



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-000256 (V)
First-tier Tribunal No: EA/04908/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 3 April 2023

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

Waseem Haider
(NO ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Ms Arifa Ahmed
For the Respondent: Mr Janja, legal representative

Heard remotely by video at Field House on 6 February 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant, a citizen of Pakistan, sought entry to the UK with an EEA family permit as an Extended Family Member (EFM), to join his sponsoring brother, KH, a Portuguese national exercising Treaty rights in the UK.
2. The respondent's decision of 9.9.20 refused the application, reasoning that no evidence had been supplied to support the claimed family relationship. The appellant appealed to the First-tier Tribunal.
3. The decision of the First-tier Tribunal (Judge Thorne) promulgated 18.6.21 dismissed the appeal, on the basis that the appellant had failed to discharge the burden of proof of demonstrating that he is related to the sponsor as claimed. The judge also found that there was insufficient evidence to demonstrate that the appellant was dependent on the sponsor. The First-tier Tribunal noted the lack of evidence of both the appellant and the sponsor's financial circumstances.
4. In seeking permission to appeal to the Upper Tribunal, the grounds first argued that at [19] to [22] of the impugned decision, the First-tier Tribunal failed to engage with the evidence regarding the appellant's identity and relationship with his sponsor brother. In particular, it is argued that no cogent reasons were given for rejecting the evidence in the NADRA document, which the respondent did not assert to be fraudulent, in the context of the respondent's country guidance information supporting the contention that births are often not registered in Pakistan, making it plausible that no birth certificate could be produced by the appellant.
5. Secondly, it is submitted that the First-tier Tribunal erred in considering the test for dependency, failing to apply the cases of Jia and Reyes, and requiring evidence of long-term dependency, which is not a requirement of EU law in the context of evidence of financial support for the period 2012 to 2021 having been submitted.
6. The First-tier Tribunal refused permission but on renewal of the application for permission to the Upper Tribunal, Upper Tribunal Judge Lindsley granted permission on 13.12.21, considering it "arguable there was a failure to set out the legal test for dependency in EU dependency and to look at past dependency for the period whilst the sponsor was a Portuguese national, and to focus on the evidence provided and the context of what can be expected in terms of identity papers in Pakistan as set out in the country of origin materials." In effect, Judge Lindsley considered both grounds arguable.
7. At the outset of the hearing, Ms Ahmed was not in possession of the appellant's First-tier Tribunal appeal bundle, and in particular the Family Registration Certificate which the grounds complain was ignored. The documents were then sent to her by email. Why the absence of the documents was not resolved prior to the hearing was not explained.
8. Also at the outset of the hearing, Mr Janjua applied to admit post-decision DNA evidence, which he said had been sent to the Upper Tribunal. No such evidence reached me. However, as I explained to Mr Jaujua, at this state the Upper Tribunal is only concerned as to whether there was an error of law in the decision of the First-tier Tribunal on the basis of the evidence that was before the First-tier Tribunal. In the circumstances, I refused to admit the post-decision evidence.

9. In his brief submissions, Mr Janjua was content to rely on the grounds of appeal. In her relatively brief submissions, Ms Ahmed relied on the contents of the impugned decision and asked for the decision to be upheld.

Relationship between the appellant and the sponsor:

10. As Ms Ahmed pointed out, at [17] of the decision the judge stated that he had seen and read all of the documents submitted by both parties and made specific reference to the Family Registration Document. I am satisfied that all evidence was considered and taken into account before any findings were made.
11. Furthermore, it was not necessary for the judge to set out all the evidence put before the Tribunal or expressly reference it in the decision. As explained in Budhatkoki [2014] UKUT 00041 (IAC), “it is generally unnecessary and unhelpful for First-tier Tribunal judgements to rehearse every detail or issue raised in a case. This leads to judgements becoming overly long and confused and is not a proportionate approach to deciding cases. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost.”
12. Neither was it necessary for forgery to be asserted for the judge to find that the documentation, or crucial parts of it, was not reliable. Whilst it is clear from the country background information that a large number of births were not registered in Pakistan and, therefore, consideration of alternative forms of identity documentation or other evidence may be required, that was not the issue that was of concern to the First-tier Tribunal Judge.
13. For the reasons explained, the judge was not satisfied that the relationship documents were reliable or the explanation credible. Of particular concern to the First-tier Tribunal was that the family registration form was dated 12.2.20, which is after the issue of the birth certificate on 25.1.20. The sponsor suggested that the appellant must have submitted an earlier family registration form to obtain the birth certificate, but there was no evidence to support that contention. On the face of the documents put before the First-tier Tribunal, there was a plain inconsistency between the date of the information supplied to obtain the birth certificate and the date of the issue of the birth certificate. At the very least, one or other of the documents cannot have been accurate.
14. Also, of concern to the judge was that the sponsor’s own birth certificate appeared to have been issued on 30.12.20, when he was born in 1982. The sponsor claimed in evidence that he had an earlier dated birth certificate, which he had used to obtain his Portuguese passport, but was unable to produce that certificate or a copy.
15. Further undermining the reliability of the appellant’s claim and the sponsor’s evidence was the failure of the sponsor to mention in evidence that the appellant lives with his sister and he claims that both are dependent on the sponsor, which facts are asserted in the appellant’s affidavit.
16. Whether or not the judge might have set out in the decision any reference from the country information materials as to what might be expected in relation to identity documents issued in Pakistan, that did not bear directly on the concerns raised by the judge.

17. On the facts set out above, the judge was entitled to reach the conclusion that the actual documents produced were inherently unreliable, for the reasons stated, and that, therefore, the appellant failed to discharge the burden to establish the relationship on the balance of probabilities. No error of law is disclosed by this ground.

Evidence of Dependency:

18. It is not clear to me that dependency was an issue taken by the respondent in the refusal decision, but it appears to have been raised and addressed during the appeal hearing.
19. It was not necessary for the judge to set out the legal test of dependency, provided that it is clear from the decision that the correct law has been applied to the facts of the case.
20. For clarity, Jia held that dependency meant needing the material support of the EU national, or his or her spouse, in order to meet essential needs at the time when they applied to join the EU national. Reyes held that it was not enough to show that the financial support was in fact provided by the EU citizen to a family member; the family member must need that support in order to meet her basic needs; there needed to exist a situation of real dependence; receipt of support was a necessary condition of dependency, but not a sufficient condition; and it was necessary to determine that the family member was dependent in the sense of being in need of assistance even though it was irrelevant why she was dependent. If, as in Reyes, the family member could support herself, there was no dependency even though she was given financial support from the EU citizen.
21. In summary, the sponsor does not have to meet all of the appellant's essential needs, but it must be demonstrated that at the time of the application the appellant genuinely needs the sponsor's financial support to meet what balance of his essential needs is not met by his employment income, and that the sponsor has the means to meet that element of those essential needs.
22. The judge doubted that the appellant received so little income from his employment as a labourer that he was genuinely financially dependent on the sponsor. This gave rise to the ground of complaint that the judge was applying an incorrect test of dependency, requiring it to be shown that the sponsor must meet all the appellant's needs. However, the grounds misunderstand the points the judge was concerned about. The judge was not requiring evidence of longer-term financial support, or any particular financial threshold. Neither did the judge challenge the reasons for dependency.
23. I am satisfied that what the judge was in fact suggesting and found was that the appellant failed to demonstrate that he needed any financial support at all. In support of that conclusion, the judge noted the long unexplained gaps between remittances, and that the appellant failed to provide adequate evidence of his own financial circumstances to show that he needed support. Furthermore, the judge was not satisfied that there was sufficient reliable evidence to demonstrate that the sponsor was able to provide financial support, either in the past or present, particularly when it was claimed by the appellant that he was supporting both the appellant and his sister. That is why the judge was concerned that there was no documentary evidence of the sponsor's financial circumstances.

24. In the circumstances, the findings were entirely open to the First-tier Tribunal on the inadequate and insufficient evidence. Even if the judge was in error as to the issue of dependency, the appeal must nevertheless fail on the issue of relationship between sponsor and appellant.
25. No error of law is disclosed by the grounds. The decision must stand as made.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve an error of law.

The appeal to the Upper Tribunal is dismissed.

I make no order for costs.

DMW Pickup

Judge of the Upper Tribunal
Immigration and Asylum Chamber

6 February 2023