



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-001813

First-tier Tribunal No: EA/06083/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 4 June 2023

Before

UPPER TRIBUNAL JUDGE KAMARA
DEPUTY UPPER TRIBUNAL JUDGE SKINNER

Between

Mr Shafait Ahmed
(NO ANONYMITY ORDER MADE)

Appellant

and

Entry Clearance Officer

Respondent

Representation:

For the Appellant: In person (via video link)
For the Respondent: Ms A Nolan, Senior Home Office Presenting Officer

Heard at Field House on 22 May 2023

DECISION AND REASONS

Introduction

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge Mills promulgated on 7 July 2021.
2. Permission to appeal was granted by First-tier Tribunal Judge Adio on 7 February 2022.

Anonymity

3. No anonymity direction was made previously, and there is no reason for one now.

Factual Background

4. The appellant is a national of Pakistan now aged 33. On 21 August 2020, he applied for an EEA Family Permit as the dependent of his uncle, Mr Tasawar Hussein Bibi who is a national of Spain, then resident in France. That application was refused by way of a decision dated 22 October 2020, which provided the following reasons for refusal.

On your application you state that you are financially dependent on your sponsor. As evidence of this you have provided money transfer remittance receipts from your sponsor to you, however, it is noted that these transfers are dated up until December 2019. Unfortunately, this limited amount of evidence in isolation does not prove that you are financially dependent on your sponsor. I would expect to see furthermore up to date evidence of your financial dependency on your sponsor.

I would also expect to see evidence which fully details yours and your family's circumstances. Your income, expenditure and evidence of your financial position which would prove that without the financial support of your sponsor your essential living needs could not be met.

The decision of the First-tier Tribunal

5. The appeal before the First-tier Tribunal was considered on the papers, at the appellant's request, on 4 July 2021. The judge considered the appellant's bundle of evidence and noted that the respondent had failed to provide such a bundle. The judge accepted that the appellant had regularly received substantial remittances from his sponsor over a considerable period but declined to accept that the appellant had demonstrated that he was dependent upon his sponsor.

The grounds of appeal

6. The appellant's grounds were professionally drafted and set out over fourteen paragraphs, albeit four points are made. In the first ground, referring to the decision in *Reyes* (EEA Regs: dependency) [2013] UKUT 314, it was contended that the judge erred in focusing on the reasons for dependency and whether there were other means of support. The second ground was that judge failed to consider that the appellant had provided substantial evidence of dependency in the form of three years' worth of money transfer receipts and had instead focused on irrelevant considerations such as whether the appellant had employment income or whether his siblings were contributing. Thirdly, it was argued that the judge had speculated in stating that it was possible that the appellant's late father left him assets in addition to the agricultural land and ignored the appellant's letter in which he stated that he would not be able to survive without his uncle's support. Lastly, the judge ought to have listed the appeal for an oral hearing if he wished to ask questions of the sponsor as opposed to 'answering all the questions by himself.'
7. Permission to appeal was granted on the basis sought, with the judge extending time for appealing and granting permission, making the following remarks.

At paragraph 19 the judge accepts that the sums sent are substantial, regular and have carried on for a considerable period of time and that all things being equal such evidence might be considered to be sufficient to prove dependency as understood in EU law on the balance of probabilities, given that the authorities are clear that dependency in EU law is simply a question of fact. In view of the findings made by the judge of what the Applicant has submitted it is arguable that the judge erred in speculating as to what other

assistance the Applicant might be getting without any basis for such findings. The issues raised by the judge as undermining the positive evidence are based more on speculation. The grounds raise an arguable error of law.

8. The respondent filed a Rule 24 response dated 7 March 2022. In it, the appeal was opposed, with the following comments being made.

3. The Judge accepts at paragraph [18] that the Appellant is in receipt of remittances from his sponsor, but determines that the receipt of money is not sufficient in and of itself to establish dependency, with reasons for this finding at [20] of the determination.

4. The burden of proof was upon the Appellant, and the Judge found on the evidence before him, that there was a lacuna of evidence surrounding the Appellant's financial circumstances. At [26] of the determination, the Judge considers the bank statements of the Appellant, which showed a number of deposits which did not correspond with the money transfers from the Sponsor.

5. It was open to the Judge to find, in light of the gaps in the evidence, that the Appellant had not discharged the burden of proof in establishing dependency. A careful reading of the determination shows the Judge did not speculate on the Appellant having no sources of income, but rather gave examples of gaps in the evidence which could and ought to have been provided by the Appellant.

The error of law hearing

9. The appellant attended the hearing in person, via an MS Teams video link. He made his submissions in Urdu with the assistance of an interpreter whom he confirmed he understood. It transpired that the appellant had not been able to read the grounds of appeal which were drafted in English. The grounds of appeal were summarised for him, and he was invited to make any further comment in relation to each point. Thereafter, Ms Nolan adopted the Rule 24 response and made submissions on behalf of the respondent. The appellant responded to those submissions. We took into consideration all the submissions made as well as the evidence which was before the First-tier Tribunal in arriving at our decision. At the end of the hearing, we informed the appellant that the decision of the First-tier Tribunal was upheld.

Decision on error of law

10. Having carefully considered the grounds, the evidence, and the submissions we heard, we concluded that the decision of the First-tier Tribunal contained no errors of law for the following reasons.
11. It is argued in the first ground that the judge wrongly placed his focus on whether the appellant had alternative means of support. That argument is not borne out by a consideration of the First-tier Tribunal decision. At [7-9], the judge lists the evidence provided by the appellant and says that he has taken all this evidence into account. Thereafter the judge directed himself as to Regulation 8 of the Immigration (European Economic Area) Regulations 2016 as well as the meaning of dependency as established in the relevant caselaw including *Jia v Migrationsverket* [2007] EUECJ C-1/05 and *Reyes*.
12. At [18], the judge began his findings with a focus on the 'extensive evidence' of remittances, which he found to be substantial, regular and to have been made over a considerable period. The judge was right to find that the burden of proof was on the appellant to show that the remittances were needed to meet the

appellant's essential living needs. Furthermore, at [26], the judge noted large deposits which did not emanate from the sponsor and for which no explanation had been given. The appellant attempted to explain those sums during the error of law hearing and said that he could send evidence at a later stage. We declined to consider that evidence as it was not before the First-tier Tribunal.

13. At [20], the judge did not misplace his focus by mentioning employment, savings, or other family support. He was not referring to the appellant's case but was merely giving examples of situations where an individual may be able to meet their own essential needs. Indeed, at [21], the judge emphasises the necessity of having a full picture of the appellant's financial circumstances, with reference to the decision of the ECO.
14. The second ground follows on from the first, in that it is said that the judge speculated as to whether the appellant was employed and had assistance from his siblings. During his submissions to the panel, the appellant stated that one of his brothers worked as a labourer and that neither had enough money to give him. We note that this evidence did not form part of his case before the First-tier Tribunal, according to the witness statements of the appellant and the sponsor. The judge notes at [24] that nothing had been said about the appellant's siblings, with the judge doing no more than raising the possibility that the appellant may have brothers who contribute towards meeting the essential expenses of the household. Given that the burden of proof was on the appellant, the judge was entitled to note gaps in the evidence.
15. The same can be said about the third ground, with reference to the judge's comments in relation to the estate of the appellant's late father. The appellant introduced the issue of agricultural land and taking over the farming from his father in his letter of 9 August 2020, a document which the grounds wrongly contend was ignored. The judge did not err in finding that an incomplete account had been given as to the extent of the father's estate [24].
16. Lastly, it is contended that the judge's concerns could have been addressed by the appellant if the matter had been adjourned for an oral hearing. This overlooks the fact that it was the appellant who requested a paper consideration of his appeal. In addition, the decision under challenge made it abundantly clear that the application for a Family Permit had been refused owing to the absence of full details of the appellant's circumstances and that of his family. The appellant and his sponsor had the opportunity to provide this missing detail before the First-tier Tribunal but did not do so, opting instead for a hearing on the papers. While some additional information was provided to the First-tier Tribunal in the witness statements and the appellant's letter, it raised more questions than it answered. Ultimately the burden of proof was on the appellant to address the concerns raised in the decision notice and to demonstrate dependency upon his sponsor. The judge was entitled to conclude that the appellant had not discharged that burden for the reasons he gave.

Decision

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

The decision of the First-tier Tribunal is upheld.

T Kamara

Judge of the Upper Tribunal
Immigration and Asylum Chamber

23 May 2023

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**