



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-001687
UI-2022-001693, UI-2022-001696
UI-2022-001699
First-tier Tribunal No: EA/04228/2021
EA/02684/2021, EA/02713/2012
EA/04232/2021

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 24 March 2023**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**AZRA KHATOON
SANIA ARIF
MUHAMMAD USMAN ARIF
KHATIBA ARIF
(NO ANONYMITY ORDER MADE)**

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Raj, Sponsor

For the Respondent: Mr Diwnycz, a Senior Home Office Presenting Officer.

Heard at Phoenix House (Bradford) on 18 January 2023

DECISION AND REASONS

1. The appellants' appeal with permission a decision of First-tier Tribunal Judge Birrell ('the Judge') promulgated on 17 August 2021, in which the Judge dismissed the appeals of the above appellants, all members of the same family unit, against the refusal of an Entry Clearance Officer to grant them

EEA Family Permits to enable them to join their Sponsor, a Spanish national exercising treaty rights in the United Kingdom.

2. In addition to the documentary evidence the Judge had the benefit of seeing and hearing the Sponsor give oral evidence. This Tribunal is grateful to the Sponsor for attending today and engaging in the discussions that occurred in relation to this appeal.
3. At the conclusion of the hearing I advised the Sponsor that my decision will be that this appeal is dismissed for which I now give my reasons.
4. I will say at the outset, as the Sponsor was advised, that although his brother, who is closely related to the above appellants and who lives with the Sponsor in the UK and who has medical needs of his own, may be missing his family whose presence in the UK may be of assistance to him, sympathy for the position of the family unit does not warrant the appeal being allowed if it would otherwise be refused. The question of whether the appellants could succeed in an application for entry clearance as family members of Sponsor's brother under Appendix FM or under Article 8 ECHR on the basis of family life is not an issue for me to consider today. That is, however, a matter on which the appellants/Sponsor can seek independent legal advice.

Reasons for dismissing the appeal

5. The Judge sets out findings of fact from [9] of the decision under challenge. Before examining the specific findings and the challenge made, I deal with one issue at this point, which was the Sponsor's claim, made on more than one occasion, that the issues identified by the Judge which led to the dismissal of the appeal arose as a result of errors of interpretation. I find such a claim without merit and an attempt to undermine the Judge's findings based upon the evidence that was received when there is no basis for doing so. As the Sponsor was advised, I have the benefit of reading the Judge's transcript of the evidence that was given, in which there is no indication of any difficulties with the interpreter which would no doubt have been pointed out to the Judge by the Sponsor who, despite requesting an interpreter for the First-tier and Upper Tribunal's in Punjabi, clearly speaks and understands English and would have been aware of any mistranslation of the answers that he gave. The findings by the Judge make reference to the evidence and clearly reflect the evidence made available.
6. At [10] the Judge writes:
 10. I heard evidence from the Sponsor Mr Raj who I did not find was a credible witness for the reasons set out below. I find that in oral evidence a number of issues arose as to his circumstances and those of his family members such that I have concluded he deliberately chose not to provide a full clear picture to the Respondent in order for them to make a decision based on all of the circumstances. That the Respondent is entitled to look at 'all of the circumstances' and be provided with a full picture of the circumstances of both the Sponsor and the Appellants is clear from Regulation 8 as the decision to issue a Family Permit is a discretionary one where it relates to an extended Family member not automatic where criteria are met with a direct family member.
7. When the concerns recorded by the Judge in relation to his evidence was pointed out to the Sponsor on more than one occasion he made claims, for example in relation to alleged plans as to how he would provide support for this family of four additional individuals in his own household which he claimed he could do by reference to his son working and other members of

the family providing an extra income into the family, which he admitted was an account not provided to the Judge.

8. A further example arose in relation to the property in Pakistan. The Judge noted the evidence was that the property had been transferred into the Sponsor's name on the death of his father. The Judge notes that the normal practice within society in Pakistan is for property to pass to the older brother, of which the Sponsor had one on the facts. The core issue identified by the Judge is that the ownership register is dated 7 February 2019, the date the Sponsor claimed the property was transferred to him on his father's death, yet his father did not die until August 2019. When asked about this the Sponsor stated that he meant to say that before his father's death the property had been transferred into his sole name and that it did not mean in every case that the property would pass to the eldest son. When asked whether this was an account that the Sponsor had provided to the Judge he accepted that he had not said this, but that he was saying it now.
9. Apart from the concerns the Judge records in the determination the Sponsor's replies in relation to these two issues clearly indicate that he was saying to the Upper Tribunal things that he claimed reflected the factual reality which he had not mentioned to the Judge. Whether these issues are true or not or make any difference is not relevant at this stage as I am considering whether the Judge has erred in law in a manner material to the decision to dismiss the appeal on the basis the evidence the Judge was asked to consider. I find the Judge's concerns recorded at [10] of the decision under challenge are clearly within the range of those available to the Judge on the evidence.
10. The Judge accepted that the Sponsor had provided remittances to the appellants in Pakistan and I accept the appellants' argument that the Judge has erred in law in finding that those remittances cover the period 11 October 2018 to 8 August 2019 with no evidence of financial support provided by the Sponsor being maintained, when later on within the appellant's bundle are further remittances dated 2020 and 2021. I do not find any error made in that respect is, however, material as making payments does not, per se, establish that a person can meet the requirements of Regulation 8 of the Immigration (European Economic Area) Regulations 2016 ('the 2016 Regulations'), which requires proof that any remittances that are made are required to meet an individual's essential needs. The Judge was unable to place any weight upon the Sponsor's evidence in relation to this matter as such evidence was found to lack credibility.
11. The Judge also considered whether it was appropriate to exercise discretion in favour of the appellants and refers to regulation 13 of the 2016 Regulations which provides it is a relevant factor if the parties become an unreasonable burden on the social assistance system of the United Kingdom.
12. In relation to housing, the Judge noted the Sponsor's evidence that he lives in a three bedroomed rented property with his wife, brother and four teenage children, meaning there are already seven people occupying this property which would increase to 11 people if the appellants' appeal is allowed and they are able to join their Sponsor in the UK. The finding of the Judge at [14] that there was nothing in the evidence to show the property would not become overcrowded or that the owner, the landlord, had given permission for additional people to live at the property, has not been shown to be finding outside the range of those available to the Judge on the evidence.
13. The Judge records that the Sponsor acknowledged the concerns in relation to this aspect and stated he would rent another property and that a friend had

suggested they could provide property at a reduced rent, but the Judge notes there was no evidence to support this claim and the Judge did not find it credible that the rental cost of such property and the additional expense that it will create for the Sponsor would not have an adverse impact on the welfare and best interest of his own children. That is a finding within the range of those available to the Judge on the evidence.

14. There is also the issue that if there was an increase in housing benefits or other property -related payments as a result of the extra people in the Sponsor's household that will be an additional burden upon the social assistance system of the UK.
15. The Judge "draws the strands together" at [15] in which it is concluded that the appellants had not met the evidential burden of establishing (a) they have lived in a house owned by the Sponsor (b) that they have continued to be financially dependent upon the Sponsor since 2018, (c) that in all the circumstances it is appropriate to exercise the available discretion in favour of the Appellants and issue a Family Permit. With the exception of (b) these are sustainable findings.
16. For completeness, and to ensure there is no misunderstanding, an individual who meets the requirements of the Regulations in relation to housing or maintenance does not have an automatic right to enter the United Kingdom. It is settled law that whether an extended family member is granted leave to enter the United Kingdom as a matter of discretion of the Secretary of State. There is nothing irrational in the conclusion of the Judge, which is supported by adequate reasons, that on the facts of this appeal it is lawful for discretion to be exercised in refusing the applications for EEA Family Permits.
17. I find the appellants have failed to establish legal error material to the decision to dismiss the appeal on the basis it has not been shown that the terms of regulations eight and 12 of the 2016 Regulations have been met.

Notice of Decision

18. There is no material legal error in the decision of the First-tier Tribunal. The determination shall stand.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

19 January 2023