



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: OA/05949/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 12 October 2015**

**Decision & Reasons Promulgated  
On 30 October 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR**

**Between**

**MOSALLAM ABOSLO  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**ENTRY CLEARANCE OFFICER, BEIRUT**

Respondent

**Representation:**

For the Appellant: Mr A Moran, Legal Representative from Alexander Moran  
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge R Walker (Judge Walker), promulgated on 23 March 2015, in which he dismissed the Appellant's appeal. That appeal was against the Respondent's decision of 30 April 2014, refusing to issue a family permit under the Immigration (European Economic Area) Regulations 2006 (the Regulations).

2. The Appellant, a national of Syria born on 25 January 1954, had made the application for the family permit on 1 April 2014. He sought the relevant documentation on the basis that he was a dependent of his daughter, who resides in the United Kingdom with her Romanian spouse. The couple have two children. The application stated the purpose of the trip to this country was simply to visit the family members here.
3. The Respondent refused the application on the basis that the EEA national's passport had not been properly notarised, the Appellant was not related to his sponsor as claimed, and that the EEA national was not exercising Treaty rights.

### **The decision of Judge Walker**

4. By the time the appeal came before Judge Walker the issues concerning the passport, the relationship and the EEA national's status as a qualified person had been conceded by the Respondent. Therefore, the only issue remaining in respect of the EEA application was that of dependency (paragraph 23). It is also clear from the decision, the Appellant's skeleton argument and the Record of Proceedings that Article 8 was relied upon.
5. Judge Walker found that the Appellant was not a dependent of his daughter and her EEA spouse. He found that there were discrepancies in the evidence of the sponsor and her husband (paragraphs 24, 25, and 28). It was said that the money transfer receipts provided did not show a clear picture of financial support to the Appellant (paragraph 26). The judge concluded that it would have been "very difficult" for the sponsor to have sent money back to the Appellant in light of the household income (paragraph 29).
6. As to Article 8, Judge Walker did not accept that there was family life as between the Appellant and his daughter and son-in-law in this country. Although not necessary in light of this initial finding, the judge went on to conclude that there was no interference and in any event that the Respondent's refusal was not disproportionate (paragraphs 32-34).
7. The appeal was dismissed on all grounds.

### **The grounds of appeal**

8. The grounds are threefold. First, that the judge failed to have regard to relevant independent evidence, namely post-decision money transfer receipts which went to the issue of a pattern of financial from the sponsor to the Appellant. Second, that the judge failed to adequately reason his conclusion that the sponsor could not have afforded to send money back, as claimed. Third, that the judge failed to consider the Article 8 claim on the basis put forward by the Appellant, namely that he wished to visit his grandchild here and could not see them anywhere else.
9. Permission to appeal was refused by the First-tier Tribunal, but granted by Upper Tribunal Judge Goldstein on 24 August 2015.

### **The hearing before me**

10. Mr Moran accepted that the findings of Judge Walker contained in paragraphs 24, 26, and 28 were not challenged in the grounds. However, those findings were based upon oral evidence. There was independent evidence in the form of money transfer receipts which supported the Appellant's case. There had been overlooked by the judge. It was important that the original refusal of the family permit had not raised dependency as an issue. This only came up in the ECM review. The money transfer receipts relied on post-dated the initial decision but pre-dated the ECM review. There was no finding that the money transfers had not in fact been made. In respect of the conclusion that the sponsor was unable to afford the remittances, Mr Moran submitted that Judge Walker should have examined her bank statements, which showed cash withdrawals commensurate with the remittances. He should also have sought further clarification on the expenditure if it was a material concern. There was no clear finding as to whether any dependency existed, as opposed to complete dependency.
11. On the Article 8 issue, it was said that the judge simply failed to engage with the submission that the Appellant wished to visit not only his daughter, but also his grandchildren. This was a meritorious submission and one which required consideration.
12. Mr Tufan submitted that the post-decision money transfer receipts were not relevant here. It was an attempt to cure defects in the evidence. In any event, receipts did not mean that dependency existed. It was questionable whether the failure to address the Article 8 in full was material.

### **Decision on error of law**

13. I will take the Article 8 issue first. I find that there is a material error of law in the decision of Judge Walker. It is clear from the papers on file that the Appellant's Article 8 claim was based not simply on a desire to visit his daughter in the United Kingdom, but as importantly (or perhaps more so) his grandchildren too. The judge should have expressly addressed this element of the Article claim. This constitutes an error.
14. It is a material error because this aspect of the claim was not bound to fail in any event. The scope of relationships to which Article 8 can *potentially* apply may be wide, as has been recognised recently by the Upper Tribunal (see, for example, paragraph 23 of Mostafa (Article 8 in entry clearance) [2015] UKUT 00112 (IAC)). Article 8 is capable of covering the relationship (developed or nascent) between a grandparent and grandchild. In addition, visits intended to maintain or develop such relationships can be an important method of protecting and/or promoting Article 8 rights. It is true that Article 8 visit cases face real obstacles in the path of success (see Kaur (visit appeals; Article 8) [2015] UKUT 00487 (IAC)), but in the present appeal there is on the face of it a good arguable case to suggest that a visit elsewhere would have been highly unlikely, if not impossible,

given the state in which Syria findings itself and the financial constraints by the United Kingdom-based family. I note too that there is no express finding by the judge that the Appellant never intended to come to this country for a short visit.

15. I turn now to the EEA dependency issue. I have concluded, albeit by a narrow margin, that there are material errors here as well. Of course, several adverse findings of Judge Walker have not been challenged and this renders the Appellant's task all the more difficult, as the judge stated that he considered the case "overall". However, Mr Moran has persuaded me that there has been a failure to adequately address two elements of the evidence.
16. First, Judge Walker failed to consider the additional money transfer receipts at pages 161-167 of the Appellant's bundle. This evidence was in my view relevant to the issue of whether financial support had been provided by the sponsor to the Appellant before and as at the date of decision. Despite being post-decision evidence it was nonetheless admissible. Its potential import was to provide independent corroboration of pre-existing support, as indicating an on going pattern of remittances. This is analogous to the 'intervening devotion' principle commonly found in entry clearance cases concerning marriages, whereby post-decision evidence is relevant to the genuineness of the relationship as at the date of decision.
17. In respect of Mr Tufan's submission that the post-decision evidence could not cure defects in the Appellant's case, I note Mr Moran's point that three of the receipts in fact pre-date the ECM review, in which the issue of dependency was first raised. Thus, the evidence, at least to this extent, was all the more relevant. I note too that the judge did not find that the money transfer receipts produced were themselves false or unreliable.
18. Second, the adverse conclusion in paragraph 29 of the judge's decision is predicated upon his own concerns about household income and the ability to send money back to the Appellant. It appears to me as though he made his own calculations and then proceeded to apply a subjective test to the question of affordability and, in turn, the credibility of the sponsor's evidence. However, the sponsor had given evidence accepting that the expenditure was indeed difficult. This acceptance did not render the claimed remittances incapable of belief. I agree with Mr Moran and the grounds to the extent that a careful analysis of the evidence was required, with adequate reasons provided, to support this conclusion. I accept that the sponsor had produced bank statements which could have been interrogated, but were not (at least not as far as I can tell). Therefore, relevant evidence was not considered and the reasons set out in paragraph 29 are inadequate.
19. The two matters set out above are material because although other findings are unchallenged, the errors undermine the sustainability of what is in reality the core conclusion of Judge Walker, namely that the sponsor

and EEA national had not been financially supporting the Appellant to any significant extent. If the two errors had not occurred, the outcome of the appeal could have been different.

20. In light of the above, I set aside the decision of Judge Walker.

### **Disposal**

21. Neither Mr Moran nor Mr Tufan had strong views about whether the appeal should be kept in the Upper Tribunal or remitted to the First-tier Tribunal.

22. Having considered rule 2 of the Upper Tribunal Procedure rules and paragraph 7.2 of the Senior President's Practice Statements, I have decided to remit this appeal to the First-tier Tribunal. There are a variety of factual issues which require findings, including those relating to Article 8 and the EEA dependency claim. Aspects of existing evidence have not yet been considered adequately or at all.

23. I set out relevant directions for the remitted hearing, below.

### **Anonymity**

24. No direction has been sought and I see no need to make one in any event.

### **Decision**

**The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.**

**I set aside the decision of the First-tier Tribunal.**

**I remit the case to the First-tier Tribunal.**

### **Substantive Directions**

- 1. The appeal is remitted to the First-tier Tribunal to be heard afresh. No findings from Judge Walker's decision are preserved;**
- 2. The issues in the appeal are those of dependency under the Immigration (European Economic Area) Regulations 2006 (the Regulations) and Article 8.**

### **Procedural Directions**

- 1. The appeal is to be reheard at the Hatton Cross hearing centre;**
- 2. The appeal is not to be reheard by First-tier Tribunal Judge R Walker;**
- 3. An Arabic interpreter will be required for the remitted hearing;**

- 4. No date for the remitted hearing is fixed, as this will be a matter for the hearing centre itself.**

Signed

Date: 25 October 2015

H B Norton-Taylor  
Deputy Judge of the Upper Tribunal