IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-001781
UI-2021-001782
UI-2021-001783
UI-2021-001784
First-tier Tribunal No:
EA/05675/2021
EA/05681/2021
EA/05691/2021
EA/05692/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 06 April 2023

Before

UPPER TRIBUNAL JUDGE HANSON

Between

Mrs Hajra Bibi
Miss Zainab Shahzad
Mr Muhammad Hassan
Miss Minahil Shahzad
(NO ANONYMITY ORDER MADE)

Appellant

and

AN ENTRY CLEARANCE OFFICER

Respondent

Representation:
For the Appellant: Mr Shea instructed by K & A Solicitors LTD
For the Respondent: Mr Tan, a Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 7 February 2023

DECISION AND REASONS

1. The above appellants, citizens of Pakistan, are a family unit composed of a mother and her three children. They appealed the refusal by an Entry Clearance Officer (ECO) of their applications to enter the UK as extended family members of an EEA national ('the Sponsor').
2. The Judge sets out findings of fact from [9] in which the Judge records not being satisfied that financial dependency had been established, for although the Judge

accepts that the relationship between the Sponsor and the appellants is not an issue, [10], and that satisfactory evidence had been provided to show the appellants were reliant on the monies that the Sponsor sent to cover their essential needs, [11], the Judge was not satisfied that the appellants received financial support from the EEA national but rather from the EEA national's children. The Judge's reasons for this are set out at [12] in the following terms:.

> 12. Thirdly, however, I dismissed the appeal as I am not satisfied that the Appellants receives "*financial support from the EEA national"* but rather part of the support comes directly from his children, as he does not have the financial means to personally financially support the appellants; I reach that conclusion for the following reasons. Specifically: he has a limited income of circa £4224 per annum, lives in a 2/3 bedroomed house with his wife and 3 children (one of whom has care needs such that she is bed bound) with no space to accommodate the appellant's so as to avoid overcrowding and he is reliant upon state benefits to support himself and his own family in the United Kingdom (his wife and three daughters). In particular, he is reliant upon his Carers Allowance and his daughters Disability Living Allowance - which he conceded formed "*the majority of his income"*. Moreover, he conceded that he also received money from his oldest daughter to supplement household income, and whilst claiming his daughter to be an EU citizen he produced no documentary evidence to establish that fact. In the circumstances, I cannot be satisfied that the sponsor has the resources to support the extended family member and that they receive financial support from an EEA national.

3. The appellant sought permission to appeal on three grounds which assert, inter alia, Ground 1: factual error in the Judge describing the sponsor's property and in concluding there was insufficient accommodation for the appellants. Ground 2: that the issue of low income was not raised in the refusal letter and was only raised in cross examination at the hearing. The Judge is said to make an error of fact in relation to whether the sponsor's daughter was an EEA national and because the issues was not raised, there was no obligation upon the Sponsor to produce the evidence from the daughter by way of her Italian passport, pre-settled status, payslips and bank statements. Ground 3: asserts the Judge imposed the wrong test at [12] as the correct test requires the qualified person to be providing support to meet the essential needs of the family member. The Grounds argue under the EEA Regulations there is no such threshold as exists in the Immigration Rules and that the Judge erred in applying the same.
4. Permission to appeal was granted by another judge of the First-tier Tribunal on 12 November 2021.
5. In her Rule 24 reply dated 15 December 2021 the Secretary of State sets out her position in the following terms:

    1. The respondent to this appeal is the Secretary of State for the Home Department. Documents relating to this appeal should be sent to the Secretary of State for the Home Department, at the above address.

    2. The respondent opposes the appellant's appeal. In summary, the respondent will submit *inter alia* that the judge of the First-tier Tribunal directed himself appropriately.

    3. The key finding in the determination is at para 12 and was that although the sponsor sent money to the appellants he in fact did not have the financial resourses to do this by himself and relied on his benefits, benefits given to his daughter and income from his eldest daughter. The judge therefore

concluded that the appellants did not receive financial support from an EEA national. The Secretary of State does not consider that the number of rooms in the house was a material consideration in this conclusion. Furthermore the true financial position of the sponsor only became apparent during the hearing, had the sponsor wished to adduce further evidence on this point they should have sought an adjournment to do so.

4. With respect to the point made at para 3 of the permission regarding the FTT judge having failed to take into account the bundle of documents, this is not in the grounds of appeal and there is no reference to the judge having failed to have regard to any particular document.
5. The respondent invites the tribunal to uphold the decision of the first tier.

Discussion

6. Even if the issue of low income was not raised in the refusal it is accepted in the grounds that it was raised during the course of the hearing. I have had the benefit of considering the Judges notes in which the evidence given on that occasion has been recorded.
7. The refusal letter did raise the question of whether the Sponsor is a qualified person in accordance with Regulation 6 of the Immigration (European Economic Area) Regulations 2016 and the fact the appellants had failed to provide sufficient evidence of the Sponsor's status in the United Kingdom. That is relevant as any financial support being provided for an extended family member by the EEA national.
8. There is no indication, even if this matter was raised at the hearing, that an adjournment was sought to adduce further evidence. The appellants were represented by Mr Shae on that occasion too and the opportunity clearly existed to apply for an adjournment if it was thought the appellants had been prejudiced.
9. The grounds of appeal refer to the post hearing disclosure of additional evidence by way of an Italian passport for the Sponsor's daughter and evidence of her earning in excess of £18,600 per annum. Whilst that may be the case, this evidence was not before the Judge.
10. On the basis of the evidence the Judge did have to consider the assessment of the Sponsor's income and financial situation has not been shown to be infected by legal error. Whilst it was stated by Mr Shea that a holistic assessment of all the evidence was required, this appears to be the exercise undertaken by the Judge at [12].
11. If the situation is as now appears, that the Sponsors older daughter is an Italian national who is in employment, is supplementing the household income and that the Sponsor uses a proportion of that income sent to Pakistan to support the appellants, that that element of the appeal may be made out. That can only be found to be the case, however, if post hearing evidence is taken into account. The Judge specifically notes at [12] the Sponsor conceded he was receiving money from his older daughter although there was before the Judge insufficient evidence to even prove this point, according to the findings made.
12. There is also the point raised at [12] relating to the availability of accommodation. The Sponsor's case is that he will support the extended family members both by virtue of the payments that are currently being made, which the Judge made findings upon, and the provision of relevant accommodation and funds if they are permitted to come to the UK. It was stated by Mr Tan that the holistic assessment required consideration of all relevant aspects.
13. It is important to note there is no right of an extended family member to enter the UK under EU law. That is clearly established in case law. Whether an

individual is permitted to enter the United Kingdom, even if they established the required element of dependency, is at the discretion of the Secretary of State.

14. There is an overlap between the consideration of the housing needs and the public interest relevant to the dependency and discretion arguments. Paragraph [12] is set out above. The Judge's concerns are that the evidence suggested the Sponsor lives in a 2/3 bedroomed house with his wife and the children with insufficient proof he can accommodate the appellants and avoid overcrowding.
15. The Grounds of Appeal assert a factual error by the Judge is the Sponsor claims in his oral evidence he stated that he and his wife and three children were living in a house which consists of three bedrooms at the first floor, one room at ground floor, and one room in the loft. The Ground asserts the Judge's recollection of the evidence is not accurate.
16. As stated above I have the opportunity of looking at the Judges notes of the evidence given at the hearing. In relation to accommodation issue it is written,:

    Q what property do you live in?

    A a 3 story house

    Q how many bedrooms

    A 2 beds and space for one

    It total?

    2 beds and 2 halls and loft space

    3 beds and space and attic that can be converted.

17. I was at the date of the hearing before the Judge five people are already living in this accommodation. The proposal is that a further four people be allowed to enter the UK to live in the same accommodation meaning there will be nine occupants. There is no evidence in relation to the age of the respect of individuals or the dimensions of the rooms concerned.
18. I find no error made out in the Judge's recollection of the nature of the property in light of the evidence that was given at the hearing. The Judges key finding is that there was insufficient evidence to establish that the property would not become overcrowded. The Housing Act contains specific criteria as to whether a property will become overcrowded and which units of accommodation can be taken into account and which cannot. One issue that immediately comes to light from the evidence is that even if there is a space in the attic, according to the Sponsor that would have to be converted. That clearly shows that at the date of the hearing and decision there was no satisfactory accommodation in the attic that could be lawfully used as a bedroom. The cost of a loft conversion is an average £40,000 with the cheapest converted to Building Regulation standards often being around £20,000, with no evidence before the Judge that this work had even been started or was affordable.
19. It was suggested by Mr Shae that if the appellants were allowed to enter the UK they will be here lawfully and could therefore claim accommodation and if there was an increase in public cost to the public purse if larger accommodation is required that was acceptable. Increased cost to the public purse, which is a likely consequence if larger accommodation is required, as the Sponsor has not shown that he will be able to meet the costs of the same himself from his available income or that of his daughter, is a further issue relevant to the exercise of discretion.
20. I find no merit in the ground asserting the Judge applied the incorrect test by indicating a reference or relationship between the income criteria under the Immigration Rules and that under EU law. That misrepresents the Judge's findings. The Judge was clearly concerned that the material assets available to

the Sponsor were not sufficient to warrant the appeal being allowed, based upon the Sponsor's own income and the accommodation issues.

21. Having considered matters afresh, including the submissions received from Mr Shae, I find that the appellants have failed to establish arguable legal error material to the decision to dismiss the appeal sufficient to warrant the Upper Tribunal interfering any further in this matter.

Notice of Decision

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

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

7 February 2023