



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-001914

First-tier Tribunal No: EA/01710/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 26th February 2024

Before

UPPER TRIBUNAL JUDGE HANSON

Between

Mohammed Nasir Uddin
(NO ANONYMITY ORDER MADE)

Appellant

and

An Entry Clearance Officer

Respondent

Representation:

For the Appellant: Mr Islam of Lawmatic Solicitors.

For the Respondent: Ms Young, a Senior Home Office Presenting Officer.

Heard at Phoenix House (Bradford) on 15 December 2023

DECISION AND REASONS

1. Following a hearing at Bradford on 8 September 2023 it was found a judge of the First-tier Tribunal had erred in law in allowing the appellant's appeal against the decision of an Entry Clearance Officer (ECO) who refused his application for an EEA Family Permit as the extended family member of an EEA national exercising treaty rights in the United Kingdom.
2. It is not disputed that the appellant's sponsor ('the Sponsor'), is his brother-in-law, who is an Italian national exercising treaty rights in the United Kingdom, and who has been granted Pre-Settle Status under the EU Settlement Scheme (EUSS).
3. The decision of the ECO is dated 4 January 2021. The application was refused as it was noted the corresponding collection receipts or bank statements in the appellant's name had not been submitted to verify funds sent by the Sponsor had been received by him, that it was not possible from the documents provided to determine either the appellant's or his family's financial circumstances and/or financial position in Bangladesh, which would prove without the support of the Sponsor the appellant's essential living needs could not be met, and that it was not accepted as being sustainable that the Sponsor could financially support the appellant along with his own family in the UK; meanings that if the appellant did arrive he will become a burden on the public purse of the UK.

4. The appellant filed a witness statement dated 2 May 2021 in which he confirms is a citizen of Bangladesh born on 1 January 2020 and provides his residential address in Bangladesh.
5. The claim by the appellant that he is the brother-in-law the Sponsor is not disputed before me. The relationship arises because the appellant's biological sister is married to the Sponsor.
6. The appellant's statement that the Sponsor lives in the UK together with his wife, the appellant's sister, and their three children, is not disputed before me.
7. The appellant refers to the Sponsor's employment as a Kitchen Assistant at a local Indian restaurant in Cleveland, claiming this proves he is a 'qualifying person' although that point has never been disputed and was not disputed before me. The Sponsor has in fact moved from his previous address in Cleveland and now lives in Leicester.
8. There is a material misdirection at [8] of the appellant's witness statement in which he refers to the Immigration (European Economic Area) Regulations 2006 when the applicable regulations are the 2016 Regulations ('the 2016 Regulations').
9. The appellant in his witness statement refers to the money transfer receipts provided with his application bearing the name of the Sponsor as the sender and his name as the beneficiary. The appellant refers to his father being 74 years of age and suffering medical complications and hence being able to provide for him, that he himself is unemployed, and is dependent upon the Sponsor for his livelihood. The appellant claims to receive approximately 20,000 Bangladesh Taka (BDT) per month from his Sponsor which he spends on rent, food and travelling expenses.
10. The first statement of the Sponsor dated 10 December 2020 which confirms his nationality as an Italian citizen, his grant of pre-settle status under the EUSS, composition of his household, and at [3] a statement that he has two brothers in law and a father-in-law currently in Bangladesh, who he claims to be an integral part of his close knitted household all of whom are financially and emotionally dependent upon him and his wife.
11. The Sponsor claims that he acts as a guardian for the appellant and regularly sends money to him which he uses to pay his household expenses in Bangladesh. The Sponsor claims that the money is often sent in his wife's name as well and that he had been providing financial support long before he came to the UK. The Sponsor confirms and undertakes to provide regular financial contributions to the appellant so he can meet his expenses while he is in the UK.
12. There is a statement by Abdul Aziz who is the son of the Sponsor who was studying at Middlesbrough College of the date of statement, 20 December 2020. He states he is aware his parents provide money to the appellant to enable him to manage and pay his necessary household expenses, that there is no other person to take responsibility financially, and expressing fondness for the appellant, his uncle, who is of a similar age to him. The statement does not, however, indicate how Abdul Aziz is aware of contributions or the purpose for the same, as there is no indication he has any involvement in either arranging or making payments.
13. As noted, none of the statements provided actually deal with the points of concern to the ECO.
14. To remedy this the Sponsor has filed a further statement dated 8 November 2023. In that he repeats the comments regarding his own status, which are not disputed, and the relationship he has to the appellant which, again, is not disputed.
15. The Sponsor refers to continued remittances sent to Bangladesh and also that although the appellant did not originally have a bank account in Bangladesh, and thus received the money in cash, on 23 November 2022 he has opened a bank

account and receives the financial support paid by the Sponsor directly into that account.

16. The Sponsor refers to the appellant being unemployed and the provision of money to pay for his essential needs. The Sponsor estimates the monthly expenses at [6 (i)-(vii)] of the witness statement claiming they amount to approximately 23,000BDT, a UK equivalent of £170.
17. The Sponsor confirms he now lives with his family at an address in Leicester which he rents but accepts the property will not be sufficient if the appellant comes to the United Kingdom and that he will provide accommodation to the appellant if he comes to the UK by looking for more suitable accommodation with more bedrooms.
18. The Sponsor confirms he is in employment and receives Universal Credit, but that if the appellant arrives in the UK it will not cause any additional burden on the public funds he is already entitled to receive, claiming the appellant's presence will be economically beneficial as he will have a better opportunity to obtain employment and eventually to contribute to the economy as a taxpayer.
19. I have also seen a statement from the Sponsor's wife confirming the composition of their family in the UK in addition to which she claims to have two brothers and a father currently in Bangladesh who are stated to be integral part of their close-knit household, all of whom are financially and emotionally dependent upon she and her husband (the Sponsor). The statement repeats historic paragraphs in relation to the Sponsor's previous employment and refers to the sending of monies in similar terms to that in the Sponsor's original statement. The statement itself is dated 10 December 2020.
20. The Sponsor was asked in cross-examination by Ms Young about who the appellant lives within Bangladesh. He originally claimed it was with his mother, but as noted in the statements above there is no mention of the appellant being with the mother but rather a father and two brothers. When it was put to the Sponsor that he had spoken of the appellant's father and two brothers being in Bangladesh I found the Sponsor's evidence being less than clear. He also referred to a father going to UK and also claimed one of the brothers did not live at the property, as claimed in the application and earlier statements, but lived away and worked in agriculture; also not as previously claimed in any of the witness statements or indeed the Sponsor's latest witness statement.
21. It is not disputed that the Sponsor sends remittances to Bangladesh but they, per se, do not establish dependency. As Mr Islam properly referred to in his submissions and in the skeleton argument, the test is whether those remittances are required to meet the appellant's essential needs, i.e. that without such remittances he would not be able to meet those needs.
22. The composition of the household and what individuals did within the household is therefore of some importance. The original claim was that the only income coming into the household as that provided by the Sponsor. It transpired in evidence that one of the brothers mentioned worked in agriculture; raising the question of exactly what the actual circumstances of this family are in terms of who lives where and what resources are available in addition to the money sent from the UK, a point of concern to the ECO in the refusal under challenge.
23. It is common for remittances to be sent home by family members living in the UK. The ECO was entitled to criticise the focus in the application being upon the monies being sent rather than what they were actually being used for.
24. There remains, as there has always been, a lack of evidence in relation to the actual financial circumstances of the family in Bangladesh. The only material that has been provided is an estimate of the costs of the household in the Sponsor's latest witness statement, when I find from his oral evidence that the Sponsor appeared to have very little detailed knowledge of the arrangements for that

family and established no evidential basis for having any confidence in relation to his estimates. There is insufficient evidence directly from Bangladesh or from any family member of the household within Bangladesh dealing with this issue, which was of specific concern to the ECO and was mentioned at the Error of Law stage. There is no documentary evidence to support the claims made in the Sponsor statement and nor has it been established that it is unreasonable to expect such evidence to have been made available to establish that the money being sent was required to meet the appellant's essential needs.

25. A further arose in relation to the source of funds available to the family in Bangladesh. It must be remembered that in the application and throughout all the written and oral evidence the claim being made is that the only source of income is that from the Sponsor in the UK as a result of the inability of the appellant's father to work and of the appellant himself being unable to secure employment, despite now having completed his studies.
26. Ms Young referred me to a copy of one of the appellant's bank statements for the period 23 November 2022 to 14 August 2023. It is accepted that within this statement are a number of references to foreign remittances and cash withdrawals. The remittances and withdrawals are similar such as 30,000BDT being withdrawn following a deposit of a similar amount on 6 February 2023 and earlier following a remittance of 31,000 on 5 February 2023, and so on.
27. The original remittances for the foreign remittances are stated to be from The City Bank Ltd together with the Mercantile Bank Ltd.
28. The concerns arise for in addition to this there is on 28 February 2023 a record of a remote deposit from what appears to be from a different account with a branch in Chattogram of 150,000BDT, a further remote deposit from the same source on 20 March 2023 of 40,000BDT, and an interbank fund transfer from the appellant's bank own bank's head office in Dhaka on 23 March 2023 of 140,732.50 BDT, for which no satisfactory explanation has been provided and the source of these funds not identified. It is noted that sums of 140,000BDT and 40,000BDT were withdrawn in cash by the appellant.
29. I also note on the same statement a deposit on 5 July 2023 from the Social Islamic Bank Ltd of 11,036TDK and transfer from the same source, describes Social Investment Bank Ltd of 27,590BDT.
30. The bank statements therefore clearly indicate the existence of separate source of funds, other than the Sponsor, which undermines the claim that the only money received by the appellant is that sent by the Sponsor.
31. I am not satisfied therefore, on the balance of probabilities, that the appellant has established that, whatever remittances are sent from the Sponsor in the UK, those funds are to meet his essential needs and that without such funds he would not be able to meet those needs. I also find there is insufficient evidence to establish exactly what the appellant's needs are in light of the absence of relevant evidence and lack of clarity in the evidence in relation to the household in Bangladesh.
32. The ECO also raised the issue of the impact of allowing the appellant coming to the UK upon the public purse.
33. It was not disputed that regulation 12(4) of the 2016 Regulations confers a wide discretion upon the decision-maker considering an application for a Family Permit as an Extended Family Member to consider not only the individual circumstances of the applicant but also the impact upon others and the public at large of that person or persons being admitted to the UK.
34. I accept it is only where the consequences of admitting an applicant are reasonably foreseeable in terms of the impact upon UK-based family members that the assessment may be relevant to the overall examination.

35. It is not disputed the Sponsor is in receipt of Universal Credit as he has his own family to maintain, his wife and children, and receives a relatively modest salary. The witness statements show the Sponsor's household composes of his wife, their son Abdul Aziz born on 25 February 2002, and daughters born on 14 July 2005 and 16 November 2012.
36. The accommodation they occupy currently in Leicester has two bedrooms and it is accepted by the Sponsor in his recent witness statements and evidence that it is not sufficient to accommodate the appellant should he be permitted to arrive in the UK.
37. The discretion upon the ECO is a wide discretion and is not unreasonable for the decision-maker to consider the element of public interest. The Sponsor will be required to incur further costs in either accommodating the appellant elsewhere or renting a larger property to house and in addition to his existing family members. When the Sponsor was asked whether he had undertaken research into the cost of such additional rent he indicated his current rent was £850 per month that he could rent a larger property for £900 per month. No evidence has been provided to show that this is a realistic proposition considering the average cost of renting a three bedroom property in Leicester.
38. The Sponsor's suggestion that there will be no real additional cost as the appellant could obtain employment and therefore make a contribution has not been supported by any evidence. When asked whether the appellant spoke English the Sponsor indicated he had some English, but it was not established that it is sufficient to enable him to communicate effectively in a workplace in which the English language was spoken. It was not made out the appellant, although he had finished his education, possesses relevant qualifications that will be of value to, or be recognised by, an employer in the UK. It was not made out the Sponsor has any influence or connections that will enable the appellant to secure employment notwithstanding the barriers to his integrating into society other than within the Sponsor's household.
39. The Sponsor's proposition that if additional costs were involved he would effectively absorb these without making any greater claim for public funds was rejected by the ECO who refers to their having to be an increase in the claim for costs to the public purse. Whilst I accept that there is no restriction upon a person with benefits spending their money as they choose, the expectation is that as the money is paid for the benefit of the claimant and his or her family to meet their essential needs, this is what it will be spent on. The funds the Sponsor receives are therefore intended, in addition to his earned income, to ensure the minimum level of income available to this family unit sufficient to enable them to meet their basic needs. What the Sponsor was proposing is that he will enable a situation to develop in which the resources available to the family will not be sufficient to meet the basic needs of the existing family members as a proportion of that income, as he will be required to cover the costs of rent and additional costs of the appellant's presence in the UK. It is not made out such increased costs will be no greater than the money that the Sponsor has been sending regularly to Bangladesh, which he claims he can afford.
40. It is settled law that an extended family member has no right to enter the UK under the 2016 Regulations in the same manner as a family member of an EEA national exercising treaty rights was entitled to do. Extended family member can only enter the United Kingdom if their entry has been facilitated by the Secretary of State for the Home Department. That is a discretionary power and how it can be exercised is the subject of settled law, for example in Rahman.
41. I find in this case that the decision-maker, the ECO, has properly exercised the discretionary power available within the 2016 Regulations. I do not find the conclusion contained in the refusal, having considered all the relevant

circumstances available to the ECO at the date of application, that there is a strong public interest for why discretion should not be exercised in the appellant's favour, has not been shown to be an irrational conclusion or one outside of the range of findings reasonably available to the ECO.

42. I therefore find that in addition to the failure of the appellant to establish any remittances sent are required for his essential needs, for the reasons set out above, that the appellant has not made out that the refusal to exercise discretion in his favour is irrational or outside the range of findings reasonably open to the ECO on the evidence. I therefore do not find that the appellant has established that the decision to refuse his application for entry as an extended family member is a decision that will result in a breach of his or his Sponsor's Treaty rights.
43. On that basis I dismiss the appeal.

Notice of Decision

44. Appeal dismissed.

C J Hanson
Judge of the Upper Tribunal
Immigration and Asylum Chamber
18 December 2023