



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001582

First-tier Tribunal No: EA/03381/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 14 August 2024

Before

UPPER TRIBUNAL JUDGE HANSON

Between

NOORAN BIBI
(NO ANONYMITY ORDER MADE)

Appellant

and

AN ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Professor Shah, Counsel.

For the Respondent: Mr Bates, a Senior Home Office Presenting Officer.

Heard at Manchester Civil Justice Centre on 2 August 2024

DECISION AND REASONS

1. At the conclusion of the hearing I announced that I will be finding that the decision of the First-tier Tribunal Judge to dismiss the appeal, for the reasons stated, is a finding within the range of those reasonably open to the Judge on the evidence.
2. I now give my reasons.
3. The Appellant, a citizen of Pakistan born on 1 January 1942, appeals with permission a decision of First-tier Tribunal Beg ('the Judge') promulgated on 1 March 2024, in which the Judge dismissed her appeal against the refusal of her application for a family permit under the EU Settlement Scheme.
4. The date of application was 19 May 2023 and the date of refusal 21 August 2023. The Entry Clearance Officer ('ECO') noted the application had been made under as a dependent parent of an EEA national citizen but was not satisfied that the Appellant had provided evidence that she is dependent upon the relevant EEA citizen or the civil partner for her essential living needs. The refusal states that evidence of dependency had not been provided and that birth certificates and marriage certificate documents submitted with the

application had not been fully considered nor verified by the authorities. The ECO therefore concluded that the Appellant did not meet the eligibility requirements for an EU Settlement Scheme family permit as a dependent of a relevant EEA citizen or their spouse or civil partner.

5. Having considered the documentary and oral evidence Judge sets out findings of fact.
6. The Judge notes that evidence was given by the sponsor Sughra Zulfiqar, the Appellant's daughter, and her husband Zulfiqar Ali.
7. The Judge's findings can be summarised as follows:

- The only issue was that of dependency [8].
- The Appellant did not provide any medical bills relating to Aisha (Mr Ali's sister who died of cancer on 30 June 2023) showing the amounts paid and by whom. Without the medical bills relating to Aisha's treatment it was difficult to know how much was spent from the fund sent by Mr Ali on her treatment was what was left over for the Appellant [15].
- The Judge finds from the evidence of the sponsor and her husband they considered they had a sense of responsibility towards the children of the sponsor's deceased stepbrother, and that while it was accepted Mr Ali contributed some funds towards paying Aisha's medical bills, the remainder of the money sent to Yasir was for his maintenance, with it being unclear whether Aisha's sister Maryam and her brother Ali Raza contributed towards her medical treatment. Ali Raza is working [17].
- Mr Ali's evidence in reply to a question asked in cross-examination about who paid utility bills for the household in Pakistan, was that the bills were shared although copies of the bills had not been provided, there were no witness statements to corroborate his claimed utility bills are shared, leading the Judge to find that is no credible evidence the Appellant as an elderly widow pays any of utility bills living in property owned by her or her family members. The Judge finds there are a number of family members with whom she lives who are in employment [18].
- The earliest documentary evidence of funds being directly transferred to the Appellant is 28 May 2023 [19].
- Neither of the Sponsor's two brothers, one of whom is a factory worker and the other a tailor, have provided bank statements to demonstrate their income levels [20].
- The Judge attached little weight to the medical evidence as a result of errors on the face of the document, but states that even if it was accepted that genuine errors were made regarding the Appellant's age, she remained unclear who paid the bills for the Appellant's medical treatment [26].

8. At [28 – 32] the Judge writes:

28. In taking the evidence as a whole, on a balance of probabilities, I do not find both witnesses credible. I find that the funds sent to Yasir by Mr Ali were sent primarily for his financial support as he did not have steady employment and did casual work. Mr Ali confirmed in his evidence that that is still the case. I find that some of the funds at the discretion of Yasir, were used by him to contribute towards the medical treatment of his sister Ayisha.
29. I find that the family home in which the appellant lives is occupied by 11 other family members. Her sons are in employment. I find that they pay the utility bills and the household expenses. The property does not have a mortgage and is owned outright by the family. Mr Ali gave evidence that the appellant has

- used the funds sent to her through Yasir, to pay for clothes, medicine and expenses of going out and buying clothes.
30. I find that the appellant is provided funds by her sons who live with her. I find that Yasir through the funds sent to him by Mr Ali, makes a contribution towards the household expenses. I find that the funds are for his maintenance rather than the appellant's who has other sources of income from her two full sons and her stepson.
 31. In conclusion, I find that there is not in existence a situation of real dependency. I find that any funds sent to the appellant by the sponsor and her husband are additional funds that she does not rely on to meet her essential living needs. I find that the family members with whom she lives provide for her and pay the household expenses. I find that the appellant is not financially dependent upon the sponsor and her husband to meet her essential living needs.
 32. Accordingly, I find that the appellant is not entitled to a family permit under the EU Settlement Scheme.
9. The Appellant sought permission to appeal asserting the Judge had made material errors of fact. The grounds specifically refer to [11] of the determination asserting the Judge made a material error of fact by treating Mr Aftab Ahmed, the stepson of Mrs Bibi, as deceased when this individual is alive, working as a tailor, and looking after his family.
 10. The grounds assert the error is material as it influenced the Judge's finding in [17].
 11. The grounds also assert the Judge did not take into consideration the social conditions of the Appellant set out in the skeleton argument.
 12. The grounds assert the Judge made a contradictory finding, when finding there was not in existence a situation of real dependency as the Appellant had other sources of income from her two sons and her stepson [30].
 13. The Grounds also assert the Judge erred by treating Mrs Ali as the sponsor whereas Mr Ali is the main sponsor as he is working, and Mrs Ali started her job in February 2024.
 14. The Grounds also assert the Judge made three findings that she was not entitled on the basis of the evidence, for the reasons set out at [8 - 12] of the Grounds.
 15. Permission to appeal was granted by another Judge of the First-tier Tribunal on the 28 March 2024 limited to the first ground of appeal only, in the following terms:
 1. The application is made in time.
 2. The grounds are unhelpfully compendious in that a series of broad complaints are made under generic headings of "material errors of fact" and "erroneous findings" rather than distinct grounds of appeal.
 3. The principal complaint made under the first generic heading is that the judge has laboured under an uncontroversial mistake of fact that the appellant's stepson, with whom she lives, was deceased. While this finding appears to have been based on oral evidence from the sponsoring son-in-law, I note that other parts of the decision appear to be based on the contradictory proposition that this family member was, in fact, alive. I am satisfied that it is arguable that the reasons are irrational in the sense that the judge appears to have found at paragraph 17 that the stepson was dead, but in reaching her overall conclusions (Paragraph 30) appears to have held it against the appellant that this same stepson was providing her with financial support.
 4. I do not consider any of the other broad challenges to be arguable. There was no error of law in the judge failing to give weight to general cultural obligations to support elderly relatives. Loosely referring to the appellant's daughter as the sponsor is of no consequence when the decision is read as a whole. The complaints made under the heading of "erroneous findings" are nothing more than factual disagreements, not arguable errors of law.

5. I am satisfied that the first ground of appeal is arguable. The remainder of the factual disagreements are not.

16. The application for permission to appeal was not renewed to the Upper Tribunal.

Discussion and analysis

17. It is important to read the determination as a whole. When one does so it is clear that within the section of the determination headed "Determination and reasons" the Judge has recorded evidence received in addition to making actual findings.

18. For example, at [11] the Judge writes:

11. Mr Ali confirmed in his evidence that his wife has two full brothers, Adnan and Zubair and a stepbrother, Aftab. He said her full brothers are married. Adnan has two children and Zubair has one. He confirmed that there are a total of 11 family members living with the appellant. He also gave evidence that her deceased stepbrother has three surviving children; Yasir, Ali Raza and Maryam. Maryam is married and lives with her own family. Yasir and Ali Raza live with the appellant. I take into account the family registration certificate of Yasir Khan.

19. The source of the claim that Mr Ali's stepbrother Aftab died appears to be the oral evidence of Mr Ali.

20. The finding at [17] flows from this evidence. In this paragraph the Judge writes:

17. I bear in mind that Yasir has had limited periodic employment at a low-wage. I find that it is clear from the evidence that the sponsor and her husband both considered that they had a sense of responsibility towards the children of the sponsor's deceased stepbrother. Whilst I accept that Mr Ali contributed some funds towards paying Ayisha's medical bills, I find that the remainder of the money which he sent to Yasir was for his maintenance. It is unclear whether Ayisha's sister Maryam and her brother Ali Raza contributed towards her medical treatment. Ali Raza is working.

21. Even though the reference by the Judge to Aftab having deceased is wrong, through no fault of the Judge as all the Judge was doing was making findings based on the evidence received, that alone is not sufficient. The Appellant is required to prove that such an error of fact is material.

22. I do not find this made out. The Judge's findings at [30] of the determination are set out above. That finding has not been shown to be finding outside the range of those reasonably open to the Judge on the evidence, and is clearly based upon Aftab being alive, as he is.

23. The difficulty for the Appellant is that despite there being a clear direction in relation to the need to provide relevant evidence to prove what was being alleged, insufficient evidence was provided to establish dependency, sufficient to warrant a grant of a family permit under the EU Settlement Scheme.

24. Specifically in relation to Aftab, I find that if the Judge made an error of fact [17] this is based upon inaccurate information provided by the witness Mr Ali, who was not found credible by the Judge, and is not material, as the Judge clearly found at [30] that Aftab is alive and contributing to the family finances. That factual analysis was confirmed as being correct by Professor Shah.

25. In relation to the claim the error at [17] infected the Judge's assessment of the evidence, I find no merit in this claim. The Judge clearly considered the evidence with the required degree of anxious scrutiny as evidenced by a

reading of the determination as a whole and the material that was provided in support of the appeal.

26. There is no challenge to the Judges recording the evidence given by the sponsor at [11].
27. The appeal failed, not because Aftab was alive or not, because insufficient evidence had been provided to establish dependency. It is not made out the Judge's finding at [17] had a material impact upon the Judge's thinking. The Judge was faced with a situation where the evidence provided did not enable the Judge to find that the Appellant required remittances from the United Kingdom-based sponsor to meet her essential needs. That is a factual finding open to the Judge on the evidence.
28. Permission to appeal was only granted in relation to Ground 1 which I find does not establish legal error material to the decision to dismiss the appeal.
29. Whatever the sponsor believes to be the case, the evidence did not prove what was being alleged. The Judge was entitled to make the findings recorded, especially in light of the finding at [28] that neither of the witnesses who appeared before the First-tier Tribunal were credible.

Notice of Decision

30. No legal error material to the decision to dismiss the appeal has been made out. The determination shall stand.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

2 August 2024