



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003221

First-tier Tribunal No: EA/09336/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 3 October 2023

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

Sufia Begum
(NO ANONYMITY ORDER MADE)

Appellant

and

Entry Clearance Officer

Respondent

Representation:

For the Appellant: Ms S Ferguson, of Counsel instructed by City Heights Solicitors

For the Respondent: Mr N Wain, Senior Home Office Presenting Officer

Heard at Field House on 25 September 2023

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Bangladesh born on 21st March 1945. She applied for an EUSS family permit to come to the UK as the dependent of her daughter Rasheda Begum, a citizen of Ireland, on 18th January 2022. Her application was refused on 14th September 2022. Her appeal against the decision was dismissed by First-tier Tribunal Judge Hussain in a determination promulgated on the 7th June 2023.
2. Permission to appeal was granted by Judge of the First-tier Tribunal G Clarke on 7th July 2023 on the basis that it was arguable that the First-

tier judge had erred in law in using his personal knowledge of Bangladesh to determine that certain matters were implausible (such as the payment of bills using a top-up card in Bangladesh and the contention that the appellant's husband did not leave her a home on his death); and in finding that the appellant could rely upon other children absent any evidence that she had any such dependency on her other two children.

3. The matter came before me to determine whether the First-tier Tribunal had erred in law, and if so to determine whether any such error was material and whether the decision needed to be remade.

Submissions – Error of Law

4. In the grounds of appeal and in submissions from Ms Ferguson it is argued for the appellant in short summary as follows. The only issue in the appeal was whether the appellant was dependent on her daughter, the sponsor.
5. Firstly, it is argued that the First-tier Tribunal Judge Hussain erred in law in considering his own personal experience of Bangladesh to find that it was not plausible for the appellant's bills to have been paid using a top-up card and that it was not plausible that the appellant lived in a rented property because, in his view, her husband would have left her a property to live in when he died as this would have been normal in rural Bangladesh. Reliance on personal knowledge was not, it is argued, permissible or fair.
6. Further, it is contended that the First-tier Tribunal failed to give adequate reasons for finding that the appellant was financially reliant on her other two children when there was no evidence that this was the case, and further it was not open to the First-tier Tribunal to find it implausible that the appellant's other daughter, who is resident in the UK, does not financially support the appellant because of pressure from her in-laws who did not want her to do this. Ms Ferguson noted that there was no specific finding that the sponsor was not a credible witness.
7. Secondly, it is argued, that the wrong standard of proof was applied by the First-tier Tribunal at paragraph 25 of the decision when the First-tier Tribunal Judge found that it was not possible to make "definite findings" as to the extent of the sponsor's support for the appellant when the only thing needed was for him to make findings on the balance of probabilities.
8. Thirdly, it is argued, that there was a failure to consider material evidence namely: the statement of the appellant herself; statements from Ms Rahman, Mr Rahman, Mr Syed and Mr Haque with respect to their having taken remittances for the sponsor to the appellant; medical evidence relating to the appellant (who is very elderly which would have indicated that it was likely that the appellant was dependent on

someone); receipts for remittances from 2019 to 2023 which Ms Ferguson was able to show, giving a specific example, correlate with the appellant's bank statement; and evidence from the sponsor that she provides psychological support as well as financial support.

9. Mr Wain opposed the appeal. He argued that the findings of the First-tier Tribunal were generally open to it on the evidence, that the correct standard of proof was applied by the First-tier Tribunal Judge. He accepted however that the remittance receipts in the bundle did have the sponsor's details on them and did appear to relate to the entries in the appellant's bank statement.
10. At the end of the hearing I informed the parties that I found that the First-tier Tribunal had erred in law in making the decision by making insufficiently reasoned findings based on plausibility and by failing to take into account material evidence when making the decision. I did not give an oral judgement but set out my findings below. It was agreed by all that given the extent of fact finding needed in the remaking it was appropriate to remit that hearing to the First-tier Tribunal.

Conclusions - Error of Law

11. As per Jia v Migrationsverket [2007] CJEU Case C-1/05 the meaning of 'dependence' in EEA law is defined as the provision of material support to meet the appellant's essential living needs. At paragraphs 19 and 24 of the decision the First-tier Tribunal Judge finds that he cannot find that the sponsor alone has been responsible for the appellant's essential living needs. I find that this was not the correct test to apply as the sponsor only needs to provide material support for essential living needs not be the sole financial provider. However, at paragraph 25 of the decision it is conceded that the sponsor does not need to be the only one meeting these needs and ultimately I am satisfied that the First-tier Tribunal understood the test that needed to be applied. Whilst better wording might have been used at paragraph 25 of the decision, when the First-tier Tribunal Judge states that: "it has not been possible for me to make any definite finding as to the extent, if any support provided by the sponsor" I am satisfied that the standard of proof of the balance of probabilities was being applied as this is recited at paragraph 16 of the decision.
12. However I find, that the following implausibility findings were not reasonably open to the First-tier Tribunal Judge or sufficiently reasoned:
 - that the sponsor might send money to the appellant via a friend from Ireland rather than use an agency when clearly many people chose to do this whether for reasons of convenience or trust that the money will reach the right person without payment of fees (at paragraph 20 of the decision);

- that the appellant's son might disappear from her life in 2009 (at paragraph 21 of the decision) as no reasoning is given for finding this being implausible and it is obviously not inherently implausible;
 - that the appellant's other daughter might be prevented from supporting the appellant due to pressure from her in-laws as she lives in the UK (at paragraph 21 of the decision) as the reasoning seems to omit consideration of the appellant's daughter wishing to do/feeling that she must do what her in-laws consider to be the right thing and only to focus on their not being able to physically unable to prevent her;
 - that bills cannot be paid by top-up cards in Bangladesh and that the appellant's husband would have bought her a house before he died using his Kuwaiti compensation package (at paragraphs 22 and 23 of the decision) as the reasoning relates to the Judge of the First-tier Tribunal claiming knowledge through his personal experience of Bangladesh but there is no reference to any country of origin evidence or adequate explanation in the decision as to how the Judge has this expertise. The fact that the Judge has lived in rural Bangladesh at some point in time and has heard other Bangladeshi appeals is insufficient reasoning to justify these findings.
13. I also find that the following material evidence was unlawfully omitted from consideration in making the decision: the appellant's own statement that she is wholly dependent on the sponsor; remittance receipts with the appellant and sponsor's names for the period 2021 to 2023 which can be seen to correlate to the appellant's bank statements; letters from other relatives Masuma Rehaman, Mohammad Ashaqafur Rehman, Afzul Afruz Syed, Mohammad Habibul Haque confirming that they have sent money to the appellant on the sponsor's behalf, and the medical documents.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. I set aside the decision and all of the findings of the First-tier Tribunal.
3. I remit the remaking hearing to the First-tier Tribunal to be heard de novo at Taylor House by any Judge of the First-tier Tribunal other than Judge Hussain.

Fiona Lindsley

Judge of the Upper Tribunal
Immigration and Asylum Chamber

25th September 2023