



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
UI-2023-002555

Case No:

First-tier Tribunal No: EA/08753/2022

THE IMMIGRATION ACTS

Heard at Field House
On 13 September 2023

Decision & Reasons Issued:
On 3rd October 2023

Before:

UPPER TRIBUNAL JUDGE LANE
DEPUTY UPPER TRIBUNAL JUDGE CHANA

Between

MS SARA NOORZAY
(ANONYMITY ORDER NOT MADE)

Appellant

And

The Secretary of State for the Home
Department

Respondent

Representation:

For the Appellant: Mr Gajjar, of Counsel

For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer.

Heard at Field House on 13 September 2023

DECISION AND REASONS

1. The appellant, a national of Afghanistan born on 1 January 1963, appeals against a decision of the judge of First-tier Tribunal Blackwell (hereafter the “judge”) who, in a decision promulgated following a hearing on 4 April 2022, dismissed her appeal for a Family Permit under Appendix EU of the Immigration Rules.
2. Permission to appeal was granted by First-tier Judge Bartlett who stated that, given that there had been evidence in the form of receipts for food and other items, the First-tier Tribunal judge had

arguably incorrectly stated that there is “no evidence” of the appellant’s essential needs or how much she depends on those needs.

3. The matter came before us to determine whether the First-tier Tribunal had erred in law, and if so to decide if any such error was material and the decision should be remade.

The First-tier Tribunal decision

4. In paras 25-31 the judge stated that there is very little evidence of dependency other than a simple assertion by the appellant, in a single sentence, in her witness statement. The sponsor also did not testify to dependency in his witness statement beyond referring to money transfer receipts.

5. The judge stated, “we have no evidence as to what the appellant’s essential needs are and how much she spends on them”. The judge concluded that the appellant has not discharged the burden of proof to show that she is dependent on the sponsor for her essential needs.

6. The judge found the sponsor to be an unreliable witness because he was unable to commit to how long he had been supporting his mother (‘8, 9 or 10 years’) and was uncommitted in his response to the questions as to when his mother’s ID had been issued.

7. The judge had found that a letter from a money transfer agency was not sufficient evidence, without producing written receipts. The appellant had only been able to produce two remittance receipts.

The grounds of appeal

8. In the first ground of appeal, it is argued that the judge’s conclusion (that the appellant had not discharged the burden of proof to show that she is dependent on the sponsor for her essential needs) is not based on the evidence. The grounds assert that the judge incorrectly stated “I have *no* evidence as to what the appellant’s essential needs are and how much she spends on them” [our emphasis]. This was an incorrect statement because at page 42 to 48 of the appellant’s bundle, the appellant provided a list of typical regular expenditure on essential items such as gas, soap, bread and milk etc with the cost of 750 to 100 Afghani’s (£10).

9. The second ground of appeal is that the judge did not otherwise rationally consider the issue of dependency and did not make a holistic evaluation of dependency. There was sufficient evidence of dependency in the form of written and oral evidence of the sponsor, in the appellant’s written evidence and remittance slips. There was, in addition, a statement from a money transfer agency pertaining to the regularity of transfers for which receipts were not obtainable.

Error of Law Decision

10. A Dependent is defined in Appendix EU as follows-
“‘dependent’ means here that:

(a) having regard to their financial and social conditions, or health, the applicant cannot, or (as the case may be) for the relevant period could not, meet their essential living needs (in whole or in part) without the financial or other material support of the relevant EEA citizen ... and

(b) such support is, or (as the case may be) was, being provided to the applicant by the relevant EEA citizen ...; and

(c) there is no need to determine the reasons for that dependence or for the recourse to that support”

11. This definition describes what constitutes a dependent in the context of Appendix EU. It also must be demonstrated that without the financial or other material support from the EEA citizen, the appellant would not be able to meet her essential living needs. Therefore, proving the appellant status as a dependent under Appendix EU, requires evidence that demonstrate the appellant’s essential living needs and her reliance on their EEA citizen for meeting them. Therefore, this requires a determination of the essential living needs of the appellant. The definition of these needs are subjective and dependent on the societal norms or where the appellant lives. In order to prove dependency, evidence of both these conditions should be provided.

12. The appellant relied on the two money remittance receipts and a letter from the money transfer agency to demonstrate the sponsor’s support. The judge was entitled to find that two remittance receipts did not give a sufficiently comprehensive picture of the appellant’s overall essential living needs. The two receipts failed to demonstrate that support is derived from an EEA citizen or that without the support, the appellant would not meet her essential living needs. The judge was entitled to find that a mere letter from the money transfer agency without providing receipts, does not establish dependency on the respondent.

13. The appellant’s proof of her dependency rests on several grocery bills that were submitted in evidence. However, merely submitting what is in effect raw data without any commentary or explanation does not, in our opinion, establish dependency. This is especially when no attempt has been made to detail recurring expenses — from housing and utilities to transportation and other daily costs - which the appellant has to meet. It is not for the judge to construct a case for the appellant by drawing inferences about her regular expenses from random receipts for food items. It would have been a simple matter for the appellant to have provided an account of her expenses, thereby providing a clear picture of her dependency on her sponsor. That she chose not to do so led inevitably to the judge finding that she had failed to discharge the burden of proof.

14. It was entirely unclear in the evidence as to what the appellant's essential living needs were and whether she required support from the sponsor to meet those needs (in whole or in part). The judge stated that there was very little evidence of dependency

in the witness statements of the appellant and the sponsor other than a single sentence in the appellant witness statement and the sponsor also did not testify to dependency in his witness statement beyond referring to money transfer receipts. In our opinion, the judge did not fall into material error when he said that there was “no evidence” before him as to what the appellant’s essential needs are; notwithstanding the appellant’s production of the food receipts, there was no evidence before the judge which was capable of discharging the burden of proof in the appeal.

15. There is no merit in the ground of appeal that the judge did not make a holistic evaluation of dependency. The judge took into account all the evidence in the appeal and came to a sustainable conclusion that the appellant has not satisfied the requirements of the immigration rules. We find that it has not been shown that all the issues in the appeal have not been adequately addressed by the judge.

16. We have considered the evidence that was before the Judge, and we find that it was open to him to reach the conclusion that he did, for the reasons that he did, on the basis of the evidence before him.

Decision

17. The making of the decision of the First-tier Tribunal did not involve the making of any error of law sufficient to require it to be set aside. The appellant's appeal to the Upper Tribunal is therefore dismissed.

Signed
Deputy Judge Chana

Date: 25th Day of September 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