



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-
002115

First-tier Tribunal No: EA/51964/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

7th November 2023

Before

UPPER TRIBUNAL JUDGE WILDING

Between

TAHIR NAWAZ
(ANONYMITY ORDER NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr G Abas, Solicitor, Sky Solicitors
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

Heard at Field House on 12 October 2023

DECISION AND REASONS

1. The appellant appeals against the decision of First-tier Tribunal Judge Farrelly ('the Judge') who dismissed the appeal in a decision dated 30 April 2023.

Background

2. The appellant applied for a family permit under the EEA Regulations 2016 as the dependent relative of his UK sponsor, Mr Niaz Ahmed, his uncle. The respondent refused the application on the basis that she did not accept that the appellant was either related as claimed or dependent on his uncle. The appellant was dissatisfied and appealed.
3. The appeal came before the Judge on 20 February 2023. He dismissed the appeal. He accepted that the appellant and sponsor were related as claimed.

There is no cross appeal by the respondent on this point, and so the appellant has established his claimed relationship.

4. The Judge then considered the question of dependency, he found that the appellant(was not dependent as claimed, in particular:

16. The determinative issue in the appeal is whether the appellant is dependent upon his sponsor in order to meet his essential needs. It would be for him to demonstrate this. The decision of Moneke (EEA - OFMs) Nigeria [2011] UKUT 341 (IAC) makes the point that dependency is not the same as receipt of financial assistance from the sponsor. Where an able-bodied person claims to have always been dependent upon remittances from a sponsor close scrutiny is invited as to why this should be the case. The Citizens Directive contemplates documentary evidence demonstrating at least in part this dependency and the level of support, its duration and impact.

17. There is a statement from the sponsor stating his brother has been a poor man all his life and that when he went to Europe he supported his brother's children. He refers to the cultural tradition of supporting family.

...

19. I have had regard to the medical evidence submitted. There is a medical report from a Dr Akbar dated 27 September 2019. The doctor speciality would appear to be orthopaedics. I cannot see an address on the letter. The letter is in English and I have considered the various conditions listed. It states that the appellant over the past four of five years has been treated for various conditions including chest infections, fever, stomach problems and headaches. There is mention of anxiety. He lists his daily treatment as being by way of medication. I have no medical expertise but I do not see anything in the conditions listed which would suggest the appellant is incapable of employment. The doctor refers to him receiving basic medication and there is a list of prescriptions to this effect.

20. The sponsor has referred to a condition affecting the appellant's nails. He says that his children also have this. I cannot speculate but he appeared to be referring to a fungal type of infection. In any event, I cannot see how this would prevent him working in the absence of more definitive medical evidence.

21. There is an affidavit from a Mr Mohammad Afzal who refers to the appellant being unable to support himself and his family because of his medical condition. However I do not find the medical evidence confirms this.

22. I have considered the schedule provided of income and expenses for the appellant. In itself it does not confirm the expenses stated. The same can be said of the schedule relating to the sponsor. I find this evidence to be of limited probative value.

23. *There is a letter from the headmaster of the school in Pakistan stating that the sponsor paid for his education at the school for the year 2005-2006. On the chronology this relates to when the appellant was 15 years of age. There is no reference to fees were earlier years. I would accept the sponsor helped with fees. Generally, I accept the sponsor was trying to assist the family in Pakistan.*

24. *The appellant in his statement said that his father had worked as a labourer and his mother was at home. He states that he is unemployed and his sponsor can arrange employment for him in the United Kingdom. This suggests capability.*

25. *In summary, my conclusion is that the appellant and sponsor are related as claimed. I find that for a number of years the sponsor has been sending money to his family in Pakistan. The sponsor indicated his mother is still alive and lives with the appellant. He also referred to his eldest brother and the appellant's father as being in Pakistan. The appellant is one of a large family.*

26. *I do not see evidence to indicate the sponsor has been deterred from exercising his treaty rights because of the absence of his nephew. As his nephew is not an immediate family member under the 2016 regulations he must demonstrate dependency. On the evidence I cannot see why on the evidence the claimant is unable to work as is asserted and dependent upon his sponsor. It is suggested if he were in the United Kingdom he could work. When he married and went on to have a family there is an inference he could provide for them.*

27. *I am not satisfied that the appellant has demonstrated dependency. There is reference to a medical condition but the documents provided are very non-specific. I do not see anything in the letter provided from the doctor in Pakistan which would indicate he is incapable of work. What is meant by dependency in this context have been explored in the case law and the skeleton argument on behalf of the appellant refers to this. Ultimately however is a factual question.*

5. The appellant appealed. Permission was initially refused by First-tier Tribunal Judge Seelhoff on 12 June 2023. Renewed grounds were lodged, and permission was granted by Upper Tribunal Judge Kamara on 4 July 2023:

The judge, on several occasions, commented that the appellant was not incapable of work. It is arguable that the judge erred in considering the reason for dependency, applying Lim [2015] EWCA Civ 1383. It is further arguable, notwithstanding the judge's findings to the contrary, that the schedule of income and expenses adequately set out the appellant's expenses.

The hearing

6. Mr Abas relied on his grounds of appeal. He submitted that the Judge was wrong to find that the appellant was not dependent on his sponsor based on his ability to work. He relied on Lim v Entry Clearance Officer Manila [2015] EWCA Civ 1383, in particular:

32. In my judgment, the critical question is whether the claimant is in fact in a position to support himself or not, and Reyes now makes that clear beyond doubt, in my view. That is a simple matter of fact. If he can support himself, there is no dependency, even if he is given financial material support by the EU citizen. Those additional resources are not necessary to enable him to meet his basic needs. If, on the other hand, he cannot support himself from his own resources, the court will not ask why that is the case, save perhaps where there is an abuse of rights. The fact that he chooses not to get a job and become self-supporting is irrelevant. It follows that on the facts of this case, there was no dependency. The appellant had the funds to support herself. She was financially independent and did not need the additional resources for the purpose of meeting her basic needs.

7. He submitted that the Judge's reasons simply did not allow him to dismiss the appeal based upon the appellant's ability or fitness to find employment.
8. Mr Avery submitted that the grounds were misconceived. He submitted the issue before the Judge was whether the appellant was and is dependent on the sponsor. The burden lies with the appellant to show.
9. He highlighted that remittances are not enough in and of themselves. What the appellant needs to show is that the money is required to meet his needs. The reasons why the Judge refers to work is because that is what the appellant said was the reason why he was dependent, and this appeared to be inconsistent with what the sponsor said in evidence in relation not whether the appellant would work if he was allowed to come to the UK. Mr Avery submitted that these considerations were relevant to the question of dependency, and were perfectly legitimate for the Judge to take into account.
10. The appellant had provided a schedule of income and expenditure however the actual evidence submitted to support the schedule was thin, and the Judge plainly was entitled to consider that the evidence was of limited probative value.
11. It is in that context that the Judge made the findings and observations. The Judge's decision is sound and he was entitled to take into account the appellant's ability or not to work as to whether he was in fact dependent, and was entitled to conclude that the schedule and remittances were unreliable in and of themselves to show dependency. Taking all the evidence in the round Mr Avery submitted that the Judge was entitled to conclude that the burden of proof had not been discharged to the relevant standard.

Decision and reasons

12. I have carefully considered the submissions made by both advocates, and have considered the evidence that was before the Judge, as well as the written arguments advanced. I am not persuaded that the Judge materially erred in law for the following reasons.
13. Mr Abas placed significant reliance on paragraph 32 of Lim, highlighted above. However paragraph 25 is also relevant:

25. In my judgment, this makes it unambiguously clear that it is not enough simply to show that financial support is in fact provided by the EU citizen to the family member. There are numerous references in these paragraphs

which are only consistent with a notion that the family member must need this support from his or her relatives in order to meet his or her basic needs. For example, paragraph 20 refers to the existence of "a situation of real dependence" which must be established; paragraph 22 is even more striking and refers to the need for material support in the state of origin of the descendant "who is not in a position to support himself"; and paragraph 24 requires that financial support must be "necessary" for the putative dependant to support himself in the state of origin. It is also pertinent to note that in paragraph 22, in the context of considering the Citizens Directive, the court specifically approved the test adopted in Jia at paragraph 37, namely that:

14. In addition to the above, it is important to understand the context within which the Court reached their conclusion at paragraph 32:

28. In support of his conclusion, he referred to the following observation of Goldring LJ in the case of Pedro at paragraph 62:

"As Lebon made clear, whether someone has the status of a dependant family member is a question of fact. Such a status is characterised by the material support for that family member provided by the Union national who has exercised his free right of movement. Why the family member is dependent does not matter."

29. I respectfully do not accept that these observations of Goldring LJ made good Upper Tribunal Judge Storey's conclusion. Receipt of support is a necessary but not sufficient condition. It is still necessary to determine that a family member is dependent in the sense of being in need of the assistance. I accept that the authorities clearly establish that it is irrelevant why he or she is dependent, whether because he has given his money away or because he is unwilling to work (save possibly where an abuse of rights can be established), but paragraph 62 in Pedro does not establish that dependency is determined by the mere fact that the EU national makes resources available to the dependent relative.

30. I confess that even without the assistance of the judgment in Reyes, I would have thought that the concept of dependency must mean that the claimant is not financially independent and therefore requires support. Upper Tribunal Judge Storey rejected the analysis in part because he did not consider that there was a principled basis for concluding that such a person was not a dependant whilst someone who refused to get a job could be a dependant. Sullivan LJ in SM (India) at paragraph 27 (produced above) had suggested that these situations might be distinguished, but the judge was not persuaded that they should be. He said this:

"Whilst the jurisprudence has not to date dealt with dependency of choice in the form of choosing not to live off savings, it has expressly approved dependency of choice in the form of choosing not to take up employment: see Lebon. I readily acknowledge that in SM (India) Sullivan LJ saw it as possible that there was a distinction relating to the situation of a claimant who preferred living off savings and a claimant who preferred not to work, (see above ...). But it is very difficult to discern any principled basis for differentiating between the two different forms of dependency of choice when the test is simply a

question of fact and the reasons why there is dependency are irrelevant. Indeed, if anything, one might have thought that expecting a retired person to utilise existing financial resources after a lifetime of work is more problematic than expecting a young able bodied person to earn a wage."

31. I see some force in the observation that there is no moral or policy justification for distinguishing between these two situations, but it seems to me that the distinction is now very firmly established in the authorities.

32. In my judgment, the critical question is whether the claimant is in fact in a position to support himself or not, and Reyes now makes that clear beyond doubt, in my view. That is a simple matter of fact. If he can support himself, there is no dependency, even if he is given financial material support by the EU citizen. Those additional resources are not necessary to enable him to meet his basic needs. If, on the other hand, he cannot support himself from his own resources, the court will not ask why that is the case, save perhaps where there is an abuse of rights. The fact that he chooses not to get a job and become self-supporting is irrelevant. It follows that on the facts of this case, there was no dependency. The appellant had the funds to support herself. She was financially independent and did not need the additional resources for the purpose of meeting her basic needs.

15. It is absolutely clear therefore that an appellant need show more than receiving money, but must show that that money is necessary to meet their basic needs. The Judge was provided with a schedule of evidence, which on the face of it was provided in order to show, to the required standard, that his basic needs required the remittances. However the Judge rejected this evidence as having little probative value.
16. The Judge was certainly entitled to expect evidence establishing that his basic needs required the money being sent by the sponsor, and having rejected the only evidence that had been provided, it is unsurprising that he found the burden not met.
17. What materialised through the submissions before me was that in fact the appellant lives with the sponsor's mother. The sponsor's eldest brother and the appellant's father remain living in Pakistan also, and the money sent back to Pakistan was for all of the family, and not just the appellant. Given this, it was even more important on the appellant to show that he was in fact dependent on his sponsor, and not simply in receipt of remittances. The reason his appeal was dismissed was because he did not satisfy the Judge that the schedule of expenditure, along with the supporting documents was sufficient to show, on balance, the claimed dependency.
18. The Judge further considered the medical evidence that was provided but was not satisfied, for clear and reasoned conclusions, that identified there were any medical grounds for being unable to work. If it was being said that the appellant was unable, medically, to work, then the Judge rejected that evidence.
19. In that context I am satisfied that the reference to the appellant's ability to work is one which was a) reflective of the seeming evidential inconsistency before the Judge and b) was an observation which he was entitled to make. It did not

however form the basis for finding there was no dependency. The basis for dismissing the appeal was that the appellant had failed to show, on balance, that he was in fact dependent on his sponsor.

20. For all of the above reasons I find that the Judge did not materially err in law.

Notice of Decision

The First-tier Tribunal's decision was not infected by legal error.

The appeal is dismissed.

Judge T.S. Wilding

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Date: 28th October 2023