



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002219
First-tier Tribunal No: EA/10409/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

7th December 2023

Before:

THE HONOURABLE MR JUSTICE HENSHAW
sitting as a Judge of the Upper Tribunal

UPPER TRIBUNAL JUDGE GILL

Between

Khavar Hassani Fard
(ANONYMITY ORDER NOT MADE)

Appellant

And

Entry Clearance Officer

Respondent

Representation:

For the Appellant: Ms Hamideh Eskandari, the sponsor, attended.
For the Respondent: Ms E Everett, Senior Home Office Presenting Officer

Heard at Field House on 22 November 2023

DECISION AND REASONS

1. The appellant, a national of Iran born on 23 March 1957, appeals against a decision of Judge of the First-tier Tribunal O'Hanlon (hereafter the "judge") who, in a decision promulgated on 15 February 2023, dismissed her appeal against a decision of the respondent dated 19 July 2022 to refuse her application of 10 March 2022 for a family permit under the EU Settlement Scheme ("EUSS") set out in Appendix EU (Family Permit) of the Immigration Rules. The respondent was not satisfied that the appellant was dependent upon her daughter, Ms Hamideh Eskandari (the "sponsor"), for her essential needs.
2. The sponsor attended the hearing in person and addressed us, assisted by an official interpreter in the Farsi language. The interpreter attended remotely.
3. By way of background, Judge of the First-tier Tribunal G A Black allowed the appeal of the appellant's husband, Mr Abdol Hossein Eskandari, a national of Iran born on 11 December 1952, in a decision promulgated on 11 May 2023 against a decision of

the Entry Clearance Officer of 26 July 2022 to refuse his application for a family permit under the EUSS scheme (appeal number: EA/07963/2022).

4. The appellant and her husband had made their applications for a family permit under the EUSS at the same time. The appellant's husband asked the First-tier Tribunal (the "FtT") to decide his appeal on the papers. Judge Black had the benefit of a bundle of documents which she took into account in finding that the husband had established that he was dependent upon the sponsor for his essential needs. This was the sole issue in his appeal before Judge Black.
5. The appellant too had requested that her appeal to the FtT be decided on the papers.
6. At para 7 of his decision in the present case, the judge said that there was a note on the respondent's bundle stating that there were no retained documents on file for the appellant due to either no documents having been lodged by the appellant or "*document purging*" having been carried out between the application and bundling stage.
7. It appears from para 8 of the judge's decision that the only documentation before him was a copy of the appellant's notice of appeal dated 22nd October 2022. The judge noted that the notice of appeal stated that it was intended to submit a complete bundle in due course. However, the judge said, there were no other documents before him.
8. According to para 9 of the judge's decision, the FtT issued directions on 5th January 2023 for the appellant to provide any further documentation upon which she intended to rely by 27th January 2023.
9. It is therefore evident that the judge took care to ensure that not only that the respondent had filed all relevant papers that were in his possession but also that the appellant had been given an opportunity to file and serve any evidence that she wished to rely upon.
10. Importantly, it is evident that the bundle of documents that was before Judge Black in the appeal of the appellant's husband was not before the judge in deciding the appellant's appeal.
11. At the hearing before us, the sponsor produced a copy of her letter dated 3 November 2022 to the FtT which she said she had posted to the FtT. The body of the letter said:

"Re: Linked appeal for consideration and internet issues

I, Hamideh Eskandari an EU national sponsoring my dependent parents, Mr Abdolhossein Eskandari and Khavar Hassani Fard. My parent's application was unfairly refused for the EU Family Scheme permit twice and we appealed the decision. I would like to inform you that the internet has problems and access is blocked by the government of Iran at the moment. I would be thankful if you send me any correspondence as well by post and if possible link the appeal together for hearing as all available evidence for both applications is the same and both parents are under my support for many years.

I look forward to hearing from you."

12. The sponsor informed us that the FtT's directions of 5 January 2023 were not received, which she said was possibly due to problems as a result of the shutdown of the internet in Iran that followed the protests last autumn.
13. We noted that the sponsor's letter dated 3 November 2022 was addressed to the FtT at the correct address for notices of appeal. We accepted that this letter had been posted to the FtT. We could see no reason to think that it was not received by the FtT, and Ms Everett did not seek to challenge that view.
14. We were therefore satisfied that the FtT had been requested to link the appeals of the appellant and her husband.
15. Further, we were satisfied that the failure of the FtT to link the appeals of the appellant and her husband resulted in the appellant being denied the opportunity of relying upon the evidence that had been submitted in her husband's appeal. We accept that it had been the expectation, not only on the part of the sponsor but also the appellant, that the evidence submitted in the appeal of the appellant's husband would be considered in the appellant's appeal upon the two appeals being linked, as had requested by the sponsor.
16. Ms Everett therefore very realistically accepted that there had been a procedural error, that we should set aside the judge's decision and that we should proceed to re-make the decision on the appellant's appeal. On the basis of the documents that had been submitted in the appeal to the FtT of the appellant's husband (which the sponsor had submitted to the Upper Tribunal in the appellant's appeal), Ms Everett did not dispute that we should re-make the decision on the appellant's appeal by allowing her appeal.
17. We are satisfied that, through no fault of his own, the judge's decision proceeds upon a procedural irregularity, in that the FtT had failed to act upon a reasonable request to link the appeals of the appellant and her husband. As a consequence, the appellant has been unfairly deprived of the opportunity to rely upon relevant evidence. We are satisfied that the evidence submitted to the FtT in the appeal of the appellant's husband is sufficient to discharge the burden of proof upon the appellant to establish on the balance of probabilities that she has been dependent and is dependent upon the sponsor for her essential needs.
18. We therefore set aside the decision of the judge and re-make the decision on the appellant's appeal by allowing her appeal against the respondent's decision.

Decision

The decision of the First-tier Tribunal involved the making of an error of law sufficient to require it to be set aside.

We re-make the decision on the appeal by allowing the appellant's appeal against the respondent's decision.

Signed
Upper Tribunal Judge Gill

Date: 29 November 2023

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email