



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-004180

First-tier Tribunal No: EA/53755/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 23 June 2023

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

MUHAMMAD IMRAN
(NO ANONYMITY ORDER MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: In person (via video link from Pakistan)

For the Respondent: Mr A. Basra, Senior Home Office Presenting Officer

Heard at Field House on 24 May 2023

DECISION AND REASONS

1. The appellant (Mr Imran) appealed the respondent's (ECO) decision dated 28 October 2021 to refuse to issue a family permit recognising a right of residence as an 'extended family member' (also known as an 'other family member') with reference to regulation 8 of The Immigration (European Economic Area) Regulations 2016 ('the EEA Regulations 2016'). The appellant is said to be the cousin of a Portuguese national who was exercising his rights of free movement before the date when the United Kingdom left the European Union on 31 December 2020.
2. The appeal was brought under the EEA Regulations 2016. The only ground upon which the appeal could be considered was whether the decision breached the appellant's right under the EU Treaties in respect of entry into or residence in the United Kingdom.

First-tier Tribunal decision

3. First-tier Tribunal Judge D. Birrell ('the judge') dismissed the appeal in a decision sent on 01 April 2022. The judge recorded that the appellant had a legal representative. The judge summarised the reasons given by the respondent for refusing the application. The respondent was not satisfied that the appellant had produced sufficient evidence of his personal circumstances or of his dependency on the EEA national sponsor before 31 December 2020. The judge then summarised the relevant legal test i.e. whether the appellant was in a situation of real dependency and needed the material support of the EU national in order to meet his essential needs. The judge also heard oral evidence from the EEA national sponsor, Mr Muhammad Asim.
4. The judge made clear that she had considered the evidence as a whole before coming to her decision [14]. She noted the evidence contained in the appellant's witness statement. The appellant said that he had been supported by the EEA sponsor since 2014 following the death of his father in 2011 [12]. At the date of the First-tier Tribunal hearing, the appellant was 33 years old. The judge noted that he claimed in his witness statement that he had never worked [12]. The appellant said that he had been receiving money transfers from the EEA sponsor during 2021, but before that he was permitted to use the rental income from the EEA sponsor's house in Pakistan from 2014 to 2020, when the house was sold [13].
5. The judge gave a series of reasons for concluding that the appellant had not produced sufficient reliable evidence to show on the balance of probabilities that he was dependent on the EEA sponsor in the way that he claimed before 31 December 2020.
6. The judge found that there was no evidence in the original application form to suggest that the appellant was supported in the way that he claimed when he made the application. The documents purporting to be a rental agreement and authority to collect the rent were not produced with the original application. There was no evidence of receipt of any rent or of income from such rent into a bank account. The original application form stated that the appellant received about £120 a month from the sponsor, which might have been consistent with the money transfers from 2021, but was inconsistent with the evidence in his witness statement where he had said that he received money from rent of 20,000 rupees a month (OANDA conversion at date of First-tier Tribunal hearing = £83.22). The evidence did not indicate that the appellant was living in the property because the rent deed appeared to show that the whole property was rented by the tenant. The document purporting to give the appellant authority to collect the rent appeared to give a different address for the appellant to that given for the EEA sponsor's property. The EEA sponsor's evidence at the hearing, that the appellant also lived in his house, was inconsistent with the documentary evidence [14].
7. Having considered all the evidence before her, the judge was not satisfied that the evidence was consistent nor sufficient to show that the appellant was dependent on the sponsor by way of receipt of rental income from the sponsor's property before the end of December 2020 [15]. The only reliable evidence of financial support was dated after 31 December 2020 [16].

Grounds of appeal to the Upper Tribunal

8. The appellant applied for permission to appeal to the Upper Tribunal. He did so without the assistance of the legal representative who represented him at the First-tier Tribunal hearing. The appellant told me that he was assisted by a person he knows in Pakistan who speaks English.
9. Given that the appellant says that he was not assisted by a legal representative, I would not expect the grounds of appeal to be drafted in the same way that a legal professional would. The grounds provide explanations in response to points made by the judge rather than identifying specific errors of law. The appellant made the following points:
 - (i) The appellant said that he had not understood that he needed to provide evidence of dependency before December 2020 when he made the application. He thought it would be enough to provide the evidence of the most recent remittances. This is why he did not mention that he received income from the rent on the EEA sponsor's property. He was unable to appear at the hearing by video link to give evidence on this issue.
 - (ii) The appellant said that it was not clear that the EEA sponsor's evidence did contradict the other evidence. There was evidence to show that the EEA sponsor sold the property in 2020 and was then sending the money transfers shown in his (the appellant's) bank statement. The appellant said that he had always resided in his main address (the one given on his bank statement). He claimed that a week before the hearing he had a clash with his siblings and had to move out of his main residence. He went to stay temporarily at another house owned by the EEA sponsor. This was put forward as an explanation as to why the EEA sponsor might have said that he was living in his house when he gave evidence at the hearing.
 - (iii) The appellant submitted that the judge failed to give adequate reasons for rejecting his claim that he became dependent on the EEA sponsor after his father died. He did not have a good education and was unable to find work. The judge ignored the evidence relating to his dependence in favour of a misunderstanding of the oral evidence given by the EEA sponsor.
 - (iv) The judge noted that he had provided a rent deed and authority for collection of rent. The judge did not accept his explanation because he did not provide rent receipts or a bank statement as evidence of the transactions. The appellant claimed that he provided copies of 'rent receipts along with English translation to my representative'. He was shocked to find out that they were never sent to the Tribunal. The grounds asserted that the appellant was taking legal action against his representative for negligence for failing to provide a key aspect of evidence. However, a negligence claim would not remedy the error because he needed an opportunity to present this evidence to the Tribunal. This is why the decision should be set aside.

Permission to appeal to the Upper Tribunal

10. First-tier Tribunal Judge Welsh refused permission to appeal to the Upper Tribunal in an order dated 30 June 2022. She concluded that the grounds did not

disclose any arguable errors of law 'because the judge cannot be criticised for not taking into account evidence that was not put before [her] during the hearing.'

11. The appellant renewed the application to the Upper Tribunal. Upper Tribunal Judge Blundell granted permission in the following terms:
 - '2. In the main, the grounds represent little more than a disagreement with the judge's decision. There is one point which troubles me, however. It is said by the appellant that he provided rent receipts and bank statements to the solicitors who represented him before the FtT and that these documents were not provided to the judge as a result of their negligence.
 3. That is a serious allegation which is clearly capable of proof in the manner considered in BT (Nepal) (Former solicitors' alleged misconduct) [2004] UKIAT 00311 and other such cases. The solicitor's negligence might well, if established, have had an important bearing on the outcome of the appeal. And the evidence in question, particularly the bank statements, are likely to represent persuasive evidence of the claimed rental payments. This part of the grounds is therefore arguable.
 4. In all the circumstances, and considering that this appeal represents the appellant's last opportunity to assert the right to facilitation under the Citizens' Directive, I grant permission to appeal.
 5. The appellant must understand that his appeal will have no prospect of success whatsoever unless it is established: (i) that he provided the documents in question to his solicitors; *and* (ii) that they were not provided to the First-tier Tribunal as a result of their negligence *and* (iii) that those documents were likely to have had a material impact on the outcome of the appeal.'

Hearing in the Upper Tribunal

12. At the date of the hearing in the Upper Tribunal the appellant was still unrepresented. With the permission of the court, he appeared by a video link from Pakistan. I was satisfied that the appellant was able to make what comments or submissions he wished in relation to the appeal without infringing the principles discussed in *Agbabiaka (evidence from abroad; Nare guidance)* [2021] UKUT 00286 (IAC). The issue that I was required to determine was whether the First-tier Tribunal decision involved the making of an error of law. It did not involve the need to take evidence although the appellant, naturally, touched on the account that he had already given in the grounds of appeal.
13. The EEA sponsor also attended the hearing in person. Having discussed who was the best person for me to hear from, it was agreed that the video link was sufficiently clear for the appellant to conduct the hearing with the assistance of an Urdu speaking interpreter. The appellant confirmed that he could understand the interpreter. Although the translation needed to be clarified at certain points during the hearing, I was satisfied that there was sufficient understanding between the appellant and the interpreter for the hearing to be conducted effectively.
14. I explained the role of the Upper Tribunal and the scope of the decision that I was asked to make. I summarised the main legal issues that were relevant to the original application. I explained how and why rights of free movement came to an end on 31 December 2020 and how this impacted on the application that he had made. I summarised the main reasons given by the First-tier Tribunal judge for

dismissing the appeal. I also checked my understanding of the points made in the grounds of appeal with the appellant.

15. The day before the hearing the appellant had filed and served an additional bundle of documents containing 143 pages. The bundle contained some of the documents that were before the First-tier Tribunal. It also contained some documents that sought to address the points made by Upper Tribunal Judge Blundell in his order granting permission. However, the bundle also contained a number of other documents that were not before the First-tier Tribunal that went beyond what he said he had given to his previous representative in the grounds of appeal. I explained to the appellant why it might not be possible to consider some of that further evidence when my initial task was to assess whether the First-tier Tribunal erred in law.
16. It is not necessary to set out in detail what was discussed with the parties at the hearing because it is a matter of record. Mr Basra submitted that the appellant had failed to provide sufficient evidence to show that the documents were provided to his previous legal representative or that they were negligent as claimed. There was no evidence to show that he had made a complaint or pursued action relating to negligence as stated in the grounds. It was not clear who the Whatsapp messages in the recent bundle were sent to or what documents were sent.
17. In response, the appellant said that he did not know how best to present the evidence. He produced what he could. When I asked him to clarify a few points he confirmed that the screenshots of Whatsapp messages were from his phone. He said that when he spoke to the solicitor he did not provide any explanation as to why he did not include the rent receipts in the bundle. The appellant told me that he didn't see the bundle before the First-tier Tribunal hearing. He did not know how to complain about the solicitor. The appellant explained that he had been dependent upon the EEA sponsor since 2014. His evidence was translated as: 'this is the scenario that has been created' in the bundle. The appellant emphasised that there were 'manual receipts' from 2014 to 2018 and then digital evidence in the form of bank statements showing the rental income being paid into his bank account from 2018 to 2020.
18. I asked the appellant to clarify a point about the English translations for the rent receipts, which appeared to be stamped and dated by Rizvi & Co Translators on 15 May 2023. The appellant told me that the dates were on the original receipts. When I pointed him to the evidence on the translation he said '*The one that you are seeing in the face of stamp. It is nothing to do with the date. It was just when I was sending I put it there. The original receipts in Urdu that mattered the most for this case.*' This answer was unclear. I asked the appellant whether he sent English translations with the rent receipts that he says he sent to his solicitor before the First-tier Tribunal hearing in 2022. He said that he did. When asked whether these were the original translations or new translations he said: '*The one page is in Urdu and one page in English new translation.*'

Decision and reasons

19. The starting point in an appeal is that the burden of proof is on the appellant to show on the balance of probabilities (i.e. that it is more likely than not) that there was real dependency on the EEA sponsor for the purpose of meeting his essential needs for the purpose of regulation 8 of the EEA Regulations 2016.

20. It should have been clear to the appellant and the EEA sponsor when the application was refused on 28 October 2021 that evidence of dependency before 31 December 2020 was required.
21. The First-tier Tribunal records show that the appellant was represented by Sky Solicitors Ltd. The email address provided for contact with the solicitor was in the name of a person called Muhammad Raza.
22. The First-tier Tribunal hearing was listed on 31 March 2022. On 28 January 2022 the appellant's bundle was uploaded onto the First-tier Tribunal system. Therefore, the bundle was available to the parties online for two months before the hearing.
23. The appellant's bundle contained:
 - (i) witness statements of the appellant and the EEA sponsor;
 - (ii) a schedule of income and expenses;
 - (iii) death certificate of the appellant's father;
 - (iv) various documents relating to a previous application for judicial review;
 - (v) a bank statement contained in an email from United Bank Limited dated 17 January 2022 covering the period from 20 January 2021 to 17 January 2022;
 - (vi) a sale deed in Urdu and a translation relating to the sponsor's property in Pakistan;
 - (vii) an 'Authority letter' in English dated 04 November 2013 purporting to give the appellant authority to collect rent from the property (signed only by the appellant and not by the EEA sponsor);
 - (viii) a 'rent deed' in Urdu and a translation relating to the sponsor's property in Pakistan;
 - (ix) documents relating to the EEA sponsor's employment in the UK;
 - (x) a job offer in the UK for the appellant;
 - (xi) bills and other receipts for expenses in Pakistan all dated after 31 December 2020 (largely for 'baby' and 'boys' clothes and some for groceries and utilities).
24. The First-tier Tribunal judge cannot be criticised for failing to consider evidence that had not been filed in support of the appeal. The only legal question before me is whether there is cogent evidence to show on the balance of probabilities that the appellant's former solicitor might have been negligent in failing to include evidence that was capable of making a material difference to the outcome of the appeal. If the appellant's case was prejudiced by such negligence it might have created unfairness.

25. The appellant is now acting in person. However, Upper Tribunal Judge Blundell made clear what evidence he would have to produce to make out the serious allegation of negligence made in the grounds of appeal. At paragraph 5 of his order, he told the appellant that this appeal would not have a prospect of success unless it is established that (i) he provided the documents in question to his solicitor; and (ii) that they were not provided to the First-tier Tribunal as a result of negligence; and (iii) that those documents were likely to have a material impact on the appeal.
26. The appellant produced a bundle of documents containing 143 pages the day before the hearing in the Upper Tribunal. It included some of the evidence contained in the original bundle before the First-tier Tribunal, such as the documents relating to the EEA sponsor's property in Pakistan (items 23(vi)-(viii) above). The bundle also contained documents that have been produced to shore up the appellant's case that clearly post date the First-tier Tribunal hearing and could not have been sent to his previous solicitor. These include a fresh bank statement from the United Bank covering the period from 04 May 2018 to 05 May 2023.
27. The documents that the appellant says he sent to his solicitor, that did not appear to be included in the original bundle before the First-tier Tribunal include copies of remittance receipts from the EEA sponsor to the appellant covering 2021-2023. Even if these documents were sent to the appellant's previous solicitor they would not have made any material difference to the outcome of the appeal because they were not relevant to dependency before 31 December 2020.
28. The key documents contained in the up to date bundle before the Upper Tribunal that the appellant says were sent to his previous solicitor for the First-tier Tribunal hearing are a series of documents described in the index as 'rent receipts with translation'. The documents purport to cover a period from 02 February 2015 to 03 May 2018. The original 'receipt' in Urdu appears to be a standard format printed from a computer onto a blank piece of paper as opposed to a carbon duplicate receipt book. The dates, signatures, and the amount of rent have been entered by hand in similar handwriting across all of the documents. The translations are consistent in stating the name of the tenant on the 'rent deed'. The translations are all endorsed with a stamp stating 'Rizvi & Co Translators' with a handwritten signature or mark over the stamp and the handwritten date in the same pen of '15/03/23'. As set out above, the appellant was unable to give a clear explanation as to why the translations are dated just before this hearing if it is said that they were sent to his previous solicitor before the First-tier Tribunal hearing.
29. As evidence to show that he sent these documents to his solicitor before the First-tier Tribunal hearing, the appellant has produced three screenshots of a series of Whatsapp messages. The screenshots show that the messages were sent on 18 January 2022 to a Whatsapp account in the name of 'Raza Ranjha UK'. The screen shots show six messages sent with photo or pdf attachments. It is possible to see the top of some of the attachments. The messages also give an idea of how many attachments there were. It is possible to identify several documents that were included in the bundle sent to the First-tier Tribunal (items 23(iii), (v) and (xi)). It is also possible to identify a single remittance receipt from RIA Financial Services Ltd that appeared to be from 2022. This was not included in the appellant's bundle, but for the reasons already given would not have made any material difference.

30. The key messages are two sent at 3.58pm. The first appears to forward a pdf document of 52 pages entitled 'Combined English'. The glimpse of an image shows a translation in what appears to be a similar format to the ones now produced in the bundle before the Upper Tribunal. However, it is not possible to see whether they were translated by the same company. Nor is it possible to read the date on the single photographic image.
31. The second message forwarded another pdf of 52 pages entitled 'Combined URDU', again showing only a glimpse of the top half of a single document. The document appears to be in a similar format to the full copy of the 'rent receipts' contained in the bundle now produced by the appellant. Again, the exact date of the partial receipt shown is difficult to read, but it is clear that it was dated in 2020 (possibly '05/8/2020'). The full copies of the rent receipts produced in the bundle for the Upper Tribunal only go up to 2018.
32. The only other observation that is worth making about the Whatsapp message is that the third screenshot shows a message sent on 07 February 2022 stating 'Slaam Bhai. Any time scale regarding hearing date after submit bundle. Also if possible can I read bundle or skeleton argument'. A further message in the thread that appears to be dated 14 February 2022 is obscured. The full thread of the Whatsapp messaging with his solicitor before the hearing has not been disclosed.
33. Despite the assertion in the grounds of appeal that the appellant was taking legal action against his previous representative for negligence, there is no evidence to show that action has been taken. There is no evidence to show that the appellant made a complaint to Sky Solicitors or to the Solicitors Regulation Authority. There is no evidence to show that he even asked his solicitors why they did not include the 'rent receipts' in the bundle for the hearing.
34. The screenshots from Whatsapp provide some evidence that documents were sent to a person with the name 'Raza' on 18 January 2022. Although there is no evidence to specifically identify 'Raza Ranjha UK' as his solicitor, I am prepared to accept that this might have been his solicitor given the content of the subsequent message on 07 February 2022 appears to relate to preparation for the hearing.
35. However, even on the limited information contained in the screenshot the messages indicating that two 52 page documents were sent with Urdu and English translations appear to be different to the limited range of documents that are now disclosed, which only cover a period up to 2018.
36. If a person make a serious allegation relating to the negligence of a professional legal representative, it needs to be supported by cogent evidence. Although the appellant has produced some evidence to indicate that he might have sent documents purporting to be 'rent receipts' to his previous solicitor, the Whatsapp evidence is weak.
37. What is fatal to the appellant's allegation about his solicitor is the two month period between the filing of the appellant's bundle on 28 January 2022 and the hearing on 31 March 2022. It is clear from the Whatsapp message dated 07 February 2022 that the appellant asked to see the bundle and the skeleton argument before the hearing. The appellant had more than sufficient time to check that all the documents he wanted to be considered were contained in the

bundle. Even at the door of the court, the EEA sponsor could have asked the legal representative about the missing documents if it was a concern.

38. Turning to Upper Tribunal Judge Blundell's last point, it is not obvious that copies of the 'rent receipts' would have made any material difference to the outcome of the appeal. It is unclear whether the copies now before the Upper Tribunal were those that were sent to the solicitor. The format indicates that the documents could have been prepared on any standard word processor and do not in themselves show the actual receipt of funds. Even if that evidence was taken at its highest, they only showed monthly receipt of less than £100. Given the First-tier Tribunal judge's findings about the inconsistent evidence given by the sponsor, it is not arguable that, even taking into account the lower cost of living in Pakistan, such a small sum would be adequate to meet the appellant's essential needs for monthly maintenance and accommodation.
39. The appellant sought to adduce a further bank statement that was not sent to his solicitor and was not before the First-tier Tribunal. I cannot take it into account at this late stage of the proceedings. It purports to show monthly rent payments of 20,000 rupees from the tenant from 2018 until 2020. The appellant produced a bank statement printed on 17 February 2022 for the First-tier Tribunal, but there is no explanation as to why he did not produce a statement of this kind to cover the period before 31 December 2020 when he should have known that dependency before that date was the key issue in the appeal.
40. For the reasons given above, I find that the appellant has failed to produce sufficient cogent evidence to show that his solicitor was negligent. He has failed to produce the exact evidence of 'rent receipts' sent to the solicitor. He has failed to show that evidence would have made a material difference to the First-tier Tribunal's findings relating to dependency before 31 December 2020. Clearly the First-tier Tribunal judge was not at fault. The evidence shows that the appellant had asked to see the bundle and the skeleton argument before the hearing. He had more than sufficient time to check those documents in the two months after the bundle was filed with the First-tier Tribunal. In such circumstances it cannot be argued that there is any procedural unfairness that might justify setting aside the First-tier Tribunal decision. As observed by Upper Tribunal Judge Blundell, the rest of the grounds amount to disagreements with the judge's findings and do not disclose errors of law.
41. For the reasons given above, I conclude that the First-tier Tribunal decision did not involve the making of an error of law. The decision shall stand.

Notice of Decision

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

The decision shall stand

M.Canavan
Judge of the Upper Tribunal
Immigration and Asylum Chamber

01 June 2023