



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2023-002990
UI-2023-002991
First-tier Tribunal Nos: EA/08670/2022
EA/07374/2022

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 24 June 2024**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

**ABUBAKER MIAH
&
MST DULJAN
(NO ANONYMITY ORDER MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr A Baddar, Counsel instructed by Saint Martin Solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

Heard at Field House on 11 October 2023

DECISION AND REASONS

1. The appellants are married to each other and are citizens of Bangladesh. With permission granted by Upper Tribunal Judge Gill they appeal a decision of the First-tier Tribunal dismissing their appeal against the decision of the respondent dated 8 July 2022 and 2 September 2022 respectively refusing them permits as family members of an EEA citizen. Upper Tribunal Judge Gill gave permission on all four grounds and I summarise her reasons as follows:

“At para 9 of her decision, Judge of the First-tier Tribunal Young-Harry said that the appellants had failed to provide details of their personal bank accounts or any other supporting evidence which would shed light on their financial circumstances. In this regard, it is arguable, as contended in ground 1, that the judge may have erred by failing to engage with, or

overlooking, the evidence at page 1 of the appellants' supplementary bundle which set out their income and expenses.

At para 8, the judge said that the receipts had limited evidential value given that they do not confirm the source of the money used for paying the bill or purchasing the item. In this regard, it is arguable that the judge may have erred by failing to engage with, or overlooking, the sponsor's evidence about the source of funds as contended in ground 4."

2. I apologize for the delay in promulgating this decision which was based very closely on a draft I received from the typist on 18 October 2023 but overlooked.
3. After considering the decision I wish to outline the strands of evidence which may not have been considered properly. The schedule at tab 1 of the Appellants' Supplementary Bundle is not very helpful. It consists of three tables in which the sum of £200 is indicated as the average monthly income and the average monthly expenses also totalling £200 are summarised as electricity bill £5, mobile bill £10, gas bill £10, grocery and food £85, transportation £30, medicine £30, cloth (sic) £20, other £10. The source is not cross-referenced to any statement or supporting evidence. The same bundle includes sample electricity bills and medical bills again, on their own, they are of very limited value.
4. Mr Baddar asked me to look particularly carefully at the supporting statements.
5. The first is at page 52 in the bundle and is the statement of Giulia Mostafa. Mrs Mostafa introduces herself as the daughter-in-law of the appellants and explains that she is an Italian and therefore EEA national and she was supporting their application. She gave details of her links to the United Kingdom but they are not important for these purposes. She said that the appellants "are always financially dependent on my husband and me". The witness said that they are elderly people without savings or income and without significant support in Bangladesh and she supported them out of a sense of family duty. Her husband understood and supported her sense of obligation. She said that they wanted them brought to the United Kingdom where they could look after them as they declined and paid an appropriate application. She asserted again that she is the sole responsible person providing financial support then said that her husband had been supporting them but the bulk of the support came from her. She said that her parents had no income or savings and managed on what she and her husband sent them. She then looked at the reasons for refusing the application and noted that the respondent failed to identify money receipts and found that was not sufficient evidence.
6. She was critical of the decision and said that if the guidance would be more specific, she would have tried to be more helpful. He insisted that the appellants were dependent on her and she had provided supporting evidence. She also insisted that the appellants were financially dependent on herself and her husband a "long way before they made this application to join us in the UK." She then explained the appellants did not have a bank account in Bangladesh and that was common for people of their generation. The statement is signed and dated 10 May 2023.
7. The next statement is from Mohammed Alamgir Hossain. He explained that the appellants are his parents. He gave his details of his immigration status. He said

he had been living with his wife since January 2017 a few months before they married and his parents “are always financially dependent on my wife and me”. He then repeated the claim made by his wife that they were elderly without savings or income or significant support in Bangladesh. The statements are essentially the same.

8. Against this background I consider the judge’s Decision and Reasons. The judge noted how Mr Hossain gave evidence. He adopted his statement, answered supplementary questions but was not cross-examined. Ms Mostafa then gave evidence. It is recorded that she was questioned and cross-examined although no details are given.
9. The judge noted it was the claim of the witnesses that they sent money to the appellants and had done every two or three months. The judge noted that she had seen receipts confirming payment of electricity bills and bills for medication but described these “have limited evidential value, given they do not confirm the source of the money used for paying the bill or purchasing the items.”
10. The judge noted that the appellants failed to provide details of their personal circumstances in Bangladesh and had failed to provide details of their personal bank accounts or other supporting evidence to shed light on their financial circumstances. The judge then noted that the documentation was rather limited and failed to provide a “clear or accurate picture of their personal circumstances. Neither do they demonstrate that they have continuously relied on the sponsors to meet their essential needs, given the limited number of receipts and the period they cover.”
11. It is always unattractive to make decisions based on the evidence that is not there. It is permissible for judges to comment adversely on supporting evidence of a kind that might be expected and to use its absence as part of the reasoning in support of an adverse finding but I find the judge’s treatment of the oral evidence before her inadequate. The documentary evidence was of limited value for the reasons identified by the judge. There is not a great deal of it and nothing can be traced to a particular payment either to or by the appellants. However, the appellants’ daughter and son-in-law have given extremely clear evidence that they believe they are the sole source of income and have been for many years. They may be untruthful or they may be accurate but incomplete in their understanding and wrong to think that they are the sole means of support but as far as I can see the judge has made no findings on their evidence some of which was not challenged.
12. I accept Mr Melvin’s entirely justified caution against setting aside decisions that are irrational unless that is clearly the case but what is abundantly plain to me is that oral evidence was given of a kind that was not so nonsensical it could have been disregarded without comment which the judge has not accepted but which the judge has not given reasons for declining to believe. I have reflected carefully on this but I find this is just not adequate. The judge has not had proper regard to the oral evidence because I do not know what she made of that evidence except that she was not satisfied by it.
13. They indicated and I outlined that the table is of very limited value. This decision is unsatisfactory because there is no proper evaluation of the oral

evidence which, in truth, would have led to the appeal being allowed. This cannot be repaired. The case has to be heard again.

Notice of Decision

14. The First-tier Tribunal erred. I set aside this decision and I direct the case to be reheard in the First-tier Tribunal.

Jonathan Perkins

Judge of the Upper Tribunal
Immigration and Asylum Chamber

24 June 2024