



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003596
First-tier Tribunal No:
EA/08326/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 01 May 2023

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

ALI USMAN
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Uddin, Counsel instructed by Direct Access
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

Heard at Field House on 13 April 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 is a citizen of Pakistan. His date of birth is 20 August 1989.
2. The Appellant was granted permission by the First-tier Tribunal (Judge Rodger) on 16 May 2022 to appeal against the decision of the First-tier Tribunal (Judge Parkes) to dismiss his appeal under the Immigration (European Economic Area)

Regulations 2016 (“the 2016 Regulations”) against the decision of the ECO is dated 31 March 2021 refusing his application which was made on 30 November 2020.

3. The Appellant’s application was made on the basis that he is dependent on his sister, a Dutch national who has been granted settlement under the EUSS. The Sponsor has pre-settled status in the UK as a worker and her evidence was that she was planning to establish a business.
4. There was consideration by the ECO of the Appellant’s claim of financial dependency on his Sponsor. It was noted that he had provided 34 money transfer receipts dated between 27 April and 7 December 2020, however it was not accepted that this established dependency. It was expected that the Appellant would produce evidence detailing his and his family’s circumstances including his income, expenditure and evidence of his financial position. The ECO made checks with the government of Pakistan and these revealed that the Appellant was listed as being an active taxpayer and that he has a business in Pakistan. The ECO concluded that they were not satisfied that the Appellant was dependent on his Sponsor in accordance with the 2016 Regulations.
5. The Appellant appealed against the decision and the appeal came before Judge Parkes on 15 February 2022. Both parties were represented. The judge properly directed himself in relation to the burden of proof (see paragraph 2) and the law in relation to dependency (see paragraph 4). The judge noted that the application was one made under Regulation 8 of the 2016 Regulations and the issue was one of dependency (see paragraph 3). The judge heard evidence from the Sponsor which he set out at paragraph 6. Her evidence was that she had been supporting the Appellant since 2017 when he had an accident and had stopped working and that she sends about £200 a month to him. This is used for treatment, utility bills and day-to-day expenses. The evidence was that the Appellant lives in Rawalpindi with his father and that his expenses amount to about £50 a month. The Appellant had had a motorbike rental business in August 2010 which had closed in April 2011. He went to Saudi Arabia in September 2011 but returned to Pakistan in 2017.
6. At paragraph 7 the judge set out the Sponsor’s evidence that she had come to the UK about a year and a half ago. Her evidence was that she was working between Holland and the UK. At the time of the hearing she did not have a business in the UK, however she had accommodation, namely a box room in a house. Her evidence was that the Appellant could sleep on a mattress and they would share a room.
7. The evidence was that the Appellant would travel to the UK on his own. His wife and children would remain in Pakistan and be supported by the Appellant. The Sponsor wanted her brother to be self-sufficient like when he was in Saudi Arabia. She did not want him to rely on her, she wants him to support her business. The judge noted at paragraph 8 that there was “no paper trail for the [Sponsor’s] business in the UK, the conversation is all verbal, she had only recently settled on the location”. The Sponsor’s evidence was that she had savings put aside for the business but there was no business plan. The judge noted that the Sponsor’s family were in Holland and she travelled between the two countries. She is employed as a receptionist and her husband has a shop in Holland. Her father worked for the Pakistani government, however he is now retired. He is self-sufficient and receives a pension. The Appellant worked as a security officer in Saudi Arabia, however there is no work available for him in Pakistan. He had a

traffic accident and his leg hurts if he stands for too long. The Appellant's wife teaches neighbours' children, however her earnings were modest.

8. In relation to the Appellant's tax affairs the Sponsor said that the Appellant had forgotten about the tax registration, however the business was no longer running, he has no earnings and he pays no tax. The FBR had not been informed of the Appellant's change in circumstances. In cross-examination the Sponsor said that she started her current employment one and a half months ago and that her father's pension is modest and he only pays certain expenses of the house. What he receives is not sufficient to support the Appellant. The judge stated the following at paragraph 12:-

"12. The evidence of the Sponsor's continued and continuing connection to Holland as the centre of her life is far stronger than the evidence of her connections to the UK. It is where her family live and where her family life is exercised, there is no suggestion that her family are even considering relocation to the UK and, as noted, all remittances were from there too".

The judge went on to state as follows at paragraph 13:-

"13. The stated intention to set up a business in the UK is not supported by any evidence despite the time that this appeal has been in the system and it remains, at best an object of discussion with no concrete proposals and nothing at all in writing. The Sponsor's evidence in cross-examination was to the effect that the Appellant would be sleeping on the floor of a box room, Mr Uddin's final question in re-examination was effectively a leading question and the Sponsor took the hint. However the original answer to the Home Office in cross-examination was telling and indicated a lack of forward planning. Besides in the circumstances she described, without being led, it appears that the accommodation would be statutorily overcrowded and that would be contrary to public policy.

14. A common, effectively universal, feature of cases involving families in India and Pakistan is that where more than one generation of a family live in the same household resources are pooled and run on a joint system. The Sponsor stated that their father has a pension and lives financially separately from the Appellant and his family. There was no detail as to how the utility bills are accounted for or why the Appellant and his family and father manage their different finances. There was no evidence of the father's actual financial circumstances. The evidence of the Appellant's actual financial needs and circumstances is very limited and on the evidence presented it cannot be said that his circumstances are such that he needs the support of the Sponsor to meet any of his essential needs.
15. The tenor of the Sponsor's evidence was not that this was for the Appellant to join her in family reunion or that she would be unable to exercise her free movement rights or be inhibited from doing so. The arrangement, which remains unsupported by evidence, is to enable the Appellant to work in the UK rather than in Pakistan. On the evidence it appears that the application is not a genuine exercise of treaty rights.

16. The evidence does not show that the Appellant is dependent on the Sponsor as required and accordingly the appeal cannot succeed. Considerations under the ECHR or substantive Immigration Rules do not arise in EEA cases”.

The Grounds of Appeal

9. The grounds of appeal are insufficiently particularised and unnecessarily lengthy. The thrust of them is that the judge applied the wrong test, namely the “centre of life” test which is not applicable to cases of this kind. The Sponsor has been granted pre-settled status under the EUSS and the judge took into account irrelevant matters relating to the credibility of her business and intentions for the future. There was nothing to support that prior to her current employment the Sponsor was unemployed. The judge erred at paragraph 12. The judge took into account immaterial matters. There is no requirement under the 2016 Regulations for remittances to originate from the UK. This was not an issue that was raised in the refusal letter. Moreover, the findings in relation to accommodation are irrelevant to the issue of dependency. The only issue before the judge was that of dependency.
10. The judge did not take into account the evidence from the Appellant’s father. He is retired and elderly and relies on a pension.

Error of Law

11. On the morning of the hearing Mr Avery indicated that the Respondent conceded a material error of law (resiling from the Rule 24 response) on the basis that the First-tier Tribunal failed to engage with all of the evidence produced by the Appellant which was material to the issue of dependency.
12. Mr Avery conceded a material error of law and that the decision should be set aside in its entirety.
13. Mr Uddin representing the Appellant wanted me to consider whether the judge erred in law when considering the wrong legal test. In my view this is not necessary in the light of the concession made by the Respondent.
14. I set aside the decision of the First-tier Tribunal on the basis that the judge materially erred.
15. Because of the nature of the error, I agreed with the parties that the appeal should be remitted to the First-tier Tribunal for a fresh hearing. Mr Avery indicated at the hearing before me that it may be that where the Sponsor is residing is an issue relied on by the Respondent at the hearing before the First-tier Tribunal in the light of all the evidence given by the Sponsor at the hearing before Judge Parkes.
16. The Appellant is therefore on notice that this matter may be relied on by the Secretary of State for the Home Department in a broad sense. The Secretary of State is entitled to rely on the evidence of the Sponsor before Judge Parkes (there is no challenge to the record of the Sponsor’s evidence). It is a matter for the Respondent to issue and amend a decision letter, however the Appellant is on notice that where the Sponsor is residing may be an issue on which the Respondent relies.

17. The decision of the First-tier Tribunal dismissing the appeal is set aside. The matter is remitted to the First-tier Tribunal for a fresh hearing.

Joanna McWilliam

Judge of the Upper Tribunal
Immigration and Asylum Chamber

25 April 2023