



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Extempore

Case No: UI-2022-001646

First-tier Tribunal No: EA/07434/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 23 July 2023

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

Mr Waqas Ali
(NO ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant:

Mr J Dhanji, instructed by ATM Law Solicitors

For the Respondent:

Ms S Lecointe, Senior Home Office Presenting Officer

Heard at Field House on 31 May 2023

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Chohan, promulgated on 24 January 2022 dismissing his appeal under the Immigration (European Economic Area) Regulations 2016 against the decision of the respondent to refuse to issue a family permit, on 10 March 2021.
2. The appellant's case is that he is wholly financially dependent on his brother, Shahzad Ali, a Portuguese national exercising treaty rights in the United Kingdom. It is his case that he has been disowned by his family, lives alone in Pakistan and that his sole financial support is from his brother.

3. The Secretary of State accepted that some money transfer had been made but did not accept that the appellant was financially dependent on the sponsor.
4. At the hearing before the First-tier Tribunal it was agreed that the sole issue was one of financial dependency, but the judge noted that there was no witness statement from the sponsor who had attended in order to give oral evidence. The judge heard evidence from the sponsor and submissions from both representatives; in addition, he had bundles prepared by the respondent and the appellant.
5. The judge found that the documentary evidence, including affidavits from the appellant and the chairman of the local Union Council, was lacking in substance [9]. He also found that as it was for the appellant to show that financial support is needed to meet his essential needs [10]. It is not enough that financial support is provided by an EEA national; the family member must need that support to meet the basic needs, that is that there must be a situation of real dependence, which the appellant had failed to establish although he accepted [11] that money was sent.
6. The appellant sought permission to appeal against the decision of the First-tier Tribunal on the grounds that the judge had erred in failing to make findings with regard to the sponsor's oral evidence about the nature of and the reasons for the appellant's dependency on him, making no findings as to the credibility of the evidence heard or why he did not accept that evidence. It is also submitted that the sponsor's evidence was materially relevant to the determination of the issue of whether the money sent to the appellant by the sponsor was used to meet essential needs.
7. Mr Dhanji submitted that the judge had failed to make findings on the oral evidence and/or had failed to accept it without giving proper reasons. Both matters referred to in paragraph 7 were materially relevant to the appellant's circumstances in Pakistan.
8. Ms Lecointe submitted that there was no error of law and it was open to the judge to note that the appellant's claim was not supported by the documentary evidence. In reply, and in response to my questions, Mr Dhanji accepted that it was difficult to identify what the evidence was as relating to the appellant's material circumstances in Pakistan although some of this could be referred from what was said in the evidence of the sponsor.
9. In HA (Iraq) v SSHD [2022] UKSC 22, the Supreme Court held:

72. It is well established that judicial caution and restraint is required when considering whether to set aside a decision of a specialist fact finding tribunal. In particular:

- (i) They alone are the judges of the facts. Their decisions should be respected unless it is quite clear that they have misdirected themselves in law. It is probable that in understanding and applying the law in their

specialised field the tribunal will have got it right. Appellate courts should not rush to find misdirections simply because they might have reached a different conclusion on the facts or expressed themselves differently - see *AH (Sudan) v Secretary of State for the Home Department* [2007] UKHL 49; [2008] AC 678 per Baroness Hale of Richmond at para 30.

(ii) Where a relevant point is not expressly mentioned by the tribunal, the court should be slow to infer that it has not been taken into account - see *MA (Somalia) v Secretary of State for the Home Department* [2010] UKSC 49; [2011] 2 All ER 65 at para 45 per Sir John Dyson.

(iii) When it comes to the reasons given by the tribunal, the court should exercise judicial restraint and should not assume that the tribunal misdirected itself just because not every step in its reasoning is fully set out - see *R (Jones) v First-tier Tribunal (Social Entitlement Chamber)* [2013] UKSC 19; [2013] 2 AC 48 at para 25 per Lord Hope.

10. Here, it was for the appellant to establish on the balance of probabilities that he was reliant on the funds sent by the sponsor to meet his essential needs. Mr Dhanji accepted, there are two elements to that: first, evidence that the money is being sent and, second, an identification in monetary or monetary value (for example, provision of accommodation) what those essential needs are.
11. There is no real challenge to the judge's finding that documentary evidence as to the essential expenditure was lacking. The affidavits are brief and as the judge noted, failed to explain how it is that the deponent was aware of the appellant's financial circumstances. While I note that there is the appellant's bundle a schedule of income and expenditure this is not adequately supported by evidence, as the judge noted. Without knowing what the appellant's income and expenditure is, including, for example, whether he obtains money from rent or other investments, it is not possible to quantify what his essential needs are nor whether the money sent by the sponsor is necessary to meet the essential needs.
12. It is not possible to infer that from the sponsor's evidence what the judge states at [7] save for that given by the sponsor given the lack of documents such as bank statements or other supporting material. The judge did not have to accept at face value what the sponsor said as sufficient to demonstrate dependency when, as here, insufficient documentary evidence was forthcoming.
13. The judge found for sustainable reasons that the sponsor's evidence was not capable of demonstrating that the funds he provided met were necessary for him to meet the appellant's essential needs. That is understandable, he is living in the United Kingdom and he is not necessarily in the position to know what the appellant's expenditure is on a monthly basis nor is it something that he would of necessity have first-hand knowledge.
14. Accordingly, even if the judge had erred in not making findings as to this evidence, it is sufficiently clear from the remainder of the determination that he was not satisfied as to the evidence relating to what the appellant

needs for his essential needs to be met. Accordingly, the decision did not involve the making of an error of law. I do however, have significant sympathy for the appellant. It would appear that the application and indeed the appeal before the First-tier Tribunal were inadequately prepared. As the judge noted, the affidavits were lacking in any detail and no affidavit and no witness statement had been provided by the sponsor.

Notice of Decision

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

Signed

Date: 13 July 2023

Jeremy K H Rintoul

Judge of the Upper Tribunal