



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004795

First-tier Tribunal Nos: EU/50183/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

24th January 2024

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

Keyro Ali Abdi

(no anonymity order made)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr M Aslam of Counsel, Aden & Co Solicitors

For the Respondent: Mr P Deller, Senior Case Worker

Heard at Field House on 16 January 2024

DECISION AND REASONS

(extempore)

1. This is an appeal by a citizen of Ethiopia against the decision of the First-tier Tribunal dismissing her appeal against a decision of the Secretary of State refusing her a family permit under the EU Settlement Scheme.
2. The problems with the case from the Secretary of State's point of view is that the evidence supporting the allegation of dependency was inadequate. It is relevant that the Respondent did not decide that the claim was dishonest but that it was not explained with sufficient depth to be persuasive to the Home Office decision maker. The right of appeal gave the appellant an opportunity to present the case again and that the appellant took that opportunity but the judge was not persuaded by the evidence.
3. We have reflected carefully on what the judge did and the rather guarded way in which permission was granted. We do remind ourselves that we have to find an error of law before there is any question of interfering with the decision and

we are satisfied, having reflected on the issue cumulatively, that the judge materially erred. We are assisted in this conclusion by the very proper and professional approach taken by Mr Deller, who effectively conceded the case after he had had a time to reflect on all the submissions, but the decision of course is ours.

4. Of particular concern to us is paragraph 8 of the Decision and Reasons, where the judge says, in the context of evidence of financial dependency:

“The evidence is that the sponsor sent money to the appellant on three occasions in 2020 and on five occasions in 2021 which is on 8 occasions in a total of two years. I find that are not consistent monthly transfers but sporadic.”
5. We do not know what the judge means when she says “the evidence is”. It is a correct summary of the evidence of financial transfers supported by documents relating solely to particular transactions but that is not the extent of the evidence before the Tribunal. It is very plainly the appellant’s case that her son did not keep records of all the transfers that were made, but he was vague over money and had produced such records as he could. There is an ambiguity in the judge’s description of the evidence. It is not clear to us if the judge was referring only to the transaction specific documentary evidence provided directly by the appellant or if she was summarising wrongly the evidence as a whole and mischaracterising the case, which was clearly set out in the witness statement, that payments were not just those that could be supported by documents from her son, but payments had been over a longer period. In fact there is evidence purporting to be from the company that organised the transfers that goes beyond the documents supported by the son and which clearly supports the contention that payments were made over a longer period of time and exceeded those that were supported by receipts or similar description from the appellant’s son.
6. The judge’s handling of this evidence is extremely curious because it is disbelieved for reasons that are not at all clear to us when it suited the judge to find that the appellant’s evidence was not reliable, but essentially similar evidence from the same source was believed by the judge when it was used to support evidence that the appellant’s daughter, Halima, had been making financial contributions on an earlier occasion. Why the judge found the evidence believable to support one point but not believable to support another is a mystery to us and it must verge on the perverse.
7. There is nothing inconsistent with the appellant’s claim to be dependent on her son for her to have been dependent on her daughter on an earlier occasion and the sums from the daughter are paid earlier than the sums from the son. As we were reminded, very properly, by Mr Aslam, the important date is the date of application and although a history of payments could illuminate what is likely to be happening at the date of application, it is the date of application that matters. It does not necessarily undermine the claim that at the date of application the appellant was dependant on her son if on some earlier occasion she had received payments from her daughter. We just do not follow the judge’s reasoning here or follow the way in which she dealt with the evidence. With respect, she was wrong.
8. There is another point that concerns us particularly. There was medical evidence that the appellant, who we now understand is 75 years old, had blood pressure problems and was lonely. We do not understand why the judge rejected this evidence. The medical note does not purport to be a full medical report in the way that we would have expected from an expert in the United Kingdom but it

makes no claims which we find in any way difficult to believe about an elderly lady living in the circumstances alleged here. It does not show any sign of anything that to our minds is intrinsically unbelievable and we are rather concerned that the judge's indication that a psychologist was needed before a proper diagnosis of loneliness can be made. We are not aware of loneliness being a precise clinical term; it is something we would not find at all hard to recognise in the case of an elderly widow living a long way from her close family. We just do not understand why the judge thought it important to make that remark, and to the extent she thought it was important, we find that she was wrong.

9. There are other things that are of concern here. There is a suggestion in the Decision and Reasons that there was some surprise about the appellant being a widow, but that is a point she had made clear in her application.
10. There is a suggestion that there was something sinister or discreditable about financial support coming from the appellant's daughter at some stage but the evidence had been made perfectly open and clear. It was not, for example, something uncovered by careful cross-examination.
11. Putting all these things together, we find the decision is unsatisfactory, which is pretty much what was indicated by Deputy Judge Zucker when he gave permission on the papers. We find the decision has to be set aside. It has to be redetermined. It is possible that there may be an application to adduce further evidence, although it may not be necessary given that really matters is the income at the date of application. An update on the appellant's circumstances may be of help. There is no reason to deal with it now. The appellant is entitled to a proper hearing and in our judgment, regrettably, she has not had a proper hearing because the decision is fundamentally unsatisfactory.
12. For all these reasons we set aside the decision of the First-tier Tribunal and we direct that the case be redetermined in the First-tier Tribunal.

Notice of Decision

13. The First-tier Tribunal erred in law. We set aside its decision and order the appeal to be redetermined in the First-tier Tribunal.

Jonathan Perkins

Judge of the Upper Tribunal
Immigration and Asylum Chamber

22 January 2024