



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001288

First-tier Tribunal No: EA/02417/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 19th of July 2024

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

NASREEN RAFIQ

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: The Sponsor

For the Respondent: Ms Newton, Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 15 July 2024

DECISION AND REASONS

1. The appellant is a citizen of Pakistan born on 12 October 1966. She appeals, with permission, against the decision of the First-tier Tribunal dismissing her appeal against the respondent's decision to refuse her application for an EU Settlement Scheme (EUSS) Family Permit.

2. The appellant applied on 8 November 2022 for an EUSS Family Permit as the 'family member of a relevant EEA citizen', as the dependent of her son and daughter-

in-law. Her daughter-in-law was a Romanian national who had been living in the UK since September 2009.

3. The appellant's application was refused on 24 February 2023 as the respondent was not satisfied that she was dependent on her sponsor for her essential living needs and was accordingly not satisfied that she met the eligibility requirements for a EUSS family permit. The respondent noted that the appellant had produced, as evidence of dependency, money transfers, shopping receipts and utility bills. The screenshots of money transfers were not considered by the respondent to be sufficient to show that the appellant was financially dependent upon the sponsor, particularly since there were no bank statements showing the money going into her account. Further, the respondent considered that the appellant had failed to demonstrate that the money she had received was used in any way to support her in meeting her essential needs as she had not provided any details of her income and outgoings.

4. The appellant appealed against that decision under the Immigration (Citizens' Rights Appeals)(EU Exit) Regulations 2020. She elected not to have an oral hearing of her appeal and the appeal was considered on the papers by First-tier Tribunal Judge Broe on 17 January 2024. The judge noted that the appellant claimed to be a widow and claimed to be dependent on her son and daughter-in-law. He referred to a letter produced for the appeal from the sponsor confirming that the appellant was not working and had no pension and confirming that she had been dependent upon the sponsor since her husband died. The sponsor advised that she had been sending money to the appellant's bank account since the covid pandemic, having previously sent it through a high street money transfer organisation. The judge noted that the appellant, in her bundle, had provided bank statements from January to November 2023 showing monthly credits of funds transferred and regular withdrawals, together with a schedule of remittances and various utility bills.

5. Judge Broe considered there to be no dispute that the sponsor sent the appellant money on a regular, almost monthly, basis, but noted that the bank statements only covered the period from 3 January 2023 to 27 November 2023 and considered that they therefore offered little assistance with the appellant's circumstances before the application. He noted that there must have been statements from before January 2023 but those had not been provided to him. The judge noted from the schedule of money transfers, beginning on 11 April 2020, that there were transfers to Alfalah Deposit IBFT which coincided with credits to the appellant's Bank Al Habib account from January 2023 and he considered it likely that the transfers made before January 2023, going back to April 2020, were also to that account, suggesting that the account was opened in April 2020. He noted that on 21 April 2021, 12 May 2021, 6 January 2022 and 27 February 2022 there were transfers to 'Bank of Punjab Deposit' in the appellant's name which suggested that she had another bank account and he also noted a cash deposit of Rs 10,000 to the appellant's Bank Al Habib account which was not matched by any transfer and for which there was no explanation. The judge was not satisfied that the appellant had provided a full picture of her financial circumstances and that she had failed to prove that she was dependent on the sponsor for her essential needs. He dismissed the appeal in a decision promulgated on 6 February 2024

6. The sponsor, on behalf of the appellant, sought permission to appeal Judge Broe's decision on the grounds that he had overlooked important evidence, namely the previous years' bank statements from HBL from January 2021 to March 2023, which had been attached in the appeal documents. It was asserted in the grounds that the appellant had only one bank account, namely the Bank Alhabib account, whereas the Bank of Punjab was a provider bank account and not a separate account. Further the

cash deposit of Rs 10,000 to the appellant's Bank Al Habib account was simply a cash transaction that did not go through and the money was reversed back into the account.

7. Permission was granted in the First-tier Tribunal. The respondent produced a rule 24 response opposing the appeal.

8. The matter came before me for a hearing. The appellant's son, Mr Irfan Rafiq, appeared before me for the appellant and Ms Newton appeared for the respondent.

Hearing and Submissions

9. Mr Rafiq confirmed my understanding that the appellant's case was that the judge had overlooked bank statements pre-dating January 2023 which were available before him. Ms Newton then made her submissions and Mr Rafiq was given an opportunity to respond.

10. Ms Newton submitted that the judge did not have the earlier bank statements in front of him, as was clear from his decision. The appellant had not shown when the additional bank statements were sent to the Tribunal. However, even if the earlier bank statements were before the judge, the issues before him were not solely whether the money had been transferred but also whether the appellant was in a position to support herself or not without that money. Ms Newton relied upon the case of Lim v Entry Clearance Officer Manila [2015] EWCA Civ 1383 in that regard where, at [32], the Court said that "*the critical question is whether the claimant is in fact in a position to support himself or not, and Reyes now makes that clear beyond doubt, in my view. That is a simple matter of fact. If he can support himself, there is no dependency, even if he is given financial material support by the EU citizen. Those additional resources are not necessary to enable him to meet his basic needs.*" She submitted that the judge followed that approach and gave that as a reason for dismissing the appeal, at [14] of his decision. The judge was entitled to find that the appellant had not provided a full picture of whether the funds sent to her covered her essential needs. He had followed the correct approach. There was no evidence of what the money was used for and nothing to show who the appellant lived with and who paid the bills, and neither was there a schedule of income and outgoings.

11. In response Mr Rafiq said that bank statements were sent to the First-tier Tribunal with a notice of appeal sent out of time, after the earlier submission was not received by the Tribunal. He was given a different address for out of time appeals. He had assumed that the bank statements were with the papers before the judge and it was for that reason that he did not attend a hearing before the judge. All the money transferred went into the appellant's account and she was continuously taking it out for her needs, to pay for the doctor, for medicine and for everything she needed. He was the only one sending her money. 99% of the money sent was used by her. That showed that his mother was financially dependent upon him. In response to my enquiry as to whether there was evidence before the judge to show how his mother used the money, Mr Rafiq said that there were grocery receipts and household bills, but it was difficult to prove because his mother paid for everything in cash. The bills were in his late father's name which was the usual practice even though his father had since died.

Analysis

12. As a starting point I note that, in granting permission, First-tier Tribunal Judge Gibbs queried why, if Judge Broe had concerns about the payments made to the appellant and about the documentation, those were not put to the sponsor. That was based upon her observation that it was unclear whether there was an oral hearing. That was plainly an erroneous observation as Judge Broe expressly stated at [1] of his decision that the appellant elected to have the matter dealt with on the papers. As such, there was no opportunity for Judge Broe to put any concerns to the sponsor and he had to make his decision on the papers and the documentary evidence before him. Where that evidence lacked clarity, it was entirely open to the judge to make adverse findings given that the burden of proof lay upon the appellant to make out her case and to demonstrate the required dependency.

13. The main point made by the sponsor in the grounds of appeal is that, contrary to Judge Broe's observation at [11], the appellant's bank statements pre-dating 3 January 2023, dating from January 2021, had been provided to the Tribunal and therefore ought to have been before the judge. I note from the documents uploaded to CE-files that there were two bundles in the First-tier Tribunal, the first of which, a 43-page bundle with a covering sheet entitled "Index File" contained bank statements dated from 3 January 2023 to 27 November 2023 and was clearly the bundle to which Judge Broe was referring at [11]. The second bundle appears to be the Notice of Appeal accompanied by documents including bank statements dating back to 28 January 2021 and it is apparent from a covering letter that that was served out of time, as Mr Rafiq explained at the hearing. It is not at all clear from the records before me that that bundle was before Judge Broe and the fact that he made the observations he did about the missing bank statements suggests that it was not.

14. However, as Ms Newton submitted, it is not in dispute that the sponsor was making regular money transfers to the appellant and indeed Judge Broe did not dispute that that had been the case since April 2020. Accordingly even if the judge had the evidence before him and had overlooked it, that was plainly not material to the outcome of the appeal. In so asserting, Ms Newton properly made the point that the issue of dependency did not just involve transfers of money, but rather was a question of whether the appellant required that money for her essential needs and depended upon it for those needs. That was precisely the point made by the respondent in the refusal decision and in the rule 24 response, by reference to Lim, and was the point made by Judge Broe.

15. As Ms Newton submitted, there was no evidence from the appellant to show that the money sent to her by the sponsor was used to meet her essential living needs. Whilst Mr Rafiq submitted that the fact that the appellant withdrew almost all of the money sent to her, as evidenced by the bank statements, was sufficient to show that she required those funds to meet her essential needs, Ms Newton properly observed that it was simply not clear from that evidence what the money was being used for and whether it was indeed used to meet those essential needs. As she pointed out, there was no evidence about the appellant's family and living circumstances in Pakistan and neither was there evidence as to who paid the bills. Mr Rafiq relied upon the utility bills and household receipts which had been produced to the Tribunal, but the bills were not in the appellant's name (Mr Rafiq explained that they remained in the name of his deceased father) and it was therefore not clear who paid them. Further, aside from a few receipts from a pharmacy, the other receipts had not been translated, as Ms Newton submitted, and it would therefore not have been apparent to Judge Broe what they were for. There was no schedule of income and outgoings, despite the refusal decision specifically referring to the need for such evidence. Although it was claimed that the appellant had no pension, there was no opportunity

for Judge Broe to ask the sponsor questions about that. Neither did the judge have the opportunity to put to the sponsor his concerns about the existence of another bank account held by the appellant, as expressed at [13] of his decision. The grounds of appeal assert that the Bank of Punjab was a provider account and the sponsor now confirms that the appellant had only one account, but there was no clear evidence before Judge Broe to that effect.

16. It seems to me, therefore, that Judge Broe took the correct approach to the question of dependency, as set out in the relevant caselaw, and he was perfectly entitled to have the concerns that he did. For the reasons properly given he was fully entitled to conclude that he had not been provided with a full picture of the appellant's financial circumstances and he was entitled to conclude, as he did at [15], that the appellant had not discharged the burden of proof to show that she was dependent upon her sponsor. Had the sponsor attended a hearing before the judge to address the judge's concerns, and had a proper schedule been provided to the Tribunal of the appellant's income and outgoings, together with translated corresponding receipts, it may be that Judge Broe could have found in her favour. However in the absence of such evidence, and given the entirely reasonable concerns he had about the evidence, it cannot be said that the judge erred in law in reaching the adverse conclusion that he did. The decision that he reached was accordingly entirely open to him on the evidence before him and I uphold the judge's decision.

Notice of Decision

17. The making of the decision of the First-tier Tribunal did not involve a material error on a point of law requiring it to be set aside. The decision to dismiss the appeal stands.

Signed: S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 17 July 2024