



The Upper Tribunal
(Immigration and Asylum Chamber)

Appeal number: OA/05350/2014

THE IMMIGRATION ACTS

Heard at Field House
On November 6, 2015

Decision and Reasons Promulgated
On November 11, 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

MS ANSAR BIBI
(NO ANONYMITY DIRECTION)

Appellant

and

THE ENTRY CLEARANCE OFFICER

Respondent

Representation:

Appellant

Mr Iqbal, Counsel, instructed by Denning Solicitors

Respondent

Mr Kotas (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The appellant is a national of Pakistan and she applied an EEA family permit to join her son and EEA national daughter-in-law in the United Kingdom.
2. The respondent refused her application on March 10, 2014 and the appellant appealed against that decision under Regulation 26 of the Immigration (EEA) Regulations 2006 on April 17, 2014.

3. The matter was heard by Judge of the First-tier Tribunal Hussain on May 20, 2015 and in a decision promulgated on June 3, 2015 the Tribunal refused her appeal under the 2006 Regulations.
4. The appellant applied for permission to appeal on June 17, 2015 submitting the Tribunal had erred by conducting a hearing as an oral hearing when a paper hearing had been requested and secondly by ignoring evidence that the appellant relied on her son and EEA national daughter-in-law for her essential needs.
5. Permission to appeal was granted by Judge of the First-tier Tribunal Hollingsworth on August 13, 2015 on the basis that it was arguable the Tribunal had applied the wrong burden/standard of proof.
6. The First-tier Tribunal did not make an anonymity direction and pursuant to Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 I see no reason to make an order now.

SUBMISSIONS

7. Mr Iqbal did not pursue the first ground of appeal with any vigour but indicated that this was a matter for myself to determine. He further submitted that the Tribunal had taken the relevant date as the date of application whereas the correct date was the date of decision. In support of his submission he referred to the fact that the Tribunal had noted when the statement had been signed by the appellant's other son (who had been living with the appellant at the time the application was made). However, he also submitted that that at that date there was ample evidence contained within a large bundle of documents which demonstrated the appellant's son and daughter-in-law were responsible for her essential needs. The Tribunal has failed to make findings on the fact that monies had been sent over a period of time and Mr Iqbal referred me to the fact that the application form made it clear that the appellant's son and daughter-in-law had paid for the appellant's accommodation and living expenses. Whatever interest her other son had in the property the fact remained that her essential needs were met by the UK based son. He submitted that there was a material error.
8. Mr Kotas relied on the Rule 24 statement dated October 2, 2015 and submitted that the Tribunal had properly considered the evidence in its decision. The submissions amounted to a mere disagreement to the evidence and as this had been dealt with on the papers, despite the reference to a presenting officer being present in the decision, the Tribunal had been entitled to assess the documents in the manner it did.

DISCUSSION AND FINDINGS

9. Permission to appeal had been granted to the appellant on the basis it was arguable that the Tribunal had erred in its approach to the burden and standard of proof. Neither representative took this issue at the hearing before me and I am satisfied that there was no merit to the point highlighted in the grant of permission to appeal.

10. On the front sheet of its decision the Tribunal referred to Ms Khan as representing the Home Office. I have checked the court record on the court file and there is no reference to Ms Khan making any submissions whatsoever. It seems entirely possible that the matter remained in the Tribunal's list of business for that day but neither the court file nor the respondent's own file suggested any submissions had been made. There is no evidence of any unfairness and I dismiss the first ground of appeal.
11. The second issue raised related to the date that the tribunal assessed this application on. Mr Iqbal referred me to the Tribunal's decision and in particular paragraph [6] of the decision. In that paragraph the Tribunal noted that the application form was signed on February 19, 2014 and further noted that the appellant's other son, who now was married and living in Britain with a British wife, must have been there at the date the application form was signed. There is nothing in that paragraph which suggests that the Tribunal treated the date the application was submitted as the relevant date.
12. In any event, the evidence before the Tribunal was unclear in that there was no evidence in any of the witness statements that suggested this son had migrated to the United Kingdom before the respondent's decision was made. The Tribunal was entitled to assume, in the absence of any other evidence, that the appellant's son was still living with the appellant in Pakistan when the respondent made its decision. In fact, there was evidence within the documents that suggested the appellant's son arrived in the United Kingdom after the application had been considered-a point confirmed in the grounds of appeal at paragraph [2] of the grounds. I am therefore satisfied that the Tribunal did not make any error in relation to the date that it applied when assessing the evidence.
13. Mr Iqbal's strongest argument related to the Tribunal's approach to the financial evidence that had been submitted in the appellant's bundle. He submitted that there was evidence within the bundle that the tribunal had overlooked when assessing whether the appellant's son and his EEA national wife had been responsible for the appellant's essential needs.
14. This was a case that was dealt with on the papers and it is clear from paragraph [2] of the Tribunal's decision that the Tribunal was aware and had noted that regular monthly payments of £97 had been sent from the United Kingdom to the appellant in Pakistan.
15. However, the Tribunal placed weight on the fact that the appellant continued to live with her eldest son and whilst funds had been sent to her the Tribunal had concluded that this did not mean the UK family were responsible for her essential needs.
16. Whilst no case law was referred to in the decision I feel it would be of assistance to set out the appropriate case law.
17. In Jia Migrationsverket Case C -1/05 the European Court considered "dependence" under Article 1(1)(d) of Directive 73/148/EEC and said this was to be interpreted to

the effect that “dependent on them” meant that members of the family of an EU national established in another member state within the meaning of Article 43 of the EC Treaty, needed the material support of that EU national, or his or her spouse, in order to meet their essential needs in the state of origin of those family members or the state from which they had come at the time when they applied to join the EU national.

18. In Moneke (EEA – OFMs) Nigeria [2011] UKUT 00341(IAC) at para [41] the Tribunal accepted that the definition of dependency was accurately captured by the current UKBA ECIs which read as follows at ch.5.12: “In determining if a family member or extended family member is dependent (i.e. financially dependent) on the relevant EEA national for the purposes of the EEA Regulations: Financial dependency should be interpreted as meaning that the person needs financial support from the EEA national or his/her spouse/civil partner in order to meet his/her essential needs – not in order to have a certain level of income. Provided a person would not be able to meet his/her essential living needs without the financial support of the EEA national, s/he should be considered dependent on that national. In those circumstances, it does not matter that the applicant may in addition receive financial support/income from other sources. There is no need to determine the reasons for recourse to the financial support provided by the EEA national or to consider whether the applicant is able to support him/herself by taking up paid employment. The person does not need to be living or have lived in an EEA state which the EEA national sponsor also lives or has lived.” At paragraph 42 the Tribunal went on “We of course accept (and as the ECIs reflect) that dependency does not have to be “necessary” in the sense of the Immigration Rules, that is to say an able bodied person who chooses to rely for his essential needs on material support of the sponsor may be entitled to do so even if he could meet those needs from his or her economic activity.”
19. In assessing whether a material error has occurred I have had regard to the fact that payments were sent for approximately 6 months prior to the date of application. Although there were regular payments I must also have regard to the fact that the appellant was living in the family home and according to her son who at the date of decision was living with his EEA national wife his brother was looking after their mother. Evidence of this can be found in paragraph [7] of the son’s witness statement and paragraph [6] of the appellant’s EEA daughter-in-law’s statement that their brother/brother-in-law, Raja Nouman Khalid, was caring for the appellant until he came to the United Kingdom.
20. In her own witness statement, the appellant also stated at paragraph [3] that she was assisted by her son, Raja Nouman Khalid, until he married and went to live in the United Kingdom.
21. In the circumstances, I am satisfied the Tribunal took account of the financial support but was entitled to conclude that the appellant’s essential needs were being met by someone other than her son and daughter-in-law who were living in the United Kingdom when the respondent’s decision was made.

22. The position may be different now and the outcome different but the Tribunal, as am I, was only concerned with the position as at the date of decision.
23. I therefore find there has been no error of law.

DECISION

24. There was no material error.
25. I uphold the original decision and dismiss the appeal.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis

**TO THE RESPONDENT
FEE AWARD**

I make no fee award as the appeal has been dismissed.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis