



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005450
First-tier Tribunal No:
EA/00987/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 13 August 2023

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

Kushnud Ullah
(NO ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Nasar Ullah Khan Bashir (sponsor)

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

Heard via MS Teams on 20 July 2023

DECISION AND REASONS

Introduction

1. The Secretary of State has been granted permission to appeal the decision of First-tier Tribunal Judge Lloyd promulgated on 17 August 2022. For convenience the parties are referred to by their designation before the First-tier Tribunal. Permission to appeal was granted by First-tier Tribunal Judge Aldridge on 7 November 2022.

Anonymity

2. No anonymity direction was made previously, and there is no reason to make one now.

Factual Background

3. The appellant is a national of Pakistan who applied for an EEA Family Permit to join the sponsor, Mr Bashir, in the United Kingdom as the extended family member of an EEA national. That application was most recently refused by way of a decision dated 13 March 2021. In that decision the respondent rejected the claim that the appellant was dependent upon his sponsor for detailed reasons set out therein.

The decision of the First-tier Tribunal

4. The respondent was not represented at the hearing before the First-tier Tribunal. The judge noted that the respondent requested an adjournment as there was no Presenting Officer available to attend but decided to proceed with the hearing. The judge concluded that the appellant had met the evidential burden of establishing dependency and allowed the appeal.

The grounds of appeal

5. The grounds of appeal made two points. Firstly, that the judge erred in refusing to adjourn the appeal because an adjournment was called for due to serious allegations which had been 'levied' against the appellant and sponsor regarding false documents. Secondly, it was argued that the judge failed to take account of material matters, specifically a Document Verification Report referred to in the decision notice.
6. Permission to appeal was granted on the basis sought, with the judge granting permission making the following remarks.

It is arguable that the judge erred by failing to grant the application to adjourn when considering the serious accusation of fraud which was raised. It is further arguable that the judge has failed to address the accusation of the employ of false documents which was raised by the Respondent and no reference to this was contained within the Decision and Reasons. In these circumstances, dismissing the Appellant's appeal in his absence was arguably procedurally unfair.

The error of law hearing

7. When this matter came before me, it transpired that there was no documentary evidence to support the claims made in the grounds of appeal as to the existence of a document verification report. Mr Walker confirmed that the relevant decision was that of 13 March 2021 and he agreed that there was no reference to alleged fraud or a DVR in that decision. Furthermore, no such report was contained in the respondent's bundle of evidence which was submitted to the First-tier Tribunal. Mr Walker agreed that the absence of the DVR effectively disposed of both grounds, noting that the Secretary of State had not attached the DVR to the grounds of appeal and had not made it clear to the judge why an adjournment was being sought.
8. At the end of the hearing, I informed Mr Walker and the sponsor that there was no material error of law in the decision of the First-tier Tribunal and that the decision was upheld.

Decision on error of law

9. I can be brief given Mr Walker's rightly made concessions. Both grounds rely on the existence of a DVR which was said to be referred to in the decision notice dated 13 March 2021. There is no reference to a DVR in that decision and nor was

such a document contained in the respondent's bundle or even with the application for permission to appeal.

10. In the absence of any evidence as to the existence of the DVR let alone that it was produced to the First-tier Tribunal, the rationale for challenging the judge's refusal to adjourn falls away as does the judge's alleged failure to consider the said document. Clearly the judge cannot be expected to realise that there is an issue of fraud to be determined which, in addition, might require the attendance of a presenting officer if there was no evidence of this before her. The judge carefully considered the adjournment request and provided sustainable reasons for refusing it. There is no evidence to support the contention that the judge was told about an allegation of fraud. It follows that neither ground of appeal is made out.
11. As there is no challenge to the judge's findings on the evidence provided by the appellant, which addressed the respondent's concerns, those findings are preserved.

Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

The decision of the First-tier Tribunal is upheld.

T Kamara

Judge of the Upper Tribunal
Immigration and Asylum Chamber

4 August 2023

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.

- 5. A “working day” means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.**
- 6. The date when the decision is “sent’ is that appearing on the covering letter or covering email.**