



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2021-001743
First-tier Tribunal No: EA/07438/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 27 March 2023

Before

UPPER TRIBUNAL JUDGE HANSON

Between

SHEHZAD KHAN
(NO ANONYMITY ORDER MADE)

Appellant

and

AN ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr Khan, ('the Sponsor').

For the Respondent: Ms Young, a Senior Home Office Presenting Officer.

Heard at Phoenix House (Bradford) on 27 January 2023

DECISION AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Tozzi ('the Judge'), promulgated on 22 December 2021, in which the Judge dismissed the appellant's appeal against the refusal by an Entry Clearance Officer (ECO) of his application for an EEA Family Permit to enable him to join the Sponsor in the United Kingdom as an extended family member of an EEA national exercising treaty rights.
2. The appellant is a citizen of Pakistan born on 26 February 1983. The Sponsor obtained citizenship of Ireland in 2015 after which he moved to the United Kingdom.
3. The application was refused on 29 March 2021 and the appellant requested his appeal against the decision be determined on the papers.

4. The application was refused as the ECO was not satisfied the appellant had established he was related to the sponsor as claimed, had not established he was dependent on the Sponsor for financial support, and therefore had not shown he was an extended family member as defined by the Immigration (EEA) Regulations 2016.
5. The Judge's findings, commencing at [15], are understandably brief in light of the Judge's comments that no further documents had been provided in support of the appeal.
6. The appellant sought permission to appeal claiming that documents were in fact submitted on 5 May 2021 containing the following:
 - a) Birth certificate of Rab Nawaz Khan (Irish national sponsor)
 - b) birth certificate of appellant.
 - c) Remittance receipts
 - d) appellant's bank statements.
 - e) Sponsors payslips.
 - f) Utility bill.
 - g) Grounds of appeal
 - h) Entry Clearance Officers refusal letter.
7. Permission to appeal was granted by another judge of the First-tier Tribunal on the basis that, through no fault of the Judge, there are arguable errors of law as the documentary evidence had not been considered when making the decision in this appeal.
8. In a Rule 24 response dated 15 March 2022 the Secretary of State did not oppose the appeal on the basis it would appear the Judge did not have the relevant documents submitted by the appellant.

Discussion

9. It is not disputed that legal error will occur if a judge does not consider adequately the evidence provided in support of or opposing an appeal. In that respect I find, through no fault of the Judge, the appellant has established legal error. The issue in this appeal is whether that error is material.
10. The appellant has provided a more substantial bundle of documents in support for this hearing. The Upper Tribunal was also assisted by the attendance of Mr Khan the Sponsor.
11. Documents stating to be birth certificates for both the appellant and sponsor have been provided showing their fathers, mothers, and grandfathers, names which tally. In relation to the relationship issue Ms Young made further submissions on this point in the following terms:

The Secretary of State does not accept the appellant and sponsor are related as claimed. The birth certificate for the sponsor is included at page 23 (appellant's bundle (AB)). However, the Secretary of State raises concerns over why some of the document is in English and some is presumably in Punjabi and no certified translation accompanies it. Furthermore, the birth certificates for both the appellant and sponsor appeared to be dated/ issued sometime after the respective births.
12. A document that is not translated is inadmissible in accordance with the Procedure Rules. It is noted in some countries birth certificates are not often

obtained on a person's birth but obtained later if required, or birthdays viewed as they are in the UK. Birth certificates may be requested a considerable time after an individual was actually born.

13. The Sponsor's status as an EEA national cannot be disputed. A copy of an Irish passport has been provided indicating it was issued on 11 August 2015 confirming his status as an EEA citizen.
14. There is evidence of remittances being sent from the UK to Pakistan by the Sponsor. The Sponsor has also provided copies of a bank statement of an account he holds with Lloyds Bank for the period 1 August 2021 to 30 December 2021. Although they postdate the decision they give an insight into the Sponsor's financial position in the United Kingdom. The bank statements show evidence of an income being received by the Sponsor from a recruitment company, PMP Recruitment. The payslips show the Sponsor having been employed by or through the company since 20 July 2020. The money received from the recruitment company is that recorded as a credit in the Lloyds Bank statement.
15. The concern that arises from this evidence is that the opening balance on the statement of 1 August 2021 is £8,209.16 whereas on 30 December 2021 it is £5,916.42 a reduction of £2,292.74 in a period of three months, which equates to £764.25 of expenditure over income for the relevant period which would exhaust the remaining capital sum in 8 months if this model was maintained, i.e. by August 2022 although the statements for that period have not been provided. The Sponsor was asked about the initial capital sum in his account and confirmed that he had sold his car. The information provided gives rise to concerns as to whether genuine financial support that is affordable has been provided by the Sponsor and whether he will be able to afford to support his brother in the United Kingdom if the appeal was allowed, without recourse to public funds. That is an issue relevant to the Secretary of State's discretion whether to grant a residence card or not, even if dependency or other qualifying criteria had been established.
16. There are, however, a number of far more serious concerns that arise from the evidence. The appellant in a letter dated 10 February 2022 claims that his parents passed away in a car accident in 2016 and that he has been wholly dependent upon his brother, his sponsor, since. Ms Young applied pursuant to rule 15(2A) of the Upper Tribunal Procedure Rules for permission to adduce additional evidence which was granted. This evidence relates to applications made for visas by individuals the Sponsor confirmed are his and the appellant's parents. One is dated 2016 but others 2021. When it was put to the Sponsor that his brother was claiming that their parents were dead he denied this was the case.
17. The appellant claims to be dependent upon the Sponsor, relying on letters from the Zakat Board of Revenue and Social Welfare Department as evidence has no other source of income, and claiming to be a member of his brother's household in Pakistan.
18. The Sponsor confirmed in his evidence that the reference in one of the Visa applications made by his father that he was supporting his mother and father in the sum of £200 per month referred to the same £200 that the appellant claimed was being sent solely to meet his own needs. The sponsor's evidence is that he sends one sum of £200.
19. Although additional documents have been provided for use by the Upper Tribunal Miss Young also highlighted a number of other concerns in the following terms:
 3. In order to satisfy the requirements of regulation 8, the appellant needs to demonstrate he is dependent on the EEA sponsor as claimed.

The Secretary of State does not accept the appellant has demonstrated dependency on the balance of probabilities. It is acknowledged there are a number of money transfer receipts contained within the bundle of documents. However, they are insufficient in themselves to establish dependency. The appellant has not demonstrated what the money is being used, what his personal circumstances and monthly expenditure is in order to show how the money is meeting his essential needs. There is a reference to the appellant being a full-time student (page 21 AB) but that letter is dated 21 September 2020 and does not confirm how long the duration of the course is.

4. The Secretary of States raises concern over the money transfer receipts and whether the money is being sent for legitimate means or rather evidently contrived. The appellant's bank statements start at (page 36 AB) and it is accepted there are references to home remittances included on the bank statements. However, it appears the money that is being sent is then being transferred back to the sender a few days later. A few examples of this are as follows:
 - Page 36 (AB)- 01/02/2020- Home Rem from 900083181010586- amount received 250,000.00
 - Page 36 (AB)- 01/04/2020- Funds Transfer IBFT To 9000831810586- amount sent 49,900.00
 - Page 44 (AB)- 02/06/2021- Home Rem from 900083181010586- amount received 88,434,63 (transfer receipt page 75 AB).
 - Page 44 (AB)- 02/06/2021- Funds Transfer IBFT To 9000831810586- amount sent 49,900.00.
 - Page 45 (AB)- 02/19/2021- Home Rem from 900083181010586- amount received 81,011.49 (transfer receipt page 77 AB).
 - Page 45 (AB)- 02/19/2021- Funds Transfer IBFT To 9000831810586- amount sent 49,900.00.
 - Page 45 (AB)- 02/20/2021- Funds Transfer IBFT To 9000831810586- amount sent 49,800.00.
 - Page 45 (AB)- 02/21/2021- Funds Transfer IBFT To 9000831810586- amount sent 100,000.00.
 - Page 45 (AB)- 02/24/2021- Funds Transfer IBFT To 9000831810586- amount sent 49,900.00.
5. There are further examples included within the bundle of documents that suggest the money is being sent back to the sponsor from the appellant. The Secretary of State submits this evidence suggests the appellant is not dependent on the EEA Sponsor as claimed.
6. The appellant asserts within the document dated 10 February 2022 (page 12AB) that his parents have passed away in a car accident in the year 2016. The Secretary of State seeks to make a rule 15 (2A) application in order to demonstrate the appellant's parents are not deceased as claimed. The Secretary of State seeks to admit two VAF (1212-0001-1781-3388/00 & 1212-0001-1244-4928/00) of Sheraz Khan who states he is the son of Rab Nawaz Khan (same EEA sponsor as the appellant) and that he is residing with his spouse Kifayat Begum. Both applications are dated post 2016 and clearly demonstrate the appellant's parents are not deceased as claimed. The appellant's father also claims he is dependent on Rab Nawaz Khan

and receives £200 per month which raises concern over how the EEA national can afford to sponsor all these individuals and meet his own essential needs. Within the appellant's own application (page 14-15 HO bundle), there is reference to Rab Nawaz Khan sponsoring Waqas Khan in October 2019. There is reference to w Khan on the sponsor's bank statements which suggests ongoing support is still provided (page 28 AB). The appellant's application form fails to mention the other individuals the sponsor has sponsored into the UK.

7. Under rule 15 (2A), the Secretary of State seeks to submit the VAF for Faizan Khan (1212-0001-1347-8797/00) who is also being sponsored by the same EEA sponsor and alleging to be dependent. The application was refused, and the appeal dismissed by the FTT. There is an outstanding application for permission to appeal to the Upper Tribunal in relation to this application.
20. These discrepancies were put to the Sponsor who was not able to provide a credible explanation for what the appellant was claiming.
21. The evidence to show the funds being sent were being used to meet the appellant's essential needs is very poor and does not establish the claim being made in this regard.
22. I have assessed the evidence carefully, but in light of the lack of clarity and lack of truth in relation to claims made by the appellant, I find that the weight of evidence supports a finding that the appellant has not discharged the burden of proof upon him to establish he is entitled to the remedy he seeks. The only outcome that arises, as the Sponsor was advised, is that the appeal must be dismissed.
23. Accordingly, I find there is no material legal error in the Judge's decision to dismiss the appeal, albeit for different reasons.

Notice of Decision

24. No material error of law is made out in the decision of the First-tier Tribunal. The decision of the Judge shall stand.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

30 January 2023