any explanation as to how the rest of their living expenses are paid weighed against the Appellants evidence that they have no other income and need support due to age and illness, I do not find it plausible that they have shown their financial dependency on the sponsor." (At paragraph 22).

6. On this basis the appeal was dismissed.

Grounds of Application

7. The grounds of application state that the judge erred in his assessment of the evidence when considering the appeal under the relevant Rules. The reality was that the Sponsor was sending £102 per month to *each* of the Appellants. This meant that the Sponsor was sending £204 on average and so if the schedule of expenses for the Appellants was 45,500 PKR, then the assertion that on average the Appellants were in receipt of 50,000 PKR was justified, on the basis that what the Appellants were receiving was not £102 per month but £204 per month approximately.
8. On 27th March 2023, permission to appeal was granted on this basis.

Submissions

9. At the hearing before me on 31st August 2023, Mr Tan for the Respondent conceded that the error was a material one which would have made all the differences to the Judge's ultimate finding. For his part, Mr Brown submitted that given that this was a 'paper' appeal, and was likely to remain so if it were to be remitted back to the First-tier Tribunal, where reliance by the Respondent was likely to be on the same set of documents once again, this Tribunal can now determine the appeal for itself, the error of law having been identified.

Error of Law

10. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law for the reasons identified above.

Re-Making the Decision

11. I have re-made the decision on the basis of the findings of the original judge, the evidence before him, and the submissions that I have heard today. I note that the documentary evidence (particularly at pages 24 to 36 and thereafter from pages 37 to 51) does demonstrate that the remittances by the Sponsor were indeed such as to cover the essential living needs of the Appellants in Pakistan. As this is the only material issue in this appeal the Appellants discharged the burden of proof that is upon them.

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 allowed.

Satvinder S Juss

Judge of the Upper Tribunal
Immigration and Asylum Chamber

18th October 2023