



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Numbers: EA/01936/2019 (V)
EA/01938/2019 (V), EA/01940/2019 (V)
EA/01941/2019 (V), EA/01944/2019 (V)

THE IMMIGRATION ACTS

**Heard remotely at Field House
On 29 January 2021**

**Decision & Reasons Promulgated
On 1 March 2021**

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

**U R
G R, R R, S R, A R
(ANONYMITY DIRECTION MADE)**

Appellants

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr Ahmed, instructed by JJ Law Chambers
For the Respondent: Mr Lindsay, Home Office Presenting Officer

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that I was referred to are in the bundles on the court file, the contents of which I have recorded. The order made is described at the end of these reasons.

DECISION AND REASONS

1. The Appellants are citizens of Pakistan. They appeal against the decision of First-tier Tribunal Judge Shergill promulgated on 11 March 2020 dismissing their appeals against the refusal of a family permit to enter the UK under the Immigration (EEA) Regulations 2016.
2. The Appellants are a mother and her dependent children. I shall refer to the First Appellant as the Appellant in this appeal because she must establish dependency on the Sponsor in order for the minor Appellants' appeals to succeed.
3. The Appellant is married to Chaudhry Irshad [H] who lives in the UK with his cousin Sami Khohkar [the Sponsor]. H was granted a residence permit as a dependant of the Sponsor. The Appellant claims to be financially dependent the Sponsor who is a Spanish national exercising Treaty rights.
4. H gave evidence before the First-tier Tribunal. The judge directed himself following Reyes (EEA Regs: dependency) UKUT 00314 (IAC), Lim (EEA-dependency [2013] UKUT 00437 (IAC) and Dauhoo (EEA Regulations - reg 8(2)) [2012] UKUT 00079 (IAC). It was the Appellant's case that she could not in the past or at present survive without financial support from the Sponsor to meet her essential needs. The Respondent relied on the Appellant's visit visa appeal heard in 2011 which referred to H's employment as an account manager.
5. The judge did not find H to be a credible witness because he failed to make full and frank disclosure in his witness statement. H claimed to have become dependent on the Sponsor when he lost his job due to medical reasons, but no medical evidence was produced. The judge found that H's account of why he came to the UK, if he was in receipt of financial help from the Sponsor, was confusing. He concluded H came to the UK illegally not as a dependant of the Sponsor and H had failed to set this out clearly in his statement. H did not disclose that he had previously worked in Pakistan when he applied for a residence card.
6. The documents relied on at the appeal were not produced with the application and the judge found there was no credible account of why they had only been recently provided. The claim that the Sponsor paid school fees was not supported by documentation. The judge found that the evidence put forward obfuscated and omitted relevant issues. He concluded that the requirements of Regulations 8 and 12 were not met and dismissed the Appellant's appeal.
7. The grounds submit that the judge failed to apply relevant criteria and took into account irrelevant matters, imposing too high a test in determining the appeal. There was ample evidence to show that, on the balance of probabilities, H and the Appellant were dependant on the Sponsor.
8. Permission to appeal was granted by First-tier Tribunal Judge Scott-Baker on 18 July 2020 on the grounds it was arguable the decision failed to disclose adequate

reasoning as to the credibility of the Sponsor and H, and arguably may have taken into account irrelevant matters which had not been raised by the Respondent.

9. In the Rule 24 response, the Respondent submitted the Appellant accepted the judge had directed himself correctly as to the law on dependency in EEA appeals. The judge found, as a matter of fact, that the Appellant was not dependant on the Sponsor to meet her essential needs. The judge gave the following reasons for coming to that conclusion:
 - i) H's evidence was vague as to when the dependency began and his immigration history in the UK;
 - ii) H had omitted details of his employment history in Pakistan and there was a lack of documentary evidence as to H's claimed inability to work;
 - iii) The Sponsor's evidence suffered from the same frailties and he was also not a credible witness;
 - iv) The money transfer receipts were produced for the first time at the hearing and were copies which were not signed;
 - v) The documentary evidence did not support the assertion that the Sponsor paid the school fees.
10. It was submitted the judge applied the correct standard of proof. The Appellant did not submit that the judge failed to take into account material evidence or that the decision was irrational. The grounds merely disagreed with the judge's findings.

Submissions

11. Mr Ahmed relied on the grounds and referred me to the relevant evidence in the Appellant's bundle. He submitted the Appellant had addressed the reasons for refusal. The judge had made findings about H in the UK, but had failed to make any clear findings about the Appellant and the Sponsor. The Appellant had provided money transfer receipts from 2014 to 2019. H was not cross-examined and he was not aware that the matters relied on by the judge would be held against him.
12. Mr Lindsay relied on the Rule 24 response and submitted it was not alleged the judge failed to look at the money transfers. The grounds were inconsistent with the acceptance that the judge had properly directed himself. An error would only occur if the judge had failed to follow his self direction. There was no such error in this case. The Respondent did not believe the Appellant was dependant notwithstanding the money transfers. It was clear that credibility was in issue and the judge considered the evidence in the round, including the documentary evidence. The judge did not believe the Appellant and H were dependant on the Sponsor before the Sponsor came to the UK or thereafter.

13. The judge properly directed himself following Reyes. The issues set out at [11] and [12] demonstrated the judge had followed that direction. The judge found that H had failed to give a full and frank account and therefore his account was not reliable. The judge's findings were open to him on the evidence before him and he gave adequate reasons for coming to that conclusion. The judge did not find the evidence of dependency to be credible and his reasons were not perverse.
14. In response to a question from me, Mr Ahmed accepted it was not apparent from the Sponsor's witness statement when the Sponsor came to the UK. The money transfer receipts were dated July 2014 onwards. Mr Ahmed submitted that H was granted a residence permit and therefore the Respondent was satisfied he was dependant on the Sponsor. There was no evidence of that application before the judge. Mr Ahmed submitted there had been no failure to disclose and the Appellant had addressed the points raised in the refusal notice. H had been accepted as a family member. The judge's credibility findings were inadequate and there was no clear finding of when the Sponsor entered the UK. The judge's reasons were inadequate.

Conclusions and Reasons

15. The judge found that H was not a credible witness and gave adequate reasons for coming to that conclusion. The visit visa appeal demonstrated the Appellant was dependant on H in 2011. There was insufficient evidence before the judge to show when and why H became dependant on the Sponsor. The witness statements were vague and showed that H had failed to make full and frank disclosure.
16. The grounds of appeal do not challenge the judge's credibility findings and accept the judge properly directed himself on the test of dependency. The grounds submit the judge applied too high a standard of proof and took into account irrelevant matters. Although the decision is brief, I am satisfied the judge applied the balance of probabilities to the evidence before him and he considered all the evidence in the round.
17. The visa application form stated that the Sponsor arrived in the UK on 15 January 2015. The Sponsor's witness statement stated he came in 2014, but did not give a specific date. The refusal notice in respect of the Appellant stated that four money transfer receipts dated February 2019, November 2018 and April/June 2015 were insufficient to demonstrate dependency since the Sponsor came to the UK.
18. The money transfer receipts produced at the hearing were dated from July 2014 onwards. The judge did not find the explanation for why they had not been produced earlier to be credible. He also doubted their provenance because they were computer printouts which were unsigned. The judge gave adequate reasons for why he attached little weight to the documents. The documents produced failed to support the Appellant's claim that the Sponsor paid school fees.

19. In order to succeed under Regulation 8 the Appellant had to show that she was dependant on the Sponsor before he came to the UK and after he came to the UK. It was not the Appellant's case that she had ever been part of the Sponsor's household. There was an absence of evidence before the judge explaining the circumstances upon which H and the Appellant became dependant on the Sponsor. There was insufficient evidence before the judge to show the Appellant was dependent on the Sponsor prior to the Sponsor's entry to the UK.
20. I find that the judge gave adequate reasons for finding that the Appellant had failed to establish dependency on the Sponsor. The judge found that H was not a credible witness and his account was not supported by the documentary evidence produced. The judge's findings were open to him on the evidence before him.
21. Accordingly, I find there was no material error of law in the decision of 11 March 2020 and I dismiss the Appellants' appeals.

Notice of Decision

Appeals dismissed

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

J Frances

Signed
Upper Tribunal Judge Frances

Date: 12 February 2021

TO THE RESPONDENT FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

J Frances

Signed
Upper Tribunal Judge Frances

Date: 12 February 2021

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email