



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

Appeal Number: EA/01346/2020

THE IMMIGRATION ACTS

Heard at Field House

**On 21 December 2021
*Extempore decision***

**Decision & Reasons
Promulgated
On 24 February 2022**

Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH

Between

**FARAZ SAEED
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER - ISLAMABAD

Respondent

Representation:

For the Appellant: Mr Qaseem Ahmed, instructed on a direct access basis
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a decision of First-tier Tribunal Judge Rose promulgated on 17 March 2021, heard under section 82 of the Nationality, Immigration and Asylum Act 2002. The judge dismissed an appeal brought by the appellant against a decision of the respondent to refuse his application for a family permit brought on the basis that he was a dependant of an EEA national residing in the United Kingdom. The application was submitted on 21 November 2019 and refused on 11 December 2019.

Factual background

2. The appellant applied for an EEA family permit, claiming to be dependent upon his uncle, Naeem Abdul, (“the sponsor”), a citizen of France residing in the United Kingdom under the Immigration (European Economic Area) Regulations 2016.
3. The Entry Clearance Officer refused the application. The basis of the refusal was threefold.
4. First, the Entry Clearance Officer considered that the appellant had failed to provide evidence of the money transfers from the sponsor upon which his claimed dependence was based. Although he had provided receipts purportedly demonstrating that the sponsor had transferred the money as claimed, there was no evidence that the funds had been collected upon them being received in Pakistan. Secondly, there was no evidence concerning the length of the claimed dependence, which the Entry Clearance Officer expected to cover a prolonged period, in light of the claims of dependence made by the appellant. Finally, there was no information relating to the appellants’ financial circumstances of the appellant in Pakistan, which went to the issue of whether he was, in fact, a dependant on the sponsor. The appellant appealed to the First-tier Tribunal, and the appeal was heard by Judge Rose.

The decision of the First-tier Tribunal

5. Before the First-tier Tribunal, the appellant relied on an extensive bundle of evidence of some 211 pages. It featured two witness statements by the appellant, Western Union money transfer receipts, a number of bank statements and other supporting materials. In his decision, Judge Rose reached the following operative findings. At [10] he concluded that on the balance of probabilities the documents that had been provided were reliable and that in the absence of proof of a forgery, he accepted them as truthful. The operative findings reached by the judge were as follows. At [13] he said:

“13. ... I have no evidence that the transfers identified in the bank statements are coming from the Sponsor, that they are going to the Appellant and that he relies on those transfers.

14. At the very least, I would wish to see a witness statement (bearing a statement of truth) from the Sponsor, indicating how much he sends to the Appellant and for how long he has been sending it. This should be accompanied by receipts showing his money transfers. There should also be a witness statement from the Appellant, confirming that he receives the sums. I would, additionally, expect to see bills identifying what his living expenses are (e.g. rent, travel, food....etc) and evidence of any other income. A witness statement from a family member or friend, who is of good standing in his community, confirming the Appellant’s dependency would also assist.”

The judge dismissed the appeal.

Grounds of Appeal

6. There are four Grounds of Appeal. First, that the First-tier Tribunal erred in relation to the assessment of dependency. Ground 2 contends that the First-tier Tribunal made “wrong findings” when assessing the appellant’s claimed dependency. Ground 3 is that the First-tier Tribunal erred by failing to “confront

the correct question and applying the appropriate standard of proof in relation to the evidence". Under Ground 4 it is claimed that the judge failed to ascribe significance to a cover letter which accompanied the application for the family permit submitted by the appellant.

7. Permission to appeal was granted by Upper Tribunal Judge Gleeson on all grounds.

Discussion

8. At the heart of Mr Ahmed's submissions in this matter is a challenge to findings of fact reached by the judge. The judge did not have the benefit of oral submissions nor had he heard evidence from the French sponsor or evidence or submissions in response from the respondent. The consideration of this case by the First-tier Tribunal took place wholly on the papers.
9. Appeals lie to this Tribunal on the basis of an error of law, not on the basis of a disagreement of fact. However, it is common ground that certain findings of fact may be so infected by error that they amount to an error of law. So much is clear from the well-known authority of *R (Iran) v the Secretary of State for the Home Department* [2005] EWCA Civ 982. At [9] Lord Justice Brooke summarised the jurisprudence concerning findings of fact being infected by errors of law. At subparagraph (vii) his lordship summarised one such basis in the following terms:

"Making a mistake as to a material fact which could be established by objective and uncontentious evidence, where the appellant and/or his advisers were not responsible for the mistake, and where unfairness resulted from the fact that a mistake was made."

10. In relation to the substantive issues before the First-tier Tribunal, before me there was no complaint on the part of the appellant that the judge misunderstood the relevant legal framework (although the Grounds of Appeal upon which permission was granted appeared to contend that he did). Mr Ahmed focused his helpful submissions on the judge's analysis of the evidence that was contained in the bundle that had been submitted rather than the judge's application of the legal framework.

Legal framework

11. Regulation 8 of the Immigration (European Economic Area) Regulations 2016 ("the 2016 Regulations") defines certain persons as an "extended family member". The regulation does not itself confer a right to reside, but for many who enjoy a putative right to reside under the 2016 Regulations, the essential issue is whether they fall into the definition of "extended family member". Regulation 8 provides:

"Extended family member'

8.— (1) In these Regulations 'extended family member' means a person who is not a family member of an EEA national under regulation 7(1)(a), (b) or (c) and who satisfies a condition in paragraph (2), (3), (4) or (5).

(2) The condition in this paragraph is that the person is—

- (a) a relative of an EEA national; and
- (b) residing in a country other than the United Kingdom and is dependent upon the EEA national or is a member of the EEA national's household; and either —
 - (i) is accompanying the EEA national to the United Kingdom or wants to join the EEA national in the United Kingdom; or
 - (ii) has joined the EEA national in the United Kingdom and continues to be dependent upon the EEA national, or to be a member of the EEA national's household."

Discussion

12. As set out above, the judge found against the appellant on the basis that the claimed evidence of dependency simply could not establish a situation of dependency in fact existed. It was common ground at the hearing before me that the specific reasons given by the judge for reaching that conclusion were simply not open to him. The judge said that there was no witness statement from the appellant setting out his circumstances in Pakistan and his need for dependency. However, there was such a statement, addressing precisely those matters: see page 34 of the appellant's bundle. At [10] the appellant stated:
- "10. I can confirm that I am unemployed. I have no other source of income or support and I rely solely on my sponsor, financially and emotionally. Since my childhood I have had a very special bond with him and he has always treated me like his own son.
11. I also want to state that I am suffering from Prosais disease since 2002. This is a serious chronic condition and over the years it has affected my health drastically. I am not just unemployed but because of this illness I am often bedridden for days. My bones had weaken [sic] and at times I find it hard to get up from the bed ... All these years my Uncle has been supporting the treatment and medicine costs and I cannot express how grateful I am for all this."
13. For the judge to state in the decision that there is no statement from the appellant to the effect that he received and needed the support provided by the sponsor was a mistake of fact, as I have just set out. There was a statement doing precisely that.
14. I turn now to the judge's findings that there was no evidence that money had been received by the appellant, having been sent by the sponsor. Throughout the bundle were many pages of Western Union transfers from the sponsor to the appellant. Also in the bundle were bank statements generated by the appellant's internet banking service in Pakistan. They demonstrate corresponding transactions and payments in. There are also statements demonstrating the appellant's day-to-day financial transactions and, as Mr McVeety realistically accepted before me, those statements do not reveal any other income alongside

what appeared to be the appellant's day-to-day financial transactions. Had the appellant submitted a schedule setting out the dates of the payments, the page number in the bundle for the Western Union transfer receipts and the corresponding transactions and page numbers on the bank statements, the judge may well have had his attention drawn to the very evidence which he stated did not exist.

15. However, in light of the judge's error in relation to the appellant's statement, it is not necessary for me to consider whether the *R (Iran)* criteria are met in relation to the judge's analysis of the bank statements. It was clear from the appellant's unchallenged statement that there was a situation of dependence, and that the translations which are relied upon to demonstrate the financial element to that dependence span back to 2016.
16. While there is no evidence relating to the first year of claimed dependency, 2015, I am satisfied, as was Mr McVeety before me, that there was sufficient evidence of dependency during later periods, such that this decision may be remade, allowing the appeal.
17. Drawing this analysis together, I make the following findings to the balance of probabilities standard, taking the Entry Clearance Officer's concerns in turn. First, the appellant's bank statements demonstrate that the money transfer receipts were in respect of funds received by the appellant, from the sponsor. Secondly, the appellant's statement demonstrated prior dependence before the appellant travelled to the United Kingdom, and during his time in the UK, thereby demonstrating that the criteria contained in 8(2)(b) of the 2016 Regulations are met. Thirdly, the appellant's statement outlined the extent of his claimed dependency on the sponsor. Those findings deal dispositively with appellant's appeal against the Entry Clearance Officer's decision to refuse his family permit. I find that the appellant has demonstrated that he is dependent upon the sponsor. Since that was the only reason relied upon by the Entry Clearance Officer for refusing the application

Notice of Decision

The decision of Judge Rose involved the making of an error of law on a material matter and is set aside.

I remake the decision and allow the appeal: this appeal is allowed under the Immigration (European Economic Area) Regulations 2016.

No anonymity direction is made.

Signed Stephen H Smith
Upper Tribunal Judge Stephen Smith

Date 31 January 2022

TO THE RESPONDENT **FEE AWARD**

I make no fee award, for the following reason. The appellant's appeal has been allowed on the basis of documents he submitted as part of the appeal, rather than a mistake made by the Entry Clearance Officer. Under the circumstances, a fee award is not appropriate.

Signed Stephen H Smith
Upper Tribunal Judge Stephen Smith

Date 31 January 2022