



IAC-AH-SAR-V1

**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: IA/25716/2014

**THE IMMIGRATION ACTS**

**Heard at Centre City Tower, Decision & Reasons Promulgated  
Birmingham  
On 4<sup>th</sup> January 2016**

**On 14<sup>th</sup> January 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE M A HALL**

**Between**

**AMIR ABBAS  
(ANONYMITY ORDER NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr D Shrestha of Counsel instructed by M R Solicitors

For the Respondent: Mr G Harrison, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction and Background**

1. The Appellant appeals against the decision of Judge V A Lowe of the First-tier Tribunal (the FtT) promulgated on 31<sup>st</sup> October 2014.
2. The Appellant is a male citizen of Pakistan born 5<sup>th</sup> July 1986 who on 29<sup>th</sup> April 2014 applied for a residence card as the extended family member of an EEA national, Ali Niamat Sheikh.

3. The application was refused on 5<sup>th</sup> June 2014 with reference to regulation 8 of The Immigration (European Economic Area) Regulations 2006 (the 2006 regulations). The Respondent contended that the Appellant had not provided any evidence of his dependency on his EEA national Sponsor at any time in Pakistan. There was no satisfactory evidence that the Appellant had been residing with the EEA national prior to entering the United Kingdom nor any satisfactory evidence that since entering the United Kingdom the Appellant had continued to be dependent upon the EEA national. The application was therefore refused with reference to regulation 8(2)(a) of the 2006 regulations.
4. The Appellant appealed and the FtT heard the appeal on 15<sup>th</sup> October 2014, and heard evidence from the Appellant and Mr Sheikh. The FtT found the Appellant and Mr Sheikh to be “wholly unreliable witnesses” and dismissed the appeal pursuant to the 2006 regulations, and with reference to Article 8 of the 1950 European Convention on Human Rights (the 1950 Convention).
5. The Appellant applied for permission to appeal. In summary it was contended that the FtT had erred in considering Article 8, by making only a brief finding, and merely repeating the position of the Secretary of State.
6. It was contended that the Appellant had produced satisfactory documentary evidence “which indicated there being a level of financial dependency upon the Sponsor and that the support is ongoing”. It was contended that if the FtT had considered the wealth of documents in the round, it would have come to the same conclusion.
7. It was contended that the FtT had erred by failing to admit Mr Sheikh’s witness statement as his evidence-in-chief on the basis that the statement was made in English, and Mr Sheikh confirmed that he could not speak or read any English. It was submitted that Mr Sheikh could have been asked if the statement had been explained to him in his own language and whether he understood the contents of his statement, and in failing to do so, the FtT had unfairly and unjustly refused to admit Mr Sheikh’s statement as his evidence-in-chief which had a negative impact on the case.
8. Permission to appeal was granted by Judge Scott-Baker of the FtT in the following terms;
  - “2. The grounds assert that the judge had failed to consider the evidence submitted as to dependency and further that the judge had failed to admit in evidence a witness statement written in English as the Sponsor could not speak or read English and cumulatively such omissions amounted to an error of law.
  3. The judge had considered the evidence as to financial dependency but the findings were peppered by speculation and doubt which seemingly had not been put to the Appellant and therefore not arguably open to the judge on the evidence before him. At [11] the judge records that a witness statement was not admitted as, although in English, the person

who had made the same could neither read nor speak any English. The judge does not appear to have considered whether such statement had been translated for the witness and in these circumstances it is considered that the failure to admit this evidence amounts to an error of law.

4. Permission to appeal is granted”.
9. Following the grant of permission the Respondent lodged a response pursuant to rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008 contending that the FtT directed itself appropriately, and the Grounds of Appeal identify no arguable error of law, but amount to a disagreement with the findings made by the FtT, and are an attempt to re-argue the case. It was submitted that the findings made by the FtT were open to it on the facts before it.
10. Directions were issued making provision for there to be a hearing before the Upper Tribunal to decide whether the FtT decision contained an error of law such that it should be set aside.

### **The Appellant’s Submissions**

11. Mr Shrestha confirmed that he did not pursue the Article 8 aspect of the appeal because of the recent Upper Tribunal decision in Amirteymour.
12. Otherwise Mr Shrestha relied upon the grounds contained within the application for permission to appeal, and the grant of permission. Mr Shrestha suggested that the judge granting permission had in fact found an error of law.
13. Mr Shrestha explained that he had not appeared before the FtT, but having had a conference with the Appellant, he understood that it was not in fact put to Mr Sheikh that there was an issue with his witness statement. In any event, Mr Shrestha submitted that Mr Sheikh’s witness statement could have been signed in front of the FtT and he could have been asked by the FtT whether the statement had been read to him in a language that he understood.
14. Mr Shrestha submitted that there was clear evidence of dependency before the FtT and the FtT had erred by speculating and acting in an inquisitorial role. Mr Shrestha submitted that the FtT decision should be set aside and the appeal remitted to the FtT to be heard again.
15. At the conclusion of Mr Shrestha’s submissions I pointed out that Mr Sheikh had given oral evidence before the FtT, and asked what evidence it was contended had been excluded. Mr Shrestha replied the extent of dependency, although he accepted that it had been open to Mr Sheikh to give whatever evidence he wished before the FtT.

### **The Respondent’s Submissions**

16. Mr Harrison relied upon the rule 24 response and submitted that the grounds amounted to a disagreement with the findings of the FtT and did not disclose any error of law.
17. Mr Harrison submitted that the FtT had taken great care in analysing the evidence and had reached conclusions open to it on the evidence and had not engaged in speculation.
18. At the conclusion of oral submissions I reserved my decision.

### **My Conclusions and Reasons**

19. Mr Shrestha was correct to abandon the Article 8 aspect of the appeal in the light of the decision in Amirteymour and Others (EEA appeals; human rights) [2015] UKUT 00466 (IAC) and for ease of reference I set out below the head note to that decision;

“Where no notice under section 120 of the 2002 Act has been served and where no EEA decision to remove has been made, an Appellant cannot bring a human rights challenge to removal in an appeal under the EEA regulations. Neither the factual matrix nor the reasoning in JM (Liberia) [\[2006\] EWCA Civ 1402](#) has any application to appeals of this nature”.
20. There was in this appeal, no removal decision and no notice pursuant to section 120 of the 2002 Act. Therefore the FtT should not have considered Article 8.
21. I next deal with Mr Sheikh’s witness statement which was not admitted in evidence. This is referred to in paragraph 11 of the FtT decision, the explanation for not admitting the statement was that the statement was made in English and Mr Sheikh confirmed at the hearing that he could not speak or read any English.
22. The witness statement should have been signed and dated prior to the commencement of the hearing. As Mr Sheikh could not speak or read English, the statement should have contained confirmation that it had been read to him in a language that he understood. The Appellant’s representatives should have ensured that this was done.
23. It may have been possible for the witness statement to be translated by the interpreter at the FtT hearing, but the non-admission of the witness statement is not a material error of law. This is because Mr Sheikh gave oral evidence, which is summarised at paragraph 15 of the FtT decision. Therefore Mr Sheikh had the opportunity to give evidence-in-chief, so that he could give any evidence that he thought relevant, and the Appellant’s representative had the opportunity to ask any questions of him, which were thought to be relevant. Mr Sheikh’s evidence was therefore not excluded nor restricted. There is no merit in this ground of appeal, which discloses no material error of law.
24. I next turn to the consideration of the FtT of the evidence in relation to financial dependency. I do not find a material error of law. I find that this

ground of appeal does amount to a disagreement with the findings made by the FtT, but there is no explanation in the grounds, as to how exactly the FtT erred in law in considering the evidence in relation to financial dependency. With respect I disagree with the comments made by the judge who granted permission, in paragraph 3 of the grant. In my view the only element of speculation in the FtT decision is the last sentence in paragraph 21 which I set out below for ease of reference;

“It may also be the case, although less plausibly, that the 2 men are involved in a business venture which involves the Appellant living in Buckinghamshire and then moving money backwards and forwards to fund commercial transactions”.

25. That however is not material, taking into account my finding that the FtT carried out an extremely comprehensive and careful assessment of all the evidence provided by both parties. The FtT decision makes it clear what evidence was submitted and considered. The findings made by the FtT are set out at paragraphs 18-24. The FtT gave adequate and cogent reasons in paragraphs 19-22 for finding that the Appellant had not discharged the burden of proof in relation to financial dependency. Those findings are sustainable, and it was unnecessary for the FtT to include the last sentence in paragraph 21.
26. Read as a whole, the FtT decision is comprehensive, deals with all material issues, and does not attach weight to any immaterial issues. The findings made are supported by adequate and cogent reasons, and the grounds contained within the application for permission to appeal are a disagreement with the findings made, but do not disclose any material error of law.

### **Notice of Decision**

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision must be set aside. I do not set aside the decision. The appeal is dismissed.

### **Anonymity**

The First-tier Tribunal did not make an anonymity direction. There has been no request to the Upper Tribunal for anonymity, and I see no need to make an anonymity order.

Signed

Date 6<sup>th</sup> January 2016

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT  
FEE AWARD**

The appeal is dismissed. There is no fee award.

Signed

Date 6<sup>th</sup> January 2016

Deputy Upper Tribunal Judge M A Hall