



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: EA/01384/2016  
EA/01386/2016

**THE IMMIGRATION ACTS**

Heard at Glasgow  
On 17 August 2018

Determination Promulgated  
On 06 December 2018

Before

MR C M G OCKELTON, VICE PRESIDENT  
and  
UPPER TRIBUNAL JUDGE CONWAY

Between

ENTRY CLEARANCE OFFICER - ISLAMABAD

Appellant

and

MOHAMMAD ANWAR  
NASEEM ANWAR  
(no anonymity orders made)

Respondents

**Representation:**

For the Appellant: Ms O'Brien, Senior Home Office Presenting Officer

For the Respondents: Mr Anwar (Sponsor)

**DECISION AND REASONS**

1. For convenience we maintain the designations as they were before the First-tier Tribunal, thus Mr and Mrs Anwar are the appellants and the ECO, the respondent.

2. The appellants are citizens of Pakistan born in 1951 and 1957. The respondent appeals against the decision of First tier Tribunal Judge Fletcher-Hill made following a hearing at Hatton Cross on 6 June 2017 to allow their appeals against the refusal to grant an EEA family permit for them to join their son, the sponsor, Mr Waseem Anwar, a citizen of the Republic of Ireland, in the UK as dependent relatives.
3. The applications were refused in a decision made on 5 January 2016 under Regulations 7 and 8 of the Immigration (European Economic Area) Regulations 2006. The respondent was not satisfied that the appellants are family members of the sponsor. Also, it was considered that any financial dependency on the sponsor is contrived. In that regard land from which income had been got had been gifted to the sponsor in 2015.
4. They appealed.

### **First tier hearing**

5. The judge heard oral evidence from the sponsor and his brother, Mr Shahzad Anwar. The gist of the evidence from the sponsor was that when he lived in Ireland exercising treaty rights he sent €1000-2000 a month to his parents. Since moving to Scotland in 2015 he has been sending £150 a month. His parents receive no financial support from anyone else. They are retired. His father used to work in Kuwait sending money back for the family. However, he was not able to save for his retirement or earn a pension in Kuwait. They now live in their own house in Pakistan. His mother had, as the respondent noted, owned a plot of land which she had transferred to the sponsor.
6. Brief evidence was also given by Mr Shahzad Anwar, the sponsor's brother. He lives in Finland where he is studying. He has not supported his parents financially.
7. The judge's findings are at paragraph [20f]. She found that the relationship of parents and child is as claimed. On dependency she found that the documentary evidence showed that the appellants have continued to be supported financially by the sponsor who has been exercising treaty rights as a worker in the UK since at least 2015, and that they need his material support to meet their essential needs. She found, further, that whether the dependency is a matter of necessity or choice is irrelevant. In that regard she noted *Lim (EEA-dependency)* [2013] UKUT 437 and *Lebon (C/316/85)* [1987] ECR 2811, concluding that what matters is the fact of dependency not the reason for it. Whilst dependency must not be an abuse of rights it can be a matter of choice. Emotional dependency between the parents and their son can also be considered.

### **Upper Tribunal hearing**

8. The respondent sought permission to appeal which was granted on 18 December 2017. The grounds were, briefly, first, the judge had not made a reasoned finding on

the relationship and, second, she was wrong to state that whether dependency is a matter of necessity or choice is irrelevant. In that regard *Lim* in the Upper Tribunal had been overturned by the Court of Appeal in *Lim v Entry Clearance Officer, Manila* [2015] EWCA Civ 1383.

9. At the hearing before us Ms O'Brien sought only to rely on the second ground to which she had nothing to add.
10. The sponsor, Mr Waseem Anwar had attended with his brother Mr Shahzad Anwar. We invited Mr Anwar to reply. We refer to his comments below.

### Consideration

11. The relevant regulation in issue is 7(1)(c). It provides that:-

*"... for the purposes of these Regulations the following persons shall be treated as the family members of another person ...*

*(c) dependent direct relatives in his ascending line or that of his spouse or civil partner."*

The test for dependency has, indeed, most recently been considered by the Court of Appeal in *Lim*.

12. We note the following comments by Elias LJ: *"... Receipt of support is a necessary but not sufficient condition. It is still necessary to determine that a family member is dependent in the sense of being in need of the assistance. I accept that the authorities clearly establish that it is irrelevant why he or she is dependent, whether because he has given his money away or because he is unwilling to work (save possibly where an abuse of rights can be established) ..."* [29]
13. And at [32]: *"In my judgment, the critical question is whether the claimant is in fact in a position to support himself or not, and Reyes [2014/C-423/12] 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. If, on the other hand, he cannot support himself from his own resources, the court will not ask why that is the case, save perhaps where there is an abuse of rights ..."*.
14. Mr Anwar's submissions were that, as he had stated in evidence before the First-tier Tribunal, he has remitted money to his parents for years and that that money has been necessary to ensure their core living needs. They live in their home and have no rental costs but they have no source of income.
15. As for the respondent's concern in the refusal letter about the gift of land to the sponsor by his parents, Mr Anwar said that his mother had bought a small plot of land about the size of half a football pitch. It was agreed it should be put in the sponsor's name. There is nothing growing on it and it is not valuable.

16. Ms O'Brien did not wish to make any reply.
17. We found Mr Anwar's submissions persuasive. The evidence before the First-tier Tribunal was that the appellants receive money from the sponsor and that having no income of their own they need that financial assistance to get by. Ms O'Brien did not seek to dispute that the transfer which concerned the ECO was a small piece of unutilised land. As Elias LJ stated it is irrelevant why that transfer was made. It was not suggested before the First-tier Tribunal or before us that the appellants had artificially attempted to create a situation of dependency so as to establish an entitlement to enter the UK, so there is no question of abuse of rights in this case.
18. The judge did err in law by taking as authority the case of *Lim* in the Upper Tribunal being unaware that the matter had been overturned by the Court of Appeal.
19. However, we conclude that her error was not material. The findings that the appellants receive money from their son and that they depend on that money to support themselves were findings open to her on the evidence.

### **Notice of Decision**

The decision of the First-tier Tribunal does not involve the making of a material error of law. That decision allowing the appeals shall stand.

No anonymity orders made.

Signed

Date 30 November 2018

Upper Tribunal Judge Conway