



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003396

First-tier Tribunal No: EA/10707/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 7th of November 2023

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

MADEEHA FIAZ
(no anonymity order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Holmes, instructed by Venire Solicitors

For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 25 October 2023

DECISION AND REASONS

1. The appellant is a citizen of Pakistan born on 20 October 1980. She appeals, with permission, against the decision of the First-tier Tribunal dismissing her appeal against the respondent's decision to refuse her application for an EU Settlement Scheme (EUSS) Family Permit as the family member of a relevant EEA citizen.

2. The appellant applied on 17 June 2022 for an EUSS Family Permit as the family member of the sponsor, her father, Mohammad Naeem, a Portuguese citizen living in the UK. Her application was refused on 14 October 2022 as the respondent was not

satisfied that she was dependent upon a relevant EEA citizen and considered that she did not meet the eligibility requirements for an EUSS family permit. The appellant's son, Huzaifa Fiaz, applied for an EUSS family permit at the same time and his application was refused at the same time, on the grounds that it was not accepted that he was a family member of a relevant EEA citizen.

3. The appellant and her son both appealed against the respondent's decisions and their appeals were heard in the First-tier Tribunal by Judge Alis on 5 May 2022. Judge Alis accepted that the appellant's son was related to the sponsor and considered that an EUSS family permit ought to be issued to him. He accordingly allowed the appeal of the appellant's son. However he dismissed the appellant's appeal as he was not satisfied that the appellant had demonstrated that the sponsor was supporting her since he appeared to be reliant upon money from family members himself.

4. The appellant sought permission to appeal to the Upper Tribunal on the grounds that there had been procedural impropriety arising from the judge's failure to apply the Surendran guidelines and that the judge had failed to ask the correct question and apply the correct burden of proof.

5. Permission was granted in the First-tier Tribunal. The respondent did not produce a rule 24 response. The matter then came before me for a hearing and both parties made submissions.

6. Mr Holmes expanded upon the grounds, submitting with regard to ground 1 that the sole basis for the judge having dismissed the appeal was not a matter raised by the respondent at any point and had not been put to the sponsor at the hearing, which was a failure to follow the Surendran guidelines. With regard to the second ground he submitted that the judge's findings were, effectively, that an arrangement had been set up to disguise the true source of the funds sent to the appellant, using the sponsor as a conduit, and that that was a clear-cut abuse of rights claim which meant that the burden of proof lay on the respondent.

7. Mr Tan submitted that the judge's decision was an agreement with the conclusion of the ECO, that the appellant had failed to show that she was financially dependent upon the sponsor. There was no allegation of fraud by the ECO and neither had the judge made any such finding. The judge did not go beyond the case put by the ECO and found that the source of the funding sent by the sponsor to the appellant was unclear, so that the appellant had not discharged the burden of proof.

8. Mr Holmes, in response, reiterated the points already made and submitted that the judge's reasoning was a new issue which did not form part of the refusal decision. The source of the funds paid to the sponsor was irrelevant as the sponsor was entitled to receive funds from any source he could. If the judge was suggesting that the source of funds was a relevant issue, then that was a suggestion of abuse.

Discussion

9. Whilst I accept that the judge's findings and conclusions could arguably have been better expressed, it is the case that the judge's finding, ultimately, was that there was insufficient evidence available to show that the appellant was being supported financially by the sponsor and was dependent upon him. That was not a departure from the reasons given by the respondent for refusing the appellant's application and neither did it involve new issues which the appellant had not had an opportunity to address. The evidence before the judge was limited and there was little difference to

the evidence which the respondent had assessed and considered to be insufficient. It had always been open to the appellant to produce more substantive evidence to support her case against the respondent's decision, which she had not done. The judge was perfectly entitled to make what he did of the evidence and to make his own findings on it. There was no requirement for him to put questions to the sponsor about each and every aspect of that evidence. The appellant was legally represented at the hearing and the burden lay upon her to show how the evidence supported her case.

10. I do not agree with Mr Holmes that the judge was effectively raising an allegation of abuse of rights and suggesting that an arrangement had been put in place to use the sponsor as a conduit for the funds being sent to the appellant. The judge was simply saying that there was a lack of clarity in the evidence as to whether the sponsor who, at the time of the appellant's application was no longer working and was in receipt of universal credit and who was himself dependent upon family members to assist him financially with his rental and other expenses, was in a position to support the appellant. It was on that basis that he found that the appellant had failed to demonstrate the claimed dependency and it seems to me that that was a basis upon which he was perfectly entitled to conclude that the appeal could not succeed.

11. In such circumstances it seems to me that the judge was entitled to consider that the evidence did not clearly demonstrate the past and ongoing dependence upon the sponsor, as claimed by the appellant. I reject the suggestion that there was procedural impropriety in the judge's approach to the evidence or that he made findings which he was not entitled to make and I consider that he was fully and properly entitled to reach the conclusions that he did. Accordingly I uphold his decision.

Notice of Decision

12. The making of the decision of the First-tier Tribunal did not involve a material error on a point of law requiring it to be set aside. The decision to dismiss the appeal stands.

Signed: S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

25 October 2023