



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003377
UI-2022-003378
First-tier Tribunal Nos: EA/05846/2021
EA/05807/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

Before

UPPER TRIBUNAL JUDGE FRANCES
DEPUTY UPPER TRIBUNAL JUDGE BAGRAL

Between

SHAHEEN ZAFAR
JUNAID IQBAL
(NO ANONYMITY ORDER MADE)

Appellants

and

THE ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellants: Mr M. Iqbal, the Sponsor

For the Respondent: Ms S. McKenzie, Senior Home Office Presenting Officer

Heard at Field House on 10 November 2023

DECISION AND REASONS

Background

1. The appellants are citizens of Pakistan born on 1 February 1966 and 20 March 1992 respectively. They are mother and son.
2. Their appeals are against the decision of the Entry Clearance Officer ("ECO") to refuse their applications for a family permit pursuant to Regulation 8 of the Immigration (European Economic Area) Regulations 2016 ("the EEA Regulations") to join, Mr Mohammed Iqbal, the sponsor, who is a Dutch national exercising Treaty rights in the UK. The appellants are the half-sister and nephew of the sponsor respectively.

3. Their appeals were allowed by First-tier Tribunal Judge Ripley on 23 February 2022. The ECO sought, and was granted, permission to appeal against that decision, and by a decision promulgated on 3 July 2023, Upper Tribunal Judge Frances found that the First-tier Tribunal had materially erred in law and set aside its decision, with a direction to the appellants to file and serve further evidence and witness statements no later than 28 days before the rehearing of the appeal in this Tribunal.
4. In setting aside the decision of the First-tier Tribunal, Upper Tribunal Judge Frances preserved its findings at [9] and [10] which read as follows:

“9. The issue in these appeals concerns only the dependency of the appellants on the sponsor. There is no dispute that the sponsor is an EEA national and that he resides in the UK and is exercising treaty rights here. It is also not disputed that the first appellant is a relative of the sponsor, his half-sister and the second is also a relative, his nephew.

10. The appellants have submitted evidence of approximately 26 more [sic] transfers made by the sponsor to the appellant from April 2020 up until March 2021. These show, as the appellants claim, that the sponsor is sending money every two weeks, normally in the region of £35 -£45. The transfers have each been updated by Western Union to record that the transfer is complete, and I am satisfied that the details on the transfers themselves provide adequate evidence, on the balance of probabilities, that the appellants have received the monies sent to them by the sponsor. The transfers bear the name of both the sender and the recipient.”
5. The resumed hearing came before Upper Tribunal Judge Frances on 14 August 2023. The respondent was represented by Ms S Cunha and the sponsor attended in person. The sponsor applied for an adjournment to provide witness statements from the appellants, and this application, unopposed by Ms Cunha, was granted in view of the overriding objective. The appellants were directed “to file and serve witness statements, on the Upper Tribunal and the respondent, no later than 4pm on 11 September 2023”. Additional evidence was provided by the appellants on 18 August 2023.
6. The resumed hearing was listed before Upper Tribunal Judge Frances and Deputy Upper Tribunal Judge Bagral, sitting as a panel, and it falls to us to remake the decision.

The Resumed Hearing

7. The resumed hearing took place on 10 November 2023. The respondent was represented by Ms McKenzie. The appellants were not legally represented. The sponsor attended in person and did not require an interpreter. The sponsor and Ms McKenzie agreed that the documentation before the Tribunal was limited to:

- (i) the respondent's bundles for each appellant – including the VAF, the refusal decision, DNA evidence, money transfer receipts from the sponsor to the appellants, a copy of the sponsor's passport showing stamps of entry to an exit from Pakistan and the first appellant's passport;
 - (ii) the Notice of Appeal and Grounds of Appeal – including a letter of explanation in response to the refusal, medical certificates and pharmacy receipts relating to the first appellant and rent receipts; and
 - (iii) additional evidence filed by the appellants in response to the Tribunal's directions and includes – affidavits from the appellants dated 15 and 17 August 2023 respectively, a "self-statement" from the first appellant dated 15 August 2023, a "Notice of Court Divorce" issued on 15 August 2023, a letter from Dr Usman Akbar dated 18 August 2023 relating to the first appellant, a letter from Raja Mubarik Ali, a High Court Advocate dated 6 June 2023, a letter from Lahore Foto Lab dated 7 August 2022 relating to the second appellant, a receipt dated 9 December 2022 from FAST Mobile & Computers, a photograph of the second appellant sitting in front of a desktop computer, a landlord's letter dated 5 June 2023, a typed list of the appellants expenditure, money transfer receipts and electricity bills.
8. We explained to the sponsor the procedure we would adopt. As the sponsor had not prepared a witness statement, we asked him some questions from the outset for the purposes of clarification and he was then cross-examined by Ms McKenzie.
9. In answer to questions from the Tribunal it is the sponsor's evidence that the first appellant and her husband divorced in accordance with Islam "a long time ago". It was customary for older women to accept a verbal divorce. The first appellant was initially supported by her uncle after her divorce, but since 2010 or 2011, the sponsor has been her sole source of financial support. The sponsor did not keep the receipts for monies sent prior to 2020. He previously used his local corner shop to send monies but now uses Western Union. He visits the appellants regularly in Pakistan. The first appellant was depressed after her divorce, but she did undertake some domestic work for rich households and received food in return.
10. The sponsor said the second appellant completed his metric school education, but ceased going to school in or around 2014 or 2015. He said the second appellant was working in construction, but he encouraged him to undertake a computer course, which he was unable to complete due to the Covid-19 pandemic. It is the sponsor's evidence that the

second appellant is undertaking an apprenticeship at Lahore Foto Lab and is learning the skills of photography and film production.

11. In cross-examination the sponsor clarified his earlier evidence and stated the second appellant ceased attending primary school in 2008 after his parents' divorce. He confirmed that Lahore Foto Lab was based in Rajapur and not Lahore. He explained the second appellant's apprenticeship involved him, "carrying and holding cameras and making movies", and in return he was given "pocket money". It was his evidence that when the second appellant worked on a "big production" he received "big pocket money, food, clothes and shoes". When pressed by Ms McKenzie, the sponsor stated the second appellant received 500 to 5000 rupees as pocket money. He could not say what that money was spent on other than food. He denied the second appellant was paid a salary.
12. The sponsor said the appellant's live in a small village about three to four miles from the main city. The first appellant's husband had left the village, but it remained his place of permanent residence and his family still lived there. He stated the first appellant had no contact with her husband after the divorce as this was forbidden in Islam. The first appellant continued to use her husband's name on her passport and identity card because she did not want to be known as a divorced woman. He advised her not to use his name and said that she intended to remove it once her divorce was legally registered.
13. It is the sponsor's evidence that the first appellant's medical treatment was paid by him out of the money he sends through Western Union. The doctor is paid in cash and does not issue receipts. The appellants live in rented accommodation. There is no tenancy agreement. The rent is paid in cash directly to the landlord who also does not provide receipts. The appellants pay for gas and electricity after the landlord informs them of the amount owed.
14. We then heard submissions from Ms McKenzie and we gave the sponsor an opportunity to make a reply. We do not need to recite them here. They are reflected where necessary in our conclusions below.

Conclusions - remaking

15. The appellants must satisfy the provisions of Regulation 8 of the EEA Regulations which provides:

"Regulation 8 — "Extended family member"

- (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 the conditions in paragraph (1A), (2), (3), (4) or (5). [(1A) not relevant]
- (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." [(3)-(7) not relevant]

16. The burden of proof is on the appellants and the standard of proof is the balance of probabilities. We have taken all the written and oral evidence into account before reaching our decision. We may not explicitly refer to all the evidence but that should not be taken as indicating that we have ignored any relevant item of evidence.

17. The starting point for the appeal is to consider why the application for a family permit was refused. In the notice of refusal dated 25 and 29 March 2021 respectively (the Notice), the operative reasons given by the ECO is in identical terms for each appellant and is as follows:

- On your application you state that your sponsor has resided in the UK since 02 May 2003 and that you are financially dependent on them. As evidence of this you have provided money transfers from your sponsor to you dated from October 2018 to February 2020. Unfortunately this limited amount of evidence in isolation does not prove that you are financially dependent on your sponsor. I would expect to see substantial evidence of this over a prolonged period, considering the length of time your sponsor has been resident in the United Kingdom.
- It is also noted that you have not submitted all of the corroborating remittance receipts for these transfers, therefore, these transfers cannot be verified. Similarly, in isolation, the fact of transferring money is not evidence that it is needed by the recipient to meet their essential living needs.
- This department would expect to see evidence which fully details your financial position and circumstances which would prove that without the financial support of your sponsor your essential living needs could not be met. In the absence of any further evidence, this department cannot sufficiently establish your dependency, either wholly or partly, upon your EEA sponsor because we are unable to establish if you need the financial support from the EEA national to meet your essential needs.

18. It is clear from the Notice that the sole issue in this appeal is the issue of dependency. It is also appreciably clear that the appellants have had sufficient notice of the ECO's concerns, namely, that the evidence

adduced to support the application was insufficient to establish their dependency on the sponsor.

19. As to dependency, we bear in mind the decision of the Court of Appeal in Latayan v SSHD [2020] EWCA Civ 191 in which Jackson LJ said:

"23. Dependency entails a situation of real dependence in which the family member, having regard to their financial and social conditions, is not in a position to support themselves and needs the material support of the Community national or his or her spouse or registered partner in order to meet their essential needs: *Jia v Migrationsverket Case C-1/05; [2007] QB 545* at [37 and 42-43] and *Reyes v Migrationsverket Case C-423/12; [2014] QB 1140* at [20-24]. As the Upper Tribunal noted in the unrelated case of *Reyes v SSHD (EEA Regs: dependency) [2013] UKUT 00314 (IAC)*, dependency is a question of fact. The Tribunal continued (in reliance on *Jia* and on the decision of this court in *SM (India) v Entry Clearance Officer (Mumbai) [2009] EWCA (Civ) 1426*):

"19. ... questions of dependency must not be reduced to a bare calculation of financial dependency but should be construed broadly to involve a holistic examination of a number of factors, including financial, physical and social conditions, so as to establish whether there is dependence that is genuine. The essential focus has to be on the nature of the relationship concerned and on whether it is one characterised by a situation of dependence based on an examination of all the factual circumstances, bearing in mind the underlying objective of maintaining the unity of the family."

Further, at [22]

"... Whilst it is for an appellant to discharge the burden of proof resting on him to show dependency, and this will normally require production of relevant documentary evidence, oral evidence can suffice if not found wanting. ..."

20. We begin by reminding ourselves of the preserved findings of the First-tier Tribunal which we set out at [4]. There is no dispute the appellants and sponsor are related as claimed. We accept the appellants have established they received regular funds from the sponsor from April 2020 up until March 2021. We also accept the evidence that funds amounting to an average monthly sum of 43,764 rupees have since been remitted by the sponsor to the first appellant between January to May 2023. However, we note that in Lim - ECO (Manila) [2015] EWCA Civ 1383, at [25], the Court held that it is not enough simply to show that financial support is in fact provided by the EU citizen to a family member. The family member must need the support from his or her relatives in order to meet his or her basic needs.

21. The evidence adduced by the appellants is, in our judgement, insufficient to enable them to discharge the burden of proof. We agree with Ms McKenzie that the sponsor's evidence was vague, and upon our closer examination of the evidence as a whole, we are of the view that

there are serious reasons to be concerned about the claims made in support of this appeal. We find the written testimony of the appellants and the oral evidence of the sponsor is replete with contradictions, and the documentary evidence is neither reliable nor sufficient proof of the appellants dependency on the sponsor. We do not accept the first appellant is separated from her husband, and nor do we accept that the appellants and the sponsor, have been candid about their personal and financial circumstances for the following reasons.

22. First, despite the appellants being on notice of the ECO's concerns, and them having ample opportunity to address those concerns following receipt of the ECO's Notice and following the adjournment of this appeal on 14 August 2023, their written testimony is vague and lacking in detail. Other than asserting in general terms, that the sponsor is their sole financial provider, very little detail is given about their domestic and financial circumstances. For example, it is striking that neither appellant refers to living in rented accommodation, state how that rent is paid and to whom, whether they pay for any utilities and neither provides a breakdown of their monthly expenditure. It is difficult to discern with any degree of clarity from their written testimony what their essential living needs are and the costs expended in order to meet those needs.
23. Second, we acknowledge that a list of purported expenditure was submitted as part of the additional evidence served by the appellants in response to the Tribunal's directions, but we are not materially assisted by this evidence. The evidence comprises of a single typed page of expenses for rent, electricity, medicines and food. The costs of electricity and food are given as monthly averages, unlike the costs of rent and medication, and the documentary evidence does not adequately support these costs.
24. Third, the sponsor's evidence does not sit comfortably with the appellants' evidence and the documentary evidence purporting to establish their personal circumstances. For example, the sponsor stated in evidence that the first appellant was initially supported by her uncle after her divorce, and that, his support commenced in 2010 or 2011. It is notable that the first appellant in her written evidence makes no reference to being supported by an uncle. On the contrary, her evidence suggests that the sponsor has been their "...sole source of income..." since her divorce. Similarly, the second appellant asserts that they have been, and are, "fully dependent" on the sponsor and that they have no other source of income, however, this stands in stark contrast to the sponsor's evidence that the second appellant whilst undertaking an apprenticeship with Lahore Foto Lab receives monies of 500 to 5000 rupees, food, shoes and clothing. This evidence we consider is in itself fatal to the claim of the second appellant that he is genuinely dependent on the sponsor.

25. Fourth, the appellants' evidence does not sit comfortably with the contents of an earlier "Explain" letter that appears to have been sent to this Tribunal together with supporting evidence following the grant of permission to appeal in 2022. Therein it is stated either by, or on behalf of the second appellant, that he is self-employed selling fruits and vegetables "but in reality he is a full time carer for his mother...". There is no reference to these matters by the second appellant in his affidavit. The reference to previous self-employment undermines his claim that he has been "fully dependent" on the sponsor since his parents' divorce. Further, there is no satisfactory medical evidence that the first appellant requires full time care, and it is not clear if that claim is true, how the second appellant is able to undertake an apprenticeship which commenced in June 2022 whilst caring for his mother on a full-time basis.
26. Fifth, as for the first appellant, the evidence purporting to establish that her husband, Zafar Iqbal, dissolved their marriage through a formal pronouncement of a Talaq under Islamic law, is unsatisfactory, and is a claim that we do not accept. We find the evidence is internally inconsistent, lacking in detail, contradicted by the sponsor's evidence and indeed the documentary evidence. We acknowledge, that the first appellant declared her relationship status as "separated" in the VAF, however, the documentary evidence submitted with the application contradicts that assertion. There are money transfer receipts from the sponsor to the first appellant bearing her husband's name and, in particular, one such receipt identifies the first appellant as "Shaheen Zafar W/O Zafar Iqbal", and the biometric page of her passport issued on 26 February 2015 states that she is married to Zafar Iqbal. We note that this is a common theme throughout the documentation and it is not just isolated to official documents such as the first appellant's passport and identity card as the sponsor sought to suggest. For example, medical certificates, the "E-Stamp" of the court issuing the affidavits and, the letter from Dr Akbar all refer to the first appellant as the wife of Zafar Iqbal. We agree with Ms McKenzie therefore, that absent a reasonable explanation, the evidence strongly suggests that the first appellant is not separated from her husband.
27. We are satisfied that we have not been given a satisfactory explanation for the clear anomalies in the evidence and for the first appellant's continued use of her husband's name if they divorced under Islamic law in 2008. Whilst we have borne fully in mind the cultural context with which we are concerned, there is no background evidence supporting the sponsor's evidence that older women who live in rural villages such as the first appellant do not seek to register their divorce and continue to use their husband's name as they do not wish to hold the status of a divorced woman. Further, that evidence does not sit comfortably with the assertion made in the "Explain" letter, which states the divorce was not legally registered because there were no assets to divide, and that, the first appellant continued to use her husband's name

because she had hopes of reconciliation. It is further striking that the first appellant does not refer to any of these matters in her written testimony of August 2023, when she was fully aware of the concerns of the ECO, and which she ought to have addressed in her evidence.

28. Sixth, we take into account the “certificate” issued by Mr Raja Mubarik Ali, an “Advocate High Court” dated 6 June 2023 who is instructed to act on behalf of the first appellant “to complete her official paper work of divorce proceeding and help to issue a proper Divorced certificate...” [sic]. This evidence carries little probative weight. Whilst we do not judge this evidence from a UK standpoint, the language used in this letter is rather loose and contains spelling and grammatical errors and is not of a standard that one would expect from a High Court Advocate. Further, Mr Ali refers to a verbal divorce taking place on 11 May 2008 between the first appellant and “Mrs, . Zafar Iqbal...” [sic]. Not only does he mis-state Mr Iqbal’s title, but we also note, the exact date of the divorce he references does not appear elsewhere in the evidence. Further still, Mr Ali refers generally to the first appellant having no contact with her husband, that she still uses his name and that he does not support her “financially” [sic]. These assertions plainly derive from the first appellant and/or sponsor and do nothing to assist this case given the deficiencies we have identified in the evidence overall. Consequently, such evidence attracts little weight.
29. Likewise, a document that is said to be a “Notice of Court Divorce” issued on 15 August 2023 is evidence that has very little probative value, primarily, because we have not seen a translation of that document. However, we note from the court “E-Stamp” at the top of that document, which is in English, identifies the first appellant’s husband as the “Applicant”, which does not sit comfortably with the evidence that there has been no contact with the first appellant’s husband since the Talaq in 2008.
30. Seventh, similarly, we are unable to attach much weight to eleven rent receipts because other than being able to discern the dates of 2019, 2020, 2022 and 2023, and the signature of the second appellant, the rent receipts are not accompanied by a certified translation. Further, this evidence is contrary to the evidence of the sponsor that the landlord does not issue receipts. We further take into account the letter from the appellants’ landlord dated 5 June 2023, but we are not greatly assisted in substance by a four-line letter which states that he receives a monthly rent of 7,000 rupees from the appellants. We agree with Ms McKenzie that it was open to the landlord to have confirmed the evidence of the appellants that he is paid in cash and that additional charges are levied for the cost of electricity, but he does not do so. We find that the electricity bills in the landlord’s name do not advance the appellants case in the circumstances.

31. Eighth, we have been provided with medical evidence relating to the first appellant who has diabetes, hypertension and lower back pain. The letter from Dr Akbar does not support the evidence that she requires full-time care and has mobility issues. Whilst he asserts that she suffers from moderate to severe complications he does not state what they are, and most significantly, as Ms McKenzie pointed out, he does not refer to being paid for any advice or treatment. This evidence together with the pharmacy receipts are not sufficient to establish the first appellant's dependency on the sponsor.
32. In summary, on the facts and evidence of this case, the picture put forward in respect of the appellants' circumstances is that they cannot survive without the financial support from the sponsor. However there is limited evidence in respect of the appellants' circumstances in Pakistan. The evidence that has been presented suggests that the first appellant is not separated from her husband as claimed and the second appellant receives monies, and other essential items such as food, clothes and shoes for work undertaken as an apprentice. It is our considered view, that the evidence does not establish that the money transferred by the sponsor is for the essential and basic needs of the appellants without which they could not support themselves. Whilst we do accept that the sponsor pays, and has paid funds to the appellants, we are not satisfied, for the reasons given above, that the appellants have proved that those payments establish the dependency which they claim. Accordingly, we remake the decision dismissing the appellants' appeals.

Notice of Decision

Appeal dismissed

R Bagral

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

24 November 2023