



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006405, UI-2022-006406, UI-2022-006407
First-tier Tribunal No: EA/50586/2022, IA/03357/2022; EA/09478/2021, EA/52858/2021; IA/11668/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 31 October 2023

Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH
DEPUTY UPPER TRIBUNAL JUDGE BOWLER

Between

MS MINAHAL NAZIR
MS SHAFaq NAZIR
MS MOMINA MOMINA

(NO ANONYMITY ORDER MADE)

Appellants

and

ENTRY CLEARANCE OFFICER - PAKISTAN

Respondent

Representation:

For the Appellant:

Mr Kanangara, Counsel, instructed by Jusmount & Co Solicitors

For the Respondent:

Mr Wain, Senior Home Office Presenting Officer

Heard at Field House on 28 September 2023

DECISION AND REASONS

Background

1. The Appellants are citizens of Pakistan who have sought to rely on sponsorship by their sister-in-law, Mrs Raza, who is an EU (Latvian) national, to show that they were family members of Mrs Raza for the purposes of the Immigration (European Economic Area) Regulations 2016 as amended ("the EEA Regs").

2. Following a hearing on 3 May 2023 we promulgated a decision in which we concluded that two linked decisions of the First-tier Tribunal (“FTT”) which had been promulgated following a hearing on 8 November 2022 contained a material error of law. We directed that the appeals should be reheard in the Upper Tribunal, although certain findings made by the FTT were to be retained. A copy of that decision is annexed to this decision.

The Issue

3. The issue in dispute in these appeals is whether the Appellants have shown (applying the usual civil standard of the balance of probabilities) that they were dependant on Mrs Raza. In considering the question of dependency the Respondent has produced a document verification report (“DVR”) challenging money transfer evidence provided by the Appellants.

The Evidence

4. Mr Kanangara confirmed that there was no new evidence for the hearing before us. The Appellants continue to rely upon a bundle of 109 pages. The Respondent relies upon two supplementary bundles of 54 pages and 48 pages. In addition, we have been provided with the same combined bundle as previously made available to the FTT. We also heard oral evidence from Mrs Reza given by her through a Latvian interpreter.

The Appellants’ case

5. Mr Kanangara submits that reliance should be placed on the fact that the Appellants’ father declared in his earlier application for a family permit that the Appellants were his dependants. The evidence is that the Appellants lived with their father as one family unit in Pakistan and all of them relied upon the financial support given by Mrs Raza and her husband. Money transfer receipts confirm the provision of support. An analysis provided by the money transfer company “ACE” of the money transfer receipts has confirmed some of the receipts and those suffice to show the dependency of the Appellants on Mrs Reza. Mrs Raza’s evidence was that the Appellants had no other income apart from the money she and her husband sent to Pakistan. Some of the ACE transfer receipts show payment made by Mrs Raza’s husband. Consequently, the case of *Lim v Entry Clearance Officer Manila* [2015] EWCA Civ 1383 makes clear that the test of dependency under the EEA Regs is met.

The Respondent’s case

6. The Respondent relies upon the DVR and the attached report from ACE to challenge the Appellants’ claim that the transfer receipts show that they are dependent on Mrs Reza.
7. Furthermore, Mr Wain submitted that we should take account of the fact that Mrs Reza could not explain why there was no reference to any money transfers to ACE in her bank account, or anything about the Trustly account referred to in one of the transfers. Notably, Mrs Reza could not explain a paragraph in her own witness statement addressing the ACE transfers. Furthermore, her evidence in her witness statement appears to accept that there was tampering with the money transfer receipts as stated by ACE. The money transfer receipts are therefore unreliable when the evidence is considered in the round under *Tanveer Ahmed (Documents unreliable and forged) Pakistan* * [2002] UKIAT 00439. Furthermore, the DVR process has shown that the money transfer receipts are not authentic in line with the guidance of *QC China* [2021] UKUT 00033.

8. Mr Wain submitted that account should be taken of the fact that Mrs Reza had sought to sponsor 11 family members. When Mrs Reza was asked how she could afford to do so given her income she had said that her husband also sent money, but no other evidence has been provided of him doing so.

The Law

9. The Citizens Directive (EP and Council Directive 2004/38/EC) provided for the residence rights of EU citizens and their family members. The Citizens Directive was incorporated into UK domestic law by the EEA Regs.
10. In order to come within the family member provisions of the EEA Regs it is necessary for the Appellants to show that they were extended family members as provided so far as relevant in regulation 8 as follows:

“(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”

11. “Dependent” is not defined in the EEA Regs but has been considered by the courts on numerous occasions. In the case of *Lim v Entry Clearance Officer Manila* [2015] EWCA Civ 1383 the Court of Appeal made clear that the critical question was whether a claimant was in fact in a position to support themselves in order to meet their basic needs without the support from the EEA citizen. If the claimant could support themselves, there was no dependency, even if they were given material support by the EEA citizen.
12. Subsequently in *Latayan v Secretary of State for the Home Department* [2020] EWCA Civ 191 the Court of Appeal considered the approach to evidence in such cases:

“...dependency does not have to be “necessary” in the sense of the Immigration Rules, that is to say an able bodied person who chooses to rely for his essential needs on material support of the sponsor may be entitled to do so even if he could meet those needs from his or her economic activity: see *SM (India)*. Nevertheless where, as in these cases, able bodied people of mature years claim to have always been dependent upon remittances from a sponsor, that may invite particular close scrutiny as to why this should be the case... note further that Article 10(2)(e) of the Citizens Directive contemplates documentary evidence. Whether dependency can ever be proved by oral testimony alone is not something that we have to decide in this case, but Article 10(2)(e) does suggest that the responsibility is on the applicant to satisfy Secretary of State by cogent evidence that is in part documented and can be tested as to whether the level of material support, its duration and its impact upon the applicant combined together meet the material definition of dependency.”

Findings and Reasons

13. The following findings made by the FTT were preserved by the error of law decision:

- a. Mrs Raza was granted Indefinite Leave to Remain in the UK on 26 August 2019 and was a qualified person for the purposes of the EEA Regs.;
 - b. Mrs Raza was considered to be unfit for work on 5 February 2022;
 - c. Mrs Raza successfully sponsored her father-in-law, Mr Mohammed Nazir and her mother-in-law, Ms Begum, to come to the UK with their son Mr Ali Raza. Mr Nazir, Ms Begum and Mr Raza were dependent on Ms Raza;
 - d. Mr Ali Raza and Mrs Raza were shown by a marriage certificate to have married on 5 February 2015;
 - e. the Appellants are shown by evidence in a Family Registration Certificate to be the daughters of Mr Mohammed Nazir and Ms Begum;
 - f. Mr Mohammed Nazir's family permit application stated that his dependents were Shafaq Nazir born on 15 May 1997, Momina Momina born on 4 October 2003 and Minahal Nazir born on 3 March 2012.
14. We find that the Appellants have not shown that they were dependant on Mrs Raza for the following reasons.
15. We are not satisfied that the Appellants have discharged the burden of proof on them (which is applied to the usual civil standard of the balance of probabilities) because we find that the weight given to the documentary evidence of money transfers and the evidence of Mrs Raza should be substantially reduced having regard to the following:
- a. The documentary evidence in money transfers from ACE has been srutinised by the Respondent. In the verification exercise, ACE identified that the vast majority of the claimed transfers were either not found at all in ACE's records, or, where found, one or more of the remitter, beneficiary and transaction date have been "tampered". There is a further collection of some 13 transfers in the period September 2018 to April 2020 which were found where the transaction date, remitter and beneficiary corresponded with the ACE records, but the transfers were replicated one or more times; for example there is a transfer dated 26 September 2018 showing a transfer of funds from Ali Raza to Mr Nazir but another transfer has been identified with the same transfer code for a transfer on another date from Ms Raza to Faiza Nazir. None of the transfers identified by ACE as corresponding to their records shows a transfer from Mrs Raza. Instead, the small proportion of transfers which correspond to the ACE records show monies transferring from Ali Raza;
 - b. In a supplemental Witness Statement of Mrs Raza responding to the DVR she says: "I confirm that the applicants have no knowledge of any documents supplied by the agent and they have never intended any misrepresentation on tempering." When Mr Kanangara was asked by us to clarify this with Ms Raza in re-examination, she was wholly unable to provide any explanation. The Witness Statement therefore appears to acknowledge that the transfer evidence has been tampered with;
 - c. Mrs Raza was also unable to provide any explanation for a reference to certain remittances having been refunded by ACE in her Witness Statement. We were left with the strong impression that Mrs Raza had not provided much of the information in her Witness Statement despite the fact that she had initially confirmed that the Witness Statement was hers and was truthful;
 - d. In cross-examination Mrs Raza was asked various basic questions about transferring money to her father-in-law in Pakistan but repeatedly gave vague answers or was unable to provide any adequate response. She could not explain why there was no evidence of money being transferred from, or withdrawn from, her bank account to fund the payments. She claimed that the payments were made

using a phone app but the funds needed to come from somewhere and she confirmed that monies from her Santander bank account had been used. However, there was no evidence in the Santander statements to show monies being used as claimed;

- e. It was only after a series of questions had been put to Mrs Raza about the claimed transfers of monies by her to Mr Nazir that, when asked how she could afford to support so many people from her monthly income, Mrs Raza said that her husband also supported his father and sisters. This was consistent with the fact that the small number of transfers confirmed by ACE showed monies moving from Ali Raza to Mr Nazir, but the answer did not explain the numerous issues with the evidence relating to the claimed transfers made by Mrs Raza.
16. Given the issues we have identified with the documentary evidence of the money transfers and the oral and written evidence of Mrs Raza herself, we are not satisfied that the very limited evidence of transfers confirmed by ACE as made by Mr Ali Raza to Mr Nazir is sufficient to discharge the burden of proof upon the Appellants. On the face of the evidence before us there is very little to show that Mrs Raza had any real involvement in providing monies to the Appellants via their father.
 17. Furthermore, given the issues we have identified with the evidence of Mrs Raza we do not find her to be a reliable witness. The only evidence that Mrs Raza provides the Appellants financial support needed for their basic needs is the very general statement made by her that she provides their only source of income. We find this to be insufficient applying the principles of *Lim* and *Latayan*.
 18. Therefore for all the reasons set out in this decision we dismiss the appeals.

Notice of Decision

1. The appeals are dismissed.
2. As we have dismissed the appeals a fee award is not appropriate.

T Bowler

Judge of the Upper Tribunal
Immigration and Asylum Chamber

18 October 2023

Annexe



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

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Appellant

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MS MINAHAL NAZIR
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MS MOMINA MOMINA

Respondent

Representation:

For the Appellant: Mr Kannangara, counsel, instructed by Jusmount & Co Solicitors
For the Respondent: Mr Wain, Senior Home Office Presenting Officer

Heard at Field House on 3 May 2023

DECISION AND REASONS

1. This is an appeal by the Respondent against two linked decisions of Judge Hillis of the First-tier Tribunal ("the Judge") written after a hearing held on 8 November 2022, allowing the Appellants' appeals against the Respondent's decisions made on 4 February 2020 and 20 March 2021 to refuse their applications made under the Immigration (European Economic Area) Regulations 2016 ("the EAA Regs").
2. For ease of reference we refer to the entry Clearance Officer as the Respondent.

The Respondent's grounds of appeal

3. The Respondent sought permission to appeal on the ground that the Judge made an error of law because he concluded that the Appellants were dependents of their sponsor as a result of the mistaken belief that their father was granted a family permit on the basis that he had proved dependency under the EEA Regs, when in fact his application had been granted under Appendix EU (Family Permit) of the Immigration Rules. Consequently, his dependency on the same sponsor had been assumed for the purposes of the Immigration Rules. Such an assumption could not carry across, as by the Judge, to the Appellants' applications under the EEA Regs.

First-tier grant of permission to appeal

4. Permission to appeal was granted by Judge Saffer of the First-tier Tribunal on 7 February 2023 on the basis that it was arguable that the Judge may have misunderstood the basis on which the Appellant's father's financial dependency had been considered.

The Appellants' response

5. There is no Rule 24 response. Mr Kannangara recognised that the Appellants' father had applied for and obtained a family permit under the Immigration Rules and not the EEA Regs. He provided a copy of that application to us at the hearing. He submitted, however, that in this case the application form used by the Appellants' father showed that he provided detailed evidence of his dependency of sponsor. That application was before the Judge who was therefore entitled to take into account the provision of that information to the entry clearance officer.

6. Furthermore, Mr Kannangara submitted that the relevant definition in Appendix EU (Family Permit) refers to a "dependent parent" not simply a "parent". The Appellant's father therefore had to satisfy that definition. While it was accepted that until June 2021 the Respondent could in theory take the easier approach of assuming dependency under the terms of the rules, the application form showed that closer examination of the extent of support took place.

Discussion

7. The Appellants made their applications for family permits on the basis of being dependant family members of Ms Raza, their sponsor. Their father, Mr Nazir, previously obtained a family permit relying upon his relationship with Ms Raza, a citizen of Latvia, who is his daughter-in-law. He obtained a family permit under the encapsulation of the EU Settlement Scheme contained in Appendix EU FM. However, the Appellants have applied under the EEA Regs as extended family members.

8. It is not in dispute that under the EEA Regs the Appellants needed to show dependency on Ms Raza. The issue before us is whether the findings made by the Judge

are sound given the fact that he relied on Mr Nazir's family permit as showing dependency on Ms Raza.

9. The relevant provisions of Appendix EU FM define a "dependant parent" as follows:

(a) the direct relative in the ascending line of a relevant EEA citizen (or, as the case may be, of a qualifying British citizen) or of their spouse or civil partner; and

(b) (unless sub-paragraph (c) immediately below applies):

(i) dependent on the relevant EEA citizen or on their spouse or civil partner:

(aa) (where sub-paragraph (b)(i)(bb) or (b)(i)(cc) below does not apply) at the date of application and (unless the relevant EEA citizen is under the age of 18 years at the date of application) that dependency is assumed; or

(bb) (where the date of application is after the specified date and where the applicant is not a joining family member) at the specified date, and (unless the relevant EEA citizen was under the age of 18 years at the specified date) that dependency is assumed; or

(cc) (where the date of application is after the specified date and where the applicant is a joining family member) at the date of application and (unless the relevant EEA citizen is under the age of 18 years at the date of application) that dependency is assumed where the date of application is before 1 July 2021; or

(ii) dependent on the qualifying British citizen (or on their spouse or civil partner) at the date of application or, where the date of application is after the specified date, at the specified date, and (unless the qualifying British citizen is under the age of 18 years at the date of application or, where the date of application is after the specified date, the qualifying British citizen was under the age of 18 years at the specified date) that dependency is assumed; ...

10. Paragraph (c) deals with applications where the sponsor is a spouse, civil partner or durable partner and therefore does not apply in this case. Ms Raza was Mr Nazir's daughter-in-law.

11. Mr Nazir applied before 1 July 2021. He applied in December 2020. Although the provisions defining a dependant parent raise some potential issues of interpretation in other contexts, the position is clear for an applicant who applied before 1 July 2021. Under (b)(i)(cc) the dependency is assumed.

12. Indeed, the original version of the Immigration Rules in place at the time of the application simply stated that "(c) the dependence of the direct relative in the ascending line on the relevant EEA citizen (where the relevant EEA citizen is not a person under the age of 18 years), ... is assumed".

13. It is therefore the case that the dependency of Mr Nazir had to be assumed under the rules in place. We take into account the fact that the application form asked for evidence of dependency. We are aware that at the time the same form was being used for applications made under the EEA Regs and Appendix EU FM. However, there would have been no basis for the entry clearance officer to investigate dependency further. We are also aware that there have been cases where the entry clearance officer has wrongly challenged an application for failing to show dependency where that was not required. If

that had occurred, there would have been a clearer basis for the Judge to conclude that the Respondent was satisfied about Mr Nazir's actual, as opposed to assumed, dependency. However, there is no evidence that there was any such challenge was made. At most the Judge was therefore entitled to find that Mr Nazir's dependency was assumed.

14. This means that we agree with the Respondent that the Judge was incorrect in relying, as he did, in his conclusion that the Appellants were dependent on their sponsor, Ms Raza, not only on the basis that that their father had described them as dependents in the household in his application, but also on the basis that "the entry clearance officer who granted Mr Nazir's application was content that he received money from Ms Raza as her dependant as defined in the EEA Regulations."

15. This was a material error of law as it formed the basis for the Judge's conclusions about the Appellants' dependency on Ms Raza. We must therefore allow this appeal. However, we are satisfied that much of the Judge's decisions otherwise should be preserved.

16. There are two linked decisions. In the decision for Ms Minahal Nazir and Ms Shafaq Nazir we preserve the Judge's findings made in paragraphs 23-28 and 30. In the decision for Ms Momina Momina we preserved the Judge's findings made in paragraphs 28-24 and 39.

17. In relation to Ms Monina's decision the Judge considered a document verification report and concluded that it would be unfair to attach any weight thereto as the Appellant was not in a position to deal with it due to the lack of service by the Respondent. This is a matter which is therefore potentially at large in the case of Ms Momina. We therefore make directions in relation thereto below.

18. Given the extent of preserved findings we are satisfied that the correct course is for the appeals to be reheard in the Upper Tribunal. The only matter to be determined is the extent of the Appellant's dependency on their sponsor under the EEA Regs.

Notice of Decision

19. The making of the decision of the First-tier Tribunal involved the making of a procedural error which constituted an error of law. The decision is set aside with the findings identified above preserved.

20. The decision will be re-made at a resumed hearing on a date to be notified to the parties. This will take place in the Upper Tribunal.

Directions

21. No later than 4 weeks after being sent this decision the Respondent shall confirm to the Appellants and the Tribunal whether the document verification report is relied upon.

22. No later than 2 weeks after being sent this decision the parties shall exchange skeleton arguments which shall be copied to the Tribunal.

T. Bowler

Judge of the Upper Tribunal
Immigration and Asylum Chamber

18 May 2023