



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: EA/06464/2017
EA/06465/2017
EA/06466/2017

THE IMMIGRATION ACTS

Heard at Field House
On 25th March 2019

Decision & Reasons Promulgated
On 2nd April 2019

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

SUMAIRA [S]
SHOIAB [S]
KIRAN [S]
(ANONYMITY DIRECTIONS NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr I Ali of Counsel, instructed by M & K Solicitors

For the Respondent: Ms S Chuna, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants appeal against the decision of First-tier Tribunal Judge Watson promulgated on 14 June 2018, in which the Appellants' appeals against the decisions to refuse to issue them with an EEA family permit under Regulation 7 of the Immigration (European Economic Area) Regulations 2016 (the "EEA Regulations")

dated 12 June 2017 were dismissed. In the hearing before UTJ Gleeson and myself on 7 February 2019, an error of law was found in the decision of the First-tier Tribunal and the appeal relisted to remake. That decision is attached as an annex and provides the background to the proceedings.

The appeal

2. Further to Regulation 12 of the EEA Regulations, a person is entitled to an EEA family permit, on application to an entry clearance officer, if they are the family member of an EEA national residing in the United Kingdom in accordance with the EEA Regulations. So far as relevant to the present appeal, Regulation 7(1)(b)(ii) of the EEA Regulations defines a “family member” as a direct descendent of a person who is a dependent of the same person.
3. The Respondent has accepted that the Appellants are direct descendants of the Sponsor and that the Sponsor is an EEA national exercising treaty rights in the United Kingdom and a qualified person. The only remaining issue in the appeals is whether the Appellants are dependent on the Sponsor.
4. In order to establish dependency, the Court of Appeal confirmed in the case of Lim v Entry Clearance Officer Manila [2015] EWCA Civ 1383, that it is not enough simply to show that financial support is in fact provided by the EU citizen to the family member, but also that the family member must need the support from his or her relatives in order to meet his or her basic needs. If the person can support himself, there is no dependency, even if he is given financial support by the EU citizen as the additional resources would not be necessary to enable him to meet his basic needs. If a person is unable to support themselves from their own resources, the court will not need to ask why that is the case, save perhaps where there is an abuse of rights. If for example a person chooses not to seek employment and become self-supporting, that is irrelevant.
5. The Appellants case is in essence that they are fully financially dependent on the Sponsor, neither they nor their mother having ever worked and are without any other source of income. Until January of this year, the First and Third Appellants were in full-time education at a sewing school and until October of last year, the Second Appellant was in full-time education doing an IT course. The Sponsor’s evidence is that all three of the Appellants are looking for work but have as yet not found employment given difficult market conditions in Pakistan.
6. In terms of financial support, there are receipts for money transfers from the Sponsor, mainly to the Second Appellant, the earliest being dated 31 July 2015 in the sum of £637 and further receipts for transfers in the region of £600 in September 2015, November 2015, December 2015, February 2016, June 2016, July 2016, August 2016, October 2016, December 2016, June 2017, August 2017, September 2017, November 2017, December 2017, February 2018, July 2018 (in the higher amount of £927),

August 2018, January 2019 (in the higher amount of £1136) and March 2019. The Sponsor's evidence is that money is sent regularly in the name of the Second Appellant as he is the eldest and only male family member and has to travel into the city to collect the money. On one occasion the money was sent to the Sponsor's wife directly, who was accompanied by the Second Appellant to collect it. On three occasions between November 2015 and February 2016, the money was transferred to a M Qadeer, who is said to be a family friend and next-door neighbour in Pakistan who was asked to collect the remittances during a period in which the Second Appellant was absent caring for his paternal aunt.

7. In his affidavit dated 4 March 2019, the Second Appellant confirms that he collects money sent by the Sponsor from the money exchange or bank. He states that it is a cultural norm that the male of the house would collect the money because they live in a rural area and it would not be convenient for the First or Third Appellants or their mother to travel to the city alone to do so. The Second Appellant passes on the money to his mother as head of the family in Pakistan. He further confirmed that the entire family is financially dependent on the Sponsor
8. In addition, the Sponsor visits the Appellants in Pakistan relatively regularly and on the last occasion in August 2018, he stayed for a month and withdrew £2000 from his account in the United Kingdom to take with him to give to his family.
9. In relation to the Appellants' studies, there are letters from the Kashmir Vocational Institute and Training Centre female dated 7 July 2017 in respect of the First and Third Appellants, and from the Chinar Institute of Modern Technologies dated 5 July 2017; all of which state that the Sponsor is registered as the father of the respective Appellant and has been paying the school fees and has regular contact with the Institute. Although these letters are identically worded, the Respondent has not directly taken issue with their authenticity. However, Ms Chuna submitted that little weight should be attached to these documents on the basis that they are not supported by any receipts showing payment of fees, identification of how much the fees were or how they were paid.
10. In his written evidence, the Sponsor said that he has regularly financially supported his family in Pakistan, from the time when he was in Spain and in the United Kingdom. The money is sent to cover their basic living expenses, including food and clothing, and pay for the childrens' school fees and school equipment. The Sponsor has remained financially responsible for the Appellants as his wife is not working and is also dependent on him.
11. In his oral evidence, the Sponsor confirmed the current position of the Appellants in Pakistan, that they had finished their education and were seeking work. He stated that at present, he had not reduced the amount of financial support he was sending following completion of their studies, but may do so in the future. He stated that he normally sends around £600, but recently had sent more for medical treatment as one of the Appellants was ill. The Sponsor's evidence was inconsistent as to whether it

was one of the Appellants who requested this or whether it was his wife and on either basis he didn't know specifically what was needed and had no evidence of receipts or medical bills. Similarly, the Respondent was asked about evidence of payment of education fees, which he stated he didn't have as he had never needed to ask for proof of the same from family members. The financial support sent went in the first instance to the Sponsor's wife, who controlled the money and who then distributed it to the Appellants depending on their need

12. Mr Mohammed Hafeez also provided written and oral evidence on behalf of the Appellants. He is a childhood friend of the Sponsor, having grown up in the same village in Pakistan to him and has visited the Appellants in Pakistan relatively recently. He confirms that the Sponsor provides for the whole family's financial upkeep and maintenance and that they are wholly dependent on him for the same.
13. In closing on behalf of the Respondent, Ms Chuna relied on the Entry Clearance Offices decisions, subject to the relationship between the Appellant and the Sponsor now having been accepted. However, she submitted that there remained insufficient evidence of dependency on the Sponsor in accordance with the case of Lim, as the limited evidence of financial remittances was insufficient. The Sponsor has not shown that he had control over the finances of the Appellants as claimed and was unable to give any evidence that the sums remitted were based on actual need, with no evidence of any greater or lesser need at different times. No receipts have been provided for payment of things such as education fees or medical bills. The financial remittances themselves have been sporadic and controlled by the Sponsor's wife, not the Appellants. It was further submitted that even if there was financial dependence, it was necessary to also have emotional or other dependence on the Sponsor and there was no evidence of the same in this case.
14. Ms Chuna further highlighted that there was a discrepancy between the evidence of the Sponsor and Mr Hafeez as to why the money is sent to the Second Appellant and not to other family members, given that the First and Third Appellants were regularly travelling to the city for studying and it was entirely unclear why remittances were sent to a third party who was not a family member in 2016. There was also no evidence at all as to how the remittances were being used by the Appellants. Overall, it was submitted that the Appellants had not, on the balance of probabilities, shown that they were dependent on the Sponsor.
15. In closing on behalf of the Appellant, Mr Ali reiterated that the position had to be assessed as at the date of hearing and determination of whether the financial remittances were sent by the Sponsor for the Appellants' essential needs. It was submitted that they were and that there was a history of regular remittances from July 2015 which in total amounted to over £21,000 of documented transfers. The money was used for the living needs, education and upkeep of the family and the Sponsor had fully explained why remittances were made to the Second Appellant as the only male family member.

Findings and reasons

16. As set out above, the only issue in the Appellants' appeals is whether they are dependent on the Sponsor in the United Kingdom. For the following reasons I find, on the balance of probabilities, that they are.
17. First, there is documentary and witness evidence (from the Second Appellant, the Sponsor and a family friend) of financial remittances from the Sponsor to his family in Pakistan (including his wife and the Appellants) dating back to July 2015. Although remittances have not been made on a strictly regular or monthly basis, they have been made with a degree of frequency and with largely consistent provision on each occasion. I accept the evidence of the Sponsor and the Second Appellant that in the main, financial remittances have been sent in the name of the Second Appellant for cultural and practical reasons given that he is the only male family member in Pakistan and is therefore given responsibility for collecting these sums from the city that is sufficient explanation for the use of one named beneficiary even though the First and Third Appellants also study in the city and travel there. There was no reasoned suggestion on behalf of the Respondent that in fact the financial remittances were not shared between all family members in Pakistan, including the Appellants, nor that it wasn't used for each of their needs.
18. I do not find the evidence of financial remittances to be undermined by the small number of occasions several years ago of remittances being made to a family friend and neighbour, for which the Sponsor has given a practical explanation which is plausible and credible in all the circumstances.
19. Secondly, there was further evidence of financial support from the Sponsor was specifically in relation to his visit in August 2018, of providing cash personally to the Appellants and his wife. This was supported by bank statements showing withdrawal of the same and passport entries showing travel.
20. Thirdly, there is in addition, the limited evidence of the Sponsor being responsible for the Appellants education fees, albeit without any evidence of specific amounts paid or receipts for the same. Although these appeals have been in process for some time and the issues well known to the Appellants, providing opportunity for further documentary evidence to be gathered, I do not find that the absence of such further evidence of specific payment of education fees, or of medical fees to undermine the Appellants' claims nor their credibility or that of the Sponsor. It is wholly understandable within a family situation, that a parent would not require documentary proof of sums paid by the child full financial remittances were made. In any event, there is sufficient evidence of financial remittances as above.
21. Fourthly, there is no evidence that the Appellants, nor their mother have ever been in employment, nor that they have any other financial resources, income or savings, available to them such that they would not require financial support from the

Sponsor. The Respondent has made no reasoned suggestion that this is the case. Although the Appellants are now adults and have undertaken training with a view to seeking employment in Pakistan, the fact that they have not yet obtained employment, either because of the job market conditions, for cultural reasons pending marriage or even if purely by choice, that is irrelevant for the purposes of this appeal. The Tribunal does not need to enquire as to the reasons why the Appellants are dependent on the Sponsor but only needs to determine that they cannot in fact support themselves. There is nothing before me to suggest that the Appellants are currently in a position to support themselves without financial support from the Sponsor.

22. Finally, in particular in the absence of any other form of support, it appears to be uncontroversial that the financial remittances from the Sponsor are for the Appellants' basic and essential needs, including accommodation, food, living expenses and up until very recently, fees for education.
23. For all of these reasons, I find that the Appellants have established that they are dependent on the Sponsor and there is no dispute that they are direct descendants of his, nor that the Sponsor is a qualified person in the United Kingdom. As such they satisfy the requirements of Regulations 7 and 12 of the EEA Regulations and their appeals are therefore allowed.

Notice of Decision

For the reasons given in the annexed decision, the making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it was necessary to set aside the decision.

The decision is remade as follows:

The Appellants appeals are allowed under the Immigration (European Economic Area) Regulations 2016.

No anonymity directions are made.

Signed



Date

28th March 2019

Upper Tribunal Judge Jackson



IAC-AH-DN-V1

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

Appeal Numbers: EA/06464/2017
EA/06465/2017
EA/06466/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 7 February 2019**

Decision & Reasons Promulgated

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Before

UPPER TRIBUNAL JUDGE JACKSON

Between

**MISS SUMAIRA [S]
MR SHOIAB [S]
MISS KIRAN [S]
(ANONYMITY DIRECTIONS NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr I Ali of Counsel, instructed by M & K Solicitors
For the Respondent: Ms A Everett, Home Office Presenting Officer

DECISION AND REASONS

1. The three appellants in this case appeal with permission the decision of First-tier Tribunal Judge Watson who dismissed their appeals against the refusal of an EEA family permit under Regulation 7 of the Immigration (European Economic Area)

Regulations 2016. At the same time an appeal by their mother was heard which was allowed by the First-tier Tribunal and there is no further challenge to that part of the decision.

2. Essentially the original reasons for refusal were overtaken by the time of the appeal, because in part they were on the basis that the relationship was not accepted between the appellants and their father, the Sponsor, who is a Spanish national in the United Kingdom, which was accepted by the time it came to the appeal before the First-tier Tribunal. Instead the only issue remaining was whether the children, as adults, were financially dependent on their father in the United Kingdom. There was no issue as to his status as a qualifying person in the United Kingdom.
3. The First-tier Tribunal's findings in relation to the children are contained in paragraphs 15 to 21 of the decision. The conclusion is that the appellants have not shown that they are genuinely financially dependent on the sponsor for their basic needs. The decision is challenged on five grounds. First, that the First-tier Tribunal failed to consider all of the evidence of financial remittances going back to 2015. Secondly, that the First-tier Tribunal reached conclusions that it was not entitled to in relation to the money transfer receipts considered upon which it could not be assumed that not all of the amounts were paid. This was not an issue raised by the respondent, nor was the issue raised with the sponsor at the hearing so that he could respond to it. Thirdly, inadequate credibility findings were made against the sponsor. Fourthly, the First-tier Tribunal findings as to the position of the female appellants as regards to studying and paid work were reached without any evidential basis. Finally, that the findings of the First-tier Tribunal were inconsistent, in particular finding that there was some irregular support which did not establish dependency, but no evidence of any other income.
4. As to the first and second grounds of appeal. At paragraph 16 there is a list of money transfer receipts that is said was put into evidence by the appellants which is taken into account. Those receipts go from 30 July 2016 up until 23 February 2018, for roughly consistent amounts on an irregular rather than monthly basis. There is some criticism of the nature of those receipts and concerns about the documents, some of which showed that cash had actually been paid, some showing that no amounts have been paid and that there is a running balance between them, such that the Judge concluded on the balance of probabilities that there was insufficient evidence to show that the amounts referred to were actually paid. There were however differences between those documents and that criticism does not apply to all of the documents relied upon. There is also a point taken by the Judge that the bank statements do not necessarily correlate to the amounts withdrawn in cash and transferred. There is however an accepted finding which is repeated later on that money has been sent on an irregular basis from the sponsor to his family in Pakistan, including for the appellants. In relation to the money transfer receipts, before the First-tier Tribunal there were also a number going back for a period of more than a year before those quoted in paragraph 16 of the decision, also showing irregular transfers of money. These go back to May 2015 but are not referred to at all in the

decision. It is on that basis far from clear that the First-tier Tribunal has had any regard to them or taken them into account.

5. A further finding follows in paragraph 19 from those in paragraph 16 about the evidence of financial remittances, that the evidence of financial support which was accepted had only been done shortly before the applications to enter the United Kingdom and that the money had been sent to bolster the applications such that there was no evidence of genuine dependency. Of course, the transfer receipts which date back to 2015 significantly predate the current applications for an EEA family permit which were made in May 2017. There was however a previous application for an EEA family permit in 2016 which was refused, although that is not expressly the point made by the First-tier Tribunal in paragraph 19.
6. The third ground of appeal was that the First-tier Tribunal erred in law in failing to make any no credibility findings in relation to the sponsor, although in part this is covered at least by reference to the sponsor's evidence not being accepted as being extremely vague and inconsistent. The First-tier Tribunal clearly considered that the sponsor should have been able to give more detail about a long-standing financial support arrangement. Unfortunately, in no part of the decision is the sponsor's evidence set out nor is there any reasons given as to why it was considered vague or inconsistent. No examples of such vagueness or inconsistency are given and it is entirely unclear on what basis those comments are therefore made.
7. As to the fourth ground of appeal, in paragraph 17 of the decision the First-tier Tribunal, the Judge notes concerns about documents from a sewing college and an IT college which are almost in identical form stating that the sponsor was paying the children's fees for their education. A further finding that it is unlikely that the two daughters have been studying without any pay as claimed at the ages of 26 and 23, is a finding which appears to have no basis on the evidence before the Tribunal and no particular reason why students would be paid for their studies, particularly if the culture in Pakistan is taken into account where adult children often remain within the family and are supported by them for a longer period and may not be working in such circumstances. That seems to be pure speculation without foundation within the paragraph.
8. As to the final ground of appeal, in paragraph 18 of the decision the Judge also refers again to the repeated finding that remittances have been made on an irregular basis, and the sponsor's own evidence that he has had periods over the years since he left Pakistan of not being able to send anything to the appellants, with the conclusion reached therefore that the appellants must have had other means of support. Again, there is no evidential basis for that, nor any reasons set out for the inference. It also arguably fails to consider the period immediately before the hearing and the situation as at the date of the hearing where there was evidence of financial support.
9. For these reasons, I find there are a number of errors and presumptions within the decision of the First-tier Tribunal which are not supported by the evidence that was

before the Tribunal or is not borne out by any background evidence at all. It is unclear from the reasons about the sponsor's credibility findings and overall I find the combination of the failure to take into account material evidence of financial support since 2015, failure to give reasons why the sponsor's evidence was considered to be vague and inconsistent and the presumptions around pay and work of adult children as well as considering the history of the matter to a far greater extent than as at the date of hearing, are in combination material errors of law in the findings of fact as to whether the appellants are dependent upon the sponsor in the United Kingdom. For these reasons the decision of the First-tier Tribunal in respect of those three appellants, not including their mother whose appeal was allowed, must be set aside.

10. The parties before me agree that the Upper Tribunal should retain this case to remake the appeal and that only limited further findings of fact are required. It was not possible to do this at the hearing on 7 February 2019 as an interpreter was not available for the sponsor to give further evidence. The case was adjourned, to be relisted before UTJ Jackson on 25 March 2019.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it is necessary to set aside the decision.

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

Directions

The appeal is re-listed for further hearing before UTJ Jackson on 25 March 2019 with a time estimate of 1.5 hours. An Urdu interpreter is required.

The Appellants are to file and serve any further written statements or evidence upon which they wish to rely no later than 4pm on 11 March 2019.

No anonymity direction is made.

Signed



Date

22nd February 2019

Upper Tribunal Judge Jackson