



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-003718
UI-2024-003720
First-tier Tribunal No: EA/02012/2023
EA/02009/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 7th of November 2024

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**MS ROBINA KOSAR
MR MOHAMMED MUNEEB ESHAN
(NO ANONYMITY ORDER MADE)**

Appellants

and

AN ENTRY CLEARANCE OFFICER - UKPLA 19131/19128.

Respondent

Representation:

For the Appellant: Mr Ullah, the Sponsor, in person.

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

Heard at Manchester Civil Justice Centre on 4 November 2024

DECISION AND REASONS

1. The Appellants, citizens of Pakistan, appeal with permission a decision of First-tier Tribunal Judge Herlihy ('the Judge'), promulgated on 15 November 2023, in which the Judge dismissed their appeals against the refusal to issue them with a Family Permit as extended family members of Mr Hamed Ullah (the Sponsor), the brother of the First Appellant and uncle of the second, a Spanish national, pursuant to the Immigration (EEA) Regulations 2016 ('the 2016 Regulations').
2. The Appellants claim to be financially dependent upon the Sponsor in support of which they have provided money transfer receipts. That evidence was not considered sufficient by the Entry Clearance Officer (ECO) who did not accept that the Appellants had proved they are dependent upon the EEA national sponsor, leading to refusal of the application under Regulation 8(2) of the Immigration (EEA) Regulations 2016 ('the 2016 Regulations').

3. Having considered the documentary and oral evidence the Judge sets out findings of fact from [5] of the decision under challenge.
4. The Judge notes the Appellants are a mother and her minor son and sets out the correct legal self-direction that it was necessary for the Appellants to show that they need the financial support of the EEA national sponsor in order to meet their essential needs.
5. The Judge noted the First Appellant claiming to be a lone parent divorced from her husband who she claims “kicked her out of property in 2016”, and that she and the Second Appellant had been dependent upon the Sponsor, living in his house since, and that she was divorced in March 2018 and had not worked in Pakistan.
6. The Judge accepts there is evidence of the Sponsor remitting money to the First Appellant from Spain from February 2016 to July 2019 and the application having been submitted in October 2019, but there was no evidence of when the Sponsor acquired his Spanish nationality although the remittances appear to have been made after he became a Spanish national. The Judge finds, however, that no bank statements had been provided for the Sponsor prior to 2023 or for the First Appellant prior to 2021 to show that the money came from the Sponsor’s own funds as evidence that the funds were remitted to the First Appellant by the Sponsor. The Judge also finds there was no satisfactory evidence to show the Appellants had ever been part of the Sponsor’s household in Pakistan, no evidence as to when the Sponsor had left Pakistan, and when he had acquired his Spanish nationality.
7. The Judge notes evidence of remittances indicate that some sums were paid into an account in Pakistan but that no copies of that account had been provided. The Judge notes the first Appellant opened a bank account in 2021 but the remittances from 2016 – 2019 do not refer to the same account number for which no evidence had been provided. Having analysed the evidence the Judge finds it likely the Appellants were living with the First Appellant’s parents given the claim in the application that the Appellants had been living in a joint family system since birth, with the evidence indicating that on the balance of probabilities the Appellants are living with the Sponsor’s parents as part of their household.
8. Drawing the threads of the evidence together the Judge at [5.6] finds not being satisfied that the Appellants had provided satisfactory details of their circumstances in Pakistan. The Judge noted the Sponsor claiming the First Appellant is uneducated but also that evidence had been submitted of her applying for a job as a teacher which refers to her qualifications. The contradictory nature of this evidence was properly noted by the Judge. The Judge also noted having limited evidence of the Sponsor’s financial circumstances to establish that the level of the claimed support from the Sponsor is credible.
9. At [5.8 – 5.9] the Judge writes:
 - 5.8 The case law clearly shows that it is not enough simply to show that financial support is in fact provided by the EU citizen to the family member but that the family member must establish that he needs this support from his or her relatives in order to meet his or her basic needs. There was limited evidence before me as to what the level of income the Appellants required to meet their essential needs. As the Court of Appeal has stated where able-bodied persons claim to have always been dependent upon remittances from the sponsor that this may invite particular close scrutiny as to why this should be the case. I am satisfied that the sponsor has provided some limited financial assistance to the Appellants in Pakistan but I do not find that the Appellants are dependent on the EEA national to meet all their essential needs as I have not found that

satisfactory evidence has been provided to support the Appellants' claimed circumstances in Pakistan upon which I can rely.

- 5.9 In considering the totality of the evidence I am not satisfied that the Appellants have established that they are dependents of the EEA national pursuant to Regulation 8 of the EEA Regulations.
10. The Appellant sought permission to appeal asserting sufficient evidence had been provided to show dependency, the main factor of which was the First Appellant's bank statements. It is asserted the Judge made an error when considering those documents.
11. The Applicant also raises the issue of remittances only being acceptable if the Sponsor was an EEA national, claiming all she needed to prove was that the Sponsor was an EEA national before 31 December 2020 which she did, and which she claims the ECO was satisfied about, including being an EEA national at the date of application.
12. The First Appellant also claims the Judge noted having received the Respondent's bundle where she herself had not received the bundle despite having sent a request to remind the respondent of not having received the bundle twice, which it is stated amounts to procedural error.
13. The First Appellant also claims that the job description letter describing her application as a teacher was incorrect as a result of a clerical error as she had applied for the job as a maid, not a teacher.
14. Permission to appeal was granted by another judge of the First-tier Tribunal, the operative part of the grant being in the following terms:
2. The grounds assert that the Judge erred in a material way by making an adverse decision on dependency, which was central to the appeal, without considering documents in the Appellants' bundle which showed money remittances for the relevant period. The grounds assert that in the decision the Tribunal made specific findings of an absence of documentary evidence of remittances for a period when the relevant documents were present in the appellant bundle.
 3. The first ground shows an arguable material error of law in the absence of consideration of relevant evidence and the application is granted.
 4. The Applicants assert that they were not in receipt of the Respondent's bundle before the appeal was heard, despite directions that it should be served. I direct that the Respondent should serve a copy of their bundle forthwith on the appellants.

Discussion and analysis

15. It is noted from the Family Registration Certificate that Robina Kosar was born on 1 January 1978 and Mohammad Muneeb Ehsan, her son, on 29 November 2006. There was in the bundle before the First-tier Tribunal a Divorce Registration Certificate showing a divorce being granted to Mohammad Eshan on 14 December 2017, which following the failure of conciliation, became effective on 31 March 2018.
16. There are a number of Ria Financial Services Ltd remittance receipts showing payments by a Hamed Ullah Gondal Bibi to Robina Kosar between 2019 - 2023, showing Hamed Bibi's address as an address in Manchester with delivery method as 'cash pick up' until 20/08/2021 when it changed to bank-deposit. A number what appear to be remittance advice slips from the same source from March 2017 to December 2019 have been provided but they are in Spanish

- without a translation and are therefore inadmissible as evidence in accordance with the First-tier procedure rules.
17. Although the Appellant claims not to have received the Respondent's bundle it would have been served to the address for service provided in the appeal form. If that was the address of the UK-based sponsor it would not have been sent to Pakistan.
 18. In relation to the claim the Appellants did not receive notice of hearing, which is factually correct but the reason is not as a result of any procedural unfairness but rather as a result of the request having been made for the appeal to be determined on the papers, which it was. That was confirmed during the course of the error of law hearing with the assistance of the Tribunal clerk who is able to make reference to the relevant case management system.
 19. It is not disputed that the Sponsor has sent remittances to the Appellants in Pakistan as many in the diaspora do.
 20. The point taken about the status of the Sponsor is valid as it is a requirement that an EU national sponsor is providing the support, which requires that person to have such status. The Sponsor's passport shows it was issued to him on the 30 December 2015.
 21. The concern of the Entry Clearance Officer was that no evidence had been provided with the application regarding the family's financial situation sufficient to establish that the remittances were required to meet the essential living costs of the Appellants, without which they could not be met.
 22. The Grounds seeking permission to appeal assert the Judge made a mistake in stating the remittances indicate that sums had been paid into an account in Pakistan ending in 2328 but no copies of such an account had been produced, which the Appellant claims is incorrect as receipts from August 2021 came into her account ending in 7598. It is also claimed the Judge erred in stating that remittances from 2016-2019 referred to the account ending in 2328 as all remittances prior to July 2001 were collected in cash, and receipts refer to cash being picked up at the bank.
 23. At [5.3] - [5.4] Judge writes:
 - 5.3 From my consideration of the evidence before me I find that there is evidence that the sponsor was remitting money to the first Appellant from Spain from February 2016 to July 2019, the applications having been submitted in October 2019. However, there is no evidence of when the sponsor acquired his Spanish nationality and these remittances appear to have been made after the sponsor became a Spanish national. No bank statements that have been provided for the sponsor prior to 2023 and for the first Appellant prior to 2021 to show that the money came from the sponsor's own funds as evidence as to the source of the funds has not been provided and that the funds were remitted into the first Appellant's bank account. Although the evidence of the money transfers names the sponsor as the sender there is no corresponding evidence to establish that the funds came from him, such as evidence of transfers from his bank account or withdrawal of cash equivalent to the sums remitted. There was no satisfactory evidence to show that the Appellants had ever been part of the sponsor's household in Pakistan; there was no evidence when the sponsor had left Pakistan or when he had acquired his Spanish nationality.
 - 5.4 However, the evidence of the remittances indicates that the sums have been paid into an account in Pakistan ending 2328 but no copies of bank statements for this account have been produced. The evidence shows that the first Appellant opened a bank account in 2021 but the remittances from 2016-2019 all refer to the same account ending in 2328 for which no evidence has been provided. The subsequent money transfers made after the dates of decision refer to the first Appellant's bank account. The first Appellant says that she is a member of the sponsor's household and "we are living in a joint family system since birth." The Appellants submitted

evidence that the first Appellant's parents are in Pakistan and I find it likely that the Appellants are living with the first Appellant's parents given the claim in the application that the Appellants have been living in a joint family system since birth. The evidence before me indicates that the balance of probabilities the Appellants are living with the sponsor's parents and are part of their household.

24. The assertion the Judge made an error of fact and/or failed to properly consider the evidence when referring to a bank account ending in 2328, on the basis the First Appellant claims never to have held such an account, is without merit.
25. Within the bundle are a number of documents from TransferWise showing a number of remittances made by the Sponsor to Robina Kosar and providing her account details which refer to a Pakistan bank account ending in 2328. If this is not the First Appellant's account then the remittances were clearly not sent for her. If they were and she has another bank account, yet is claiming otherwise, that casts doubt upon the accuracy of her evidence. The point made by the Judge is that copies of the statements for that account have not been provided. I find that is a finding within the range of those available to the Judge and clearly represents an accurate reflection on the evidence that was made available.
26. A further issue highlighted by the Judge was discrepancy in the job offer. The First Appellant claimed to be uneducated and have no prospects of work yet produced a letter from a school suggesting she had applied for a job as a teacher, possessing the relevant qualifications, but had been refused. Although the Appellant seeks to provide an explanation that is not supported by evidence from the school in question admitting to their having made an error.
27. A further discrepancy in the evidence arises from the finding by the Judge that the First Appellant had stated in her application form that she has always lived in a joint family system. This is what led the Judge to conclude that she lives with other family members within their household. I asked the Sponsor at the error of law hearing how many people lived in the same property as the First Appellant to which he claimed it was only them. This clearly contradicts the evidence given previously and cast doubt upon the credibility of the information the Tribunal was being given in relation to the Appellants circumstances.
28. I find the Appellants have failed to establish legal error material to the decision of the Judge to dismiss the appeal on the basis that insufficient evidence had been provided to enable it to be shown that the Appellants required the remittances that were paid by the UK-based Sponsor to meet their essential needs. The reality of the matter is more likely to be that recorded by the Judge in the determination.

Notice of Decision

29. The First-tier Tribunal has not been shown to have materially erred in law. The determination shall stand.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

6 November 2024