



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: EA/02245/2020

EA/02246/2020

THE IMMIGRATION ACTS

Heard at Manchester (via Microsoft Teams)

On the 7th June 2021

Decision & Reasons Promulgated

On the 22nd June 2021

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**KHALID IQBAL MEHMOOD
RIFFAT KHALID**

(Anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Ahmed instructed by Fawad Law Associates.

For the Respondent: Mr C Bates Senior Home Office Presenting Officer.

DECISION AND REASONS

- 1.** The appellants, both citizens of Pakistan, are a married couple. The first appellant was born on 14 February 1951 and the second appellant on 15 April 1958. They appeal against the refusal of their applications for leave to enter the United Kingdom as family members

- of an EEA national, their daughter sponsor Maria Usman Khan, who has also been granted Limited Leave to remain in the United Kingdom pursuant to Appendix EU of the Immigration Rules on 29 June 2020.
2. The decision of the First-tier Tribunal was set aside by consent by the Upper Tribunal in a decision promulgated on 22 April 2021 in which directions were given for the further hearing of this appeal to enable the Upper Tribunal to substitute a decision to either allow or dismiss the appeal.
 3. A bundle was received at Field House on 25th May 2021 containing a skeleton argument, the original appeal bundle, and additional documentary evidence, all of which has been taken into account for the purposes of this decision.

Discussion

4. The application was refused by an Entry Clearance Officer (ECO) as it was not accepted on the basis of the evidence provided with the application that the appellants had established the required element of dependency upon the UK-based sponsor. The refusal, dated 5 February 2020, refers to the lack of evidence regarding the appellant's own financial situation, such as bank statements or other documents indicating financial incomings and outgoings, the absence of which prevented the decision-maker being satisfied the appellants required the financial support from the EEA national to meet their essential needs.
5. Within the bundle a number of wage slips have been provided together with evidence of remittances via Money Gram money transfer, a letter from the first appellant's recent employer, an advocate in the High Court in Pakistan, confirming his previous employment as an office assistant from early 2012 to November 2018 did not entitle him to any pension, evidence to show the portion of the property occupied by the appellants in Pakistan, together with other letters in support. Also, in the bundle are a number of documents described as "income and expense statements" for various months between January 2020 April 2021 recording money received from the UK-based sponsor (in Pakistani rupees) and the expenses incurred and any balance remaining, which appears on the following months statement as a balance carried forward.
6. What has not been provided within the bundle is any further evidence from the appellants themselves. Mr Bates asked the sponsor, who provided both written and oral evidence, why there was no statement from her parents, to which she responded that they had not been asked to prepare one by the solicitors and that it had they been asked one would have been filed. Similarly, when Mr Bates asked why no evidence had been provided to confirm the identity of the statement purporting to come from the appellant's landlady, such as a driving licence or passport, the sponsor confirmed her national identity number had been provided, but that they had not been asked by their solicitor to provide any further material, and that if they had been

asked the same would have been provided. The First-tier judge referred to concerns arising from the evidence in that decision and the refusal clearly refers to a lack of evidence establishing the required degree of dependency. It is not known why solicitors who no doubt have charged for their services failed to provide appropriate advice which, in certain circumstances, may have led to the appeal being refused.

- 7.** As a result of the evidential omissions the relevant evidence therefore came from the sponsor. Mr Bates in his submissions argued that all depended upon the credibility of the sponsor and that if her evidence was accepted and she was found to be credible he was unable to show anything that will prevent the appeal being allowed.
- 8.** I found the sponsor to be a very honest, forthright, credible witness. She gave her evidence in a clear and proper manner as one would expect from an intelligent person who is a qualified medical professional. There is no doubt about the ability of her and her family unit to have provided appropriate financial support in the past to her parents or their ability to care for them in the future.
- 9.** In relation to the key issue, that of dependency, the sponsor confirmed that she is from a poor family and that her education, based upon academic ability, was supported by sponsorships and grants from the government of Pakistan. These included her medical studies, for which she received an appropriate scholarship. When asked whether she received any support from her parents, as her father would have been working at this time, she confirmed the higher proportion of the funds for her education came from the government.
- 10.** The sponsor stated that her father worked in low-level administrative assistant jobs from which he retired in late 2018. Her father's employment was not with the government and did not entitle him to a pension. Her parents still live on one floor of a house they share with another tenant, where she herself lived before her marriage.
- 11.** Mr Bates did raise an issue concerning the evidence from the landlady in relation to how responsibility for paying the proportion of the bills relating to the appellant's occupation was established, reading the landlady's statement as being that when a bill arrives it is given to the appellants who then hand the Bill back to her as evidence that payment has been made, which was said to be different from the sponsor's evidence that when a bill arrives it is in the landlady's name and that her parents and the other tenant pay the landlady in cash, which is used to pay the bill. I have looked at the statement of the landlady and the evidence as a whole and there is a scope for reading the landlady's evidence either way. I do not find this to be a determinative issue however, as the source of the income available to the appellants to meet the proportion of the costs for which they are responsible is that provided by their daughter in the United Kingdom. The issue raised concerning the statement is more relevant to the mechanics of the method by which payment is made rather than whether the appellants are reliant upon the support provided to pay the bill.

- 12.** The sponsor's evidence is that her parents do not have a bank account and that remitted funds are withdrawn in cash.
- 13.** As noted above, I am satisfied that the sponsor gave a credible account upon which weight may be placed relating to the historic family circumstances, her own educational journey and how the same was funded, the economic level of her parents in Pakistan and lack of pension income, the funds remitted by her over a period of time to support her parents' essential needs, and the inability of her parents to meet those needs without the resources she provides.
- 14.** I am therefore satisfied that the appellants have discharged the burden of proof upon them to the required standard to establish they are financially dependent upon the EEA national in accordance with the requirements of Regulation 7.
- 15.** As there is no other reason in the refusal notice as to why the appellants could not satisfy the requirements of regulation 12 of the 2016 regulations it appears appropriate in all the circumstances for the EEA Family Permit to be issued. When the appellants are able to travel to the United Kingdom will depend upon the Covid-19 rules and regulations. They should therefore not make arrangements for travelling until they are certain they will be permitted to board an international flight and to enter the United Kingdom. Pakistan is at the date of this decision on the UK Governments 'Red list'.

Decision

16. I allow the appeals.

Anonymity.

- 17.** The First-tier Tribunal made no order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated 9 June 2021