



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Ce-File Number: UI-2022-  
003114**  
**First-tier Tribunal No:**  
EA/04973/2020

**THE IMMIGRATION ACTS**

**Heard at Bradford IAC**  
**On the 15 December 2022**

**Decision & Reasons Promulgated**  
**On the 22 February 2023**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**AZRA SHAHEEN**

(Anonymity direction not made)

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: No appearance.

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

**DECISION AND REASONS**

- 1.** The appellant appeals with permission a decision of First-tier Tribunal Judge Meyler ('the Judge') promulgated on 14 May 2021 in which the

Judge dismissed the appellant's appeal against the refusal of an application for an EEA Family Permit to join her sponsor, a Norwegian national exercising treaty rights in the United Kingdom.

**2.** The appellant is a national of Pakistan born on 3 August 1978 who claimed to be the dependent sister of her sponsor.

**3.** At [5 - 6] of the decision the Judge writes:

5. No one appeared for or on behalf of the appellant and no sponsor appeared in support of the appellant's appeal. I checked that the Notice of Hearing had been sent to the appellant's and the sponsor's last known addresses / email addresses. No explanation was provided and no application for an adjournment was made. I found that the appellant and sponsor had been notified of the hearing and I had all the evidence I needed before me fairly and justly to determine the appeal. Having regard to the duty of fairness to both sides, the Overriding Objective in rule 2 and rule 28 of the Tribunal Procedure Rules 2014, I found that it was in the interests of justice and fairness to proceed in the absence of the appellant.

6. I therefore proceeded to hear submissions from the respondent and reserved the determination.

**4.** The appellant applied for permission to appeal claiming that since she sent the appellant's bundle together with a response commenting on the points raised in the respondent's primary review of 6 May 2021 she heard no further until 14 May 2021 when she received the Judge's decision and claims to have been shocked to read the content of [5] set out above.

**5.** The appellant writes:

I haven't received any Notice of Hearing and I was not even expecting an oral Hearing as I filed my appeal for "Paper Hearing".

If my appeal was converted from paper to oral hearing, I should have been informed about this and the reasons behind this and I should have been served with notice of hearing (The date of hearing) which has not been done. I am sending all email correspondence evidence with Tribunal and home office, I haven't received any notice of hearing.

The tribunal should come here with evidence how and when notice of hearing was served to me. I have been receiving all correspondence through email and the notice of hearing should also be served through email to me?

If that is the case, the tribunal should have a record of this email sent to the appellant.

If Tribunal fails to provide evidence of sending notice of hearing to the appellant, my appeal should be allowed to be heard paper-based as I applied first time through the IAFT-6.

**6.** The application for permission to appeal was not admitted by another judge of the First-tier Tribunal as the decision was promulgated on 14 May 2021 yet the application not received until 25 February 2022. The judge refusing permission also writes "*I have checked the court file. The matter was listed for a paper hearing that was converted to a case management hearing. I am satisfied that both the directions*

*issued at that hearing and notice of the subsequent hearing, were properly served upon the Appellant”.*

- 7.** The renewed application provides a further explanation for the delay identified in the decision not to admit the appeal and in relation to the notice of hearing where it is written:

Regarding the notice of hearing:

I haven't received notice of hearing in my email but I have checked this now with my sponsor through email but somehow he missed and didn't open the email of Notice of hearing and that's why I was not even informed by my brother/sponsor. I checked even my spam email folders, this notice of hearing was not served to me by email. If it served on my address in Kashmir than it's very easy to be misplaced as it's very difficult in this remote area to deliver the letters correct address.

- 8.** Permission to appeal was granted by Upper Tribunal Judge Grubb on 16 September 2022 who admitted the appeal in the interests of justice and who granted permission on the basis the grounds raise an arguable procedural error leading to unfairness if factually established. Judge Grubb further writes *“it will be for the UT to determine on the basis of the documents, not all of which are available to me, the factual issues, in particular whether the appellant had notice of the oral hearing. For the present, I am satisfied the grounds are arguable. For this reason, permission to appeal is granted”.*

- 9.** There was no appearance by the sponsor or any representative on behalf of the appellant before the Upper Tribunal. On 12 December 2022 the sponsor sent a note to the Tribunal by email in the following terms:

I am Muhammad Ashfaq sponsor of my sister Azra Shaheen's appeal (EA/04973/2020)- UI-2022-003114.

The upper tribunal have hearing on 16.12.2022, I wanted to participate in the hearing face to face 16th December in person but due to my mother sudden sickness and as she is alone in Pakistan, I travelled to Pakistan and due to this it is difficult to participate in the hearing face to face.

I have recorded my witness statement which is sent together with appellant's appeal bundle document which contains documented evidence that I am living and exercising treaty rights in the United Kingdom and that I am continuously supporting my sister Azra Shaheen financially from UK as well.

If it's still very important to attend the hearing face to face by the sponsor, I would like if possible, to move the hearing in January 2023 instead.

- 10.** There is, however, no supporting evidence to corroborate the sponsors claim that he is unable to attend the hearing. There is, for example, no evidence of a flight being booked or, if one had, when it was due to take off. There was nothing to show that the claimed family illness is genuine or that it required the sponsor to travel to Pakistan when he was aware of the hearing before the Upper Tribunal.

- 11.** I am satisfied there has been proper service of the notice of the hearing before the Upper Tribunal in accordance with established practice. I am not satisfied that any credible explanation has been provided, supported by appropriate evidence, to justify the failure to attend the hearing. I consider having reviewed the matter that it is in the interests of justice to proceed in the absence of sponsor or any representative for the appellant.

### **Error of law**

- 12.** The Judge considered the fact there was no representation before the First-tier Tribunal but found there was evidence the proper service of the notice stating the date, time, and venue of the hearing. I have seen the First-tier case management system, Aria, which shown this to be the case, which was not available to Judge Grubb. In light of the facts the Judge found it was not appropriate to adjourn the proceedings. Rule 28 of the First-tier Tribunal (Immigration and Asylum Chamber) Rules 2014 entitled the Judge, in light of the failure of the appellant or any representative to attend the hearing, to proceed with the hearing if the Judge was satisfied (a) that the party had been notified of the hearing or the reasonable steps have been taken to notify the party of the hearing, and, (b) it was considered that it is in the interests of justice to proceed with the hearing.
- 13.** No legal error is made out in the Judges findings in relation to valid service of the notice of hearing . Indeed in relation to the UK-based sponsor there is a clear acceptance that the sponsor was served by email, as recorded on Aria. It was the failure of the sponsor to open that email which explains the reason why he did not attend the hearing.
- 14.** The appellant had originally asked for the appeal to be determined on the papers and the evidence before the Judge was provided by the appellant to establish her case.
- 15.** The Judge posed the question at [23] of the determination whether the sponsor continued to support the application and whether or not he was currently living in the UK at all and exercising treaty rights at the date of the hearing, as a result of his failure to attend. The Judge accordingly makes a finding not to be satisfied on the evidence that the sponsor had in fact moved to the UK with his wife and was exercising treaty rights at the date of the hearing, as claimed.
- 16.** The sponsor claims that he is in the UK exercising treaty rights and that he had provided evidence to corroborate this claim. The date of the hearing before the Judge was 29<sup>th</sup> April 2021. There is within the bundle a letter which appears to be addressed to the sponsor dated 15 September 2020 confirming his application under the EU Settlement Scheme had been successful and that he had been granted Limited Leave to remain in the United Kingdom under Appendix EU to the Immigration Rules, more commonly referred to as pre-settled status. Such status is granted to people who have been in the UK for less than five continuous years and enables the holder to work, access the NHS, enrol in education, access public funds, as well

as travel in and out of the UK. Although some of the documents that have been provided, as identified by the Judge, are in the Norwegian language without a proper translation, it does appear the evidence confirms the sponsor had pre-settled status.

- 17.** I do not find the allegation the Judge failed to consider the evidence provided with the required degree of anxious scrutiny has merit in relation to all the documentary evidence. The evidence that had been provided by the appellant, which she believed would have been considered at an appeal determined on the papers was considered, yet the Judge identified a number of shortcomings in the evidence.
- 18.** It is important to consider the reason why the application was refused by the Entry Clearance Officer (ECO). The refusal, dated 22 September 2020, is in the following terms:

#### THE DECISION

You state that your brother is a Norwegian national. You have provided evidence that your sponsor holds a Norwegian passport.

To evidence that your sponsor is your brother you have submitted your birth certificate issued in Pakistan, your sponsor's birth certificate issued in Pakistan and a Family Registration certificate issued in Pakistan. It is noted that your birth certificate was issued on 27 February 2020, 38 years after the event of your birth. This office would expect to see your original birth certificate, other relevant birth documentation issued at the time of the event or other credible documentation evidencing your parentage. Additionally, your sponsor states his real date of birth is 01 January 1983 but that due to limitations with the Norwegian National Registry his date of birth on his passport is recorded as 02 September 1983. Your sponsor states there is a note recorded on his Master's Degree from the University of Oslo, however, you have not submitted the original certificate as evidence of this or any other official document that confirms the same. Unfortunately, regarding the Family registration certificate that you have also provided, we cannot accept this as evidence because they are produced by information provided by the applicant as opposed to enquiries by independent officials. Without further corroborating evidence of your relationship, these documents alone hold little evidential value in support of your application.

To apply for an EEA permit as the extended family member of an EEA national in accordance with regulation 8 of the Immigration (European Economic Area) regulations 2016, you must satisfy that you are financially dependent on your sponsor.

Guidance states that financial dependence should be interpreted as meaning that the family member needs the financial support of the EEA national or his or her spouse/civil partner to meet the family member's essential needs in the country where they are present.

On your application you state that you are mostly financially dependent on your sponsor. As evidence of this you have provided your bank statements showing credits to your account from your sponsor dated between February 2018 and August 2020. Your sponsor states he has been resident in Norway since 2005. Unfortunately, this limited amount of evidence in isolation does not prove that you are financially

dependent on your sponsor. I would expect to see substantial evidence of dependency over a prolonged period. This evidence should also show that without the financial support of your sponsor your essential living needs could not be met. The

You have not provided evidence which fully details your circumstances, income and expenditure and evidence of your financial position, including any other income you may receive. Therefore, I cannot be satisfied that any funds that your sponsor sends to you is your only or main source of income and used to meet your essential living needs. Please note you have provided a number of documents that appear to be in Norwegian. In your application you signed a document agreeing that any documents not in English would have a certified translation. Therefore, the documents provided cannot be used as evidence of your dependency.

On the evidence submitted in support of your application and on the balance of probability, I am not satisfied that you are financially dependent on your sponsor. I am therefore not satisfied that you are an extended family member in accordance with Regulation 8 of the Immigration (European Economic Area) Regulations 2016.

I therefore refuse your EEA Family Permit application because I am not satisfied that you meet all of the requirements of regulation 12 (see ECGs EUN2.23) of the Immigration (European Economic Area) Regulations 2016.

- 19.** Following the filing of the appellant's documents in support of her appeal a review was undertaken by the respondent. It was acknowledged that whilst the appellant provided further evidence regarding the relationship with her EEA sponsor the further submissions failed to fully address the concerns of the ECO regarding the appellant's relationship. It also notes that whilst the appellant had now provided further money transfers, which were not with the original application, they had been checked on the Western Union website, but the list of transfers cannot be verified and are shown as invalid. It was therefore stated the appellant had failed to demonstrate further financial support to address the ECO's concerns. It is also specifically noted in the review that despite the ECO's consideration, except for a tenancy agreement, there was insufficient evidence of income and expenditure. It is stated the tenancy agreement did not demonstrate that the sponsor pays for the property, it relates to property in Pakistan, and that the original untranslated document had not been provided.
- 20.** In relation to the evidence of money transfers, the Judge notes at [29] that the respondent checked the evidence on the Western Union website and that the list of transfers could not be verified and was shown as invalid. The Judge found the appellant had not addressed the ECO's concerns in relation to this evidence. That has not been shown to be a finding outside the range of those available to the Judge on the evidence.
- 21.** The Judge noted several documents that had been produced were written in Norwegian without translations and that the appellant failed to provide evidence fully explaining her circumstances, including any

other income received. The Judge was therefore not satisfied, on the balance of probabilities, that the appellant needed the funds sent by the sponsor to meet her essential needs [30].

- 22. The Judge finds the appellant had failed to show the sponsor was exercising treaty rights in the UK at the date of the hearing, the appellant failed to show that she was related as claimed to the sponsor, failed to show that she is financially dependent upon the sponsor, and failed to show she is an extended family member of the sponsor exercising treaty rights in the UK [31].
- 23. The Judge therefore concluded that the appellant had failed to show on the balance of probabilities that the requirements of the Immigration (European Economic Area) Regulations 2016 had been met.
- 24. Even if it was accepted that the sponsor is in the UK working as claimed, and therefore exercising treaty rights prior to the date the UK left the European Union, has pre-settled status thereafter, was related as claimed, and that the Judge erred in finding in the alternative, a review of the evidence does not establish that the other findings made by the Judge leading to the appeal being dismissed are outside the range of reasonable findings on the evidence. The appellant states that she receives financial support from her father in addition to the sponsor. The ECO in the refusal put the appellant to proof of all the relevant financial circumstances which she failed to do. It was not therefore established on the evidence before the Judge that the appellant needed the support of the sponsor to meet her essential needs. That has not been shown to be a finding outside the range of those available to the Judge on the evidence.
- 25. I therefore conclude that the appellant has failed to establish legal error material to the decision to dismiss the appeal.

**Decision**

- 26. **There is no material error of law in the Immigration Judge’s decision. The determination shall stand.**

Anonymity.

- 27. The First-tier Tribunal made no order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....  
Upper Tribunal Judge Hanson

Dated 21 December 2022

