



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003323
First-tier Tribunal No:
EA/05647/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 05 September 2023

Before

UPPER TRIBUNAL JUDGE HANSON

Between

IKRAM HUSSAIN
(NO ANONYMITY ORDER MADE)

Appellant

and

AN ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: R & A Solicitors, Cheethan Hill, Manchester
For the Respondent: Mr Tan, a Senior Home Office Presenting Officer.

Heard at Manchester Civil Justice Centre on 5 July 2023

DECISION AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Manyarara ('the Judge') promulgated on 16 March 2022, in which the Judge dismissed his appeal against the refusal of an Entry Clearance Officer (ECO) dated 8 April 2021 of his application for a Family Permit as an extended family member of an EEA national exercising treaty rights in the United Kingdom.
2. The appellant sought to join a Mr Sajjad Hussain Bibi ('the Sponsor') a Spanish national.
3. The Judge noted there was no appearance on behalf of the appellant at the hearing. In a letter dated 20 January 2022 the appellant's previous representatives had informed the Tribunal they were no longer acting for him. The hearing took place on 11 March 2022 indicating there had been sufficient time to seek alternative representation if required.
4. At [2] the Judge states that the documents that had been provided included the ECO's bundle of some 53 pages with the appellant failing to provide any evidence in support of the appeal apart from an appeal notice which referred to

documents “soon to be sent”, although it is said no further documents were forthcoming.

5. At [8] the Judge notes the submissions made by the Presenting Officer in attendance on behalf of the ECO regarding concerns about the lack of documentary evidence to support the assertion the appellant was a family member of the Sponsor, together with the question of whether the Sponsor was exercising treaty rights. It was submitted the provenance of funds being paid into an HSBC bank account was not clear, there were no corresponding payslips to show the Sponsor was being paid from employment or that he was claiming jobseekers allowance. It is also said there was no evidence of household membership in Pakistan, despite the appellant having been provided with at least three opportunities to provide evidence before the hearing, and there was no information for an Entry Clearance Manager to review.
6. The Judge’s findings are set out from [12] of the decision under challenge. Having set out extracts from relevant legal provisions the Judge finds there was insufficient evidence to support a finding that the Sponsor is a qualified person exercising treaty rights in the UK [19 - 21].
7. The Judge finds there is insufficient evidence to prove the appellant is dependent upon the Sponsor and notes the appellant had not explained what his personal circumstances in Pakistan were or dealt with the concerns about the Sponsor’s ability to actually support the appellant if he is given leave to enter the UK. The Judge therefore finds that the appellant had failed to establish that he satisfies the requirements of regulation 8 of the Immigration (EEA) Regulations 2016 (‘the 2016 Regulations’).
8. The appellant sought permission to appeal asserting that on 9 March 2022 he submitted a bundle and requested that the appeal be decided on the papers. The appellant believes the bundle was never presented to the Judge and that the Judge may have made the decision without sight of the bundle.
9. Permission to appeal has been granted by another judge of the First-tier Tribunal, the operative part of the grant being in the following terms:
 3. The appeal was heard on the 11th of March 2022 and the decision states that the Appellant had not submitted a bundle. Subject to the Appellant providing reliable evidence of the service of the bundle it is arguable that this was procedurally unfair. Evidence of the service of the Appellant's bundle should be forwarded to the Upper Tribunal.
 4. The grounds disclose arguable errors of law and permission to appeal is granted.

Discussion and analysis

10. Directions sent by the First-tier Tribunal to both the Presenting Officers Unit and the appellant in person, dated 7 February 2022, provided:
 1. The Appellant shall file and serve documents he relies upon, including any witness statements, no later than 1600 on 28 February 2022.
 2. All further documents must be filed and served by email in PDF form. The address to be used for filing with the Tribunal is i.f.a.taylorhouse@justice.gov.uk. The address to be used for filing with the Respondent is: fleetbankhousePOU@homeoffice.gov.uk
11. A Notice of Hearing, also dated 7 February 2022 was sent to the Presenting Officers Unit advising the parties that the appeal will be heard on Friday, 11 March 2022 by video at 1400 p.m.
12. The Judge records in the head of the determination that the appeal was heard at Taylor House remotely via CVP on 11 March 2022.

13. I have within my papers a copy of an email sent by the appellant filing the documents he sought to rely on in support of the appeal together with the acknowledgement from Taylor House. The email, sent by the sponsor, is recorded as having been sent on 9 March 2022 at 11:14 p.m. with the automatic response from I.F.A Taylor House being recorded simultaneously. There is a note within the email that due to coronavirus (COVID-19) it might take longer to answer the email.
14. The reason the directions provided for the appellant to file and serve the documents he relied upon no later than 16:00 hours on 28 February 2022 was to ensure that there was sufficient time for any such documents to be processed and put before the judge nominated to hear the appeal. Filing a bundle of documents on 9 March 2022, a Wednesday, in respect of the hearing listed for 10 AM on 11 March 2022, Friday, at this time, would have contributed to the documents not being before the Judge when he considered the merits of the appeal.
15. Mr Tan submitted the documents were out of time and that a number of documents are illegible and not determinative of the issues.
16. On the appellant's behalf it was argued that the documents provided show the appellant must succeed.

Discussion and analysis

17. There is within the bundle of documents made available to me for the purposes of this appeal a appellant's bundle containing a notice of immigration decision, grounds of appeal, appellant's witness statement, sponsor's witness statement, sponsor's tenancy agreement, sponsors payslips, sponsor's bank statement, appellant's social welfare letter, evidence of money transfer receipts, sponsor's tenancy agreement in Pakistan, utility bills in Pakistan, and appellant's expenses receipts. This is the bundle filed on the 9 March 2022
18. There was no application made to file the evidence out of time.
19. Although there was no specific consequence of filing the evidence late, such as the appeal being struck out, the late filing does not automatically mean the Tribunal was required to consider that evidence. In fact the Judge could not do so as it was not drawn to his attention.
20. It is not disputed a judge must deal justly with any case they are deciding, and that litigation to be conducted efficiently. Individuals are expected to comply with directions. Enforcement of compliance with rules, practice directions and orders are part of the tools by which Courts and Tribunal's are able to maintain proper standards of discipline in the conduct of litigation.
21. Guidance in relation to the approach when considering an application for relief from sanctions was given by the Court of Appeal in *Denton v White* [2014] EWCA Civ 906 at [24] where it is written:
 24. We consider that the guidance given at paras 40 and 41 of *Mitchell* remains substantially sound. However, in view of the way in which it has been interpreted, we propose to restate the approach that should be applied in a little more detail. A judge should address an application for relief from sanctions in three stages. The first stage is to identify and assess the seriousness and significance of the "failure to comply with any rule, practice direction or court order" which engages rule 3.9(1). If the breach is neither serious nor significant, the court is unlikely to need to spend much time on the second and third stages. The second stage is to consider why the default occurred. The third stage is to evaluate "all the circumstances of the case, so as to enable [the court] to deal justly with the application including [factors (a) and (b)]". We shall consider each of these stages in turn identifying how they should be applied in practice. We recognise that hard-pressed first instance judges need a

clear exposition of how the provisions of rule 3.9(1) should be given effect. We hope that what follows will avoid the need in future to resort to the earlier authorities.

22. The appellant was directed to file his evidence by 28th February 2022 but did not do so until 9 March 2022. Whilst in some cases that may not be seen as to be a substantial breach the seriousness of the failure to comply with the direction arises because the hearing itself was listed for 11 March 2022. It is therefore a very serious and significant failure to comply with directions. An explanation has been provided for why the default occurred. The directions were given in good time to enable the parties to file their evidence.
23. The failure of the appellant did not prevent the First-tier Tribunal from undertaking the process of assessing the merits of the appeal, but it was limited to doing so solely on the basis of the evidence that had been provided.
24. Mr Tan in his submissions argued that further documents were not determinative as a number were illegible. On the appellant's behalf it is claimed the documents are determinative.
25. The documents were filed late, and the Judge was not made aware of the same. It is not therefore clear how, if the Judge had been apprised of the existence of the documents, he would have decided the appeal. There is the possibility that if the documents had been made available and the evidence considered the outcome of the appeal may have been different.
26. I find, through no fault of the Judge, that there has been a procedural irregularity sufficient to amount to a material error of law when considering the right of the appellant to have a fair hearing.
27. Whether when the evidence is properly considered the decision will be any different is not a matter for me at this stage.
28. I find that the issues of fairness arise. There has not been a full consideration of the merits of the appeal. On the next occasion it will be necessary for extensive fact-finding to be made in relation to all issues in dispute. Having considered recent guidance provided by the Upper Tribunal I find it is appropriate in all the circumstances for the appeal to be remitted to the First-tier Tribunal sitting at Manchester to be heard afresh. There shall be no preserved findings from the decision of the Judge.

Notice of Decision

29. Through no fault of the Judge legal error material to the decision to dismiss the appeal has occurred. The decision of the First-tier Tribunal is set aside. The appeal is remitted to Manchester IAC to be heard *de novo*.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

25 August 2023