



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal number: EA/03499/2019 (P)

**THE IMMIGRATION ACTS**

Heard Remotely at Manchester CJC  
On 13 August 2020

Decision & Reasons Promulgated  
On 25 August 2020

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

RAFIA ZAMAN  
(ANONYMITY ORDER NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the appellant: Mr Z Malik of counsel, instructed by K & A Solicitors

For the Respondent: Ms R Pettersen, Senior Presenting Officer

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The order made is described at the end of these reasons.

**DECISION AND REASONS (P)**

1. The appellant, who is a Pakistani national born on 11.3.88, has appealed with permission to the Upper Tribunal against the decision of the First-tier Tribunal promulgated 11.12.19, dismissing her appeal against the decision of the Secretary of State, dated 5.7.19, to refuse her application made on 6.3.19 for an EEA Residence Card as the Extended Family Member (EFM) (niece) of Irfan Ramzan

Chaudhary, a Spanish citizen exercising Treaty rights in the UK, pursuant to Regulation 8 of the Immigration (EEA) Regulations 2016.

2. The First-tier Tribunal accepted at [20] of the decision that the sponsor was exercising Treaty rights in the UK and at [21] that the appellant and her family are part of the sponsor's household in the UK and dependent on him. However, the judge did not accept that the appellant was a member of the sponsor's household during the time that she lived in Pakistan before entering the UK in April 2012 (as a student migrant). Nor was it accepted that she was dependent on the sponsor whilst in Pakistan. The judge found that the evidence was that she lived in a joint family unit in the household of her grandfather, along with her parents, the sponsor, and other family members, and that, whilst the sponsor made financial remittances to the family after leaving Pakistan in 1997 to work in Spain, there was no specific sums earmarked for the appellant rather than the household as a whole, so that she could not be said to be dependent on him.
3. Permission to appeal was granted on limited grounds by First-tier Tribunal Judge Bulpitt on 5.5.20.
4. The grounds as drafted were first, that as the judge found the appellant and her family are part of the sponsor's household in the UK and dependent on him, Regulation 8 is met. Permission was refused on this ground as it is founded in a misunderstanding of the requirements under Regulation 8. As Judge Bulpitt pointed out, Dauhoo (EEA Regulations – reg 8(2)) [2012] UKUT 79 (IAC) held that it is necessary to prove both *present* membership of a household or dependency, and *prior* membership of a household or dependency.
5. However, Judge Bulpitt considered it arguable that in relying on the judge's understanding of Pakistani inheritance law in order to find that the appellant was not part of the sponsor's household in Pakistan, which consideration was not raised with the appellant or her representative at the hearing, gave rise to material procedural unfairness.
6. Judge Bulpitt also considered it arguable that findings as to prior dependency were inconsistent with the finding at [17] that both the appellant and the sponsor had told the truth and at [18] that the written and oral evidence was credible.
7. On 12.8.20, the Upper Tribunal received the respondent's written submissions, which I have taken into account, along with the oral submissions made to me in the remote hearing. At the conclusion of the hearing I reserved my decision and reasons, which I now give.
8. Mr Malik made three succinct points. First that the findings at [17] and [18] were inconsistent with the earlier findings that the appellant and the sponsor had been truthful and the written and oral evidence credible. Second, that the judge acted procedurally unfairly in relation to what is said about both inheritance law and

the appellant's student visa application. Third, that the judge's approach to 'household' referring to 'head of household' was legally flawed as the Regulations do not require the sponsor to be the head of household.

9. Mr Malik also opposed the late introduction by Ms Pettersen of a new issue of 'continuity of support' as set out in her email received by the Tribunal on 12.8.20 in reliance on the recent decision of the Upper Tribunal in Chowdhury (Extended family members: dependency) [2020] UKUT 188 (IAC). Whilst this decision made clear that the Regulations require a continuity of support between prior and present dependency, that was not an issue raised at the First-tier Tribunal. Whilst on the facts of this case this issue may be highly relevant if there is to be a remaking of the decision, as the appellant left Pakistan in 2012 to come to the UK as a student, and the sponsor left Pakistan in 1997 to work in Spain and did not come to the UK until 2015, so that there was an apparent gap in the continuity of any alleged dependency. However, Ms Pettersen did not pursue this point with any vigour given that it was not raised at the First-tier Tribunal appeal hearing and could not properly be taken into account in the error of law consideration. For the purposes of this hearing, I ignore that issue.
10. In relation to the issue of judge's unfortunate and inexpert assertions as to inheritance law in Pakistan, for the reasons set out below, I do not find any error of law material to the outcome of the appeal.
11. I bear in mind that the recent authority of Hussein and another (Status of passports: foreign law) [2020] UKUT 250 (IAC) has confirmed that foreign law is a matter of evidence, to be proved by expert evidence directed specifically to the point in issue. However, for the reasons set out below, I am satisfied that whether or not he was right, the judge's understanding of Pakistani inheritance law as expressed at [23] of the decision was either a mere observation or an alternative consideration and, therefore, not material to the outcome of the appeal.
12. In relation to prior household membership, Article 3 of the Citizens Directive provides that the 'other family member' must be "*members of the household of the Union citizen*":

*"1. This Directive shall apply to all Union citizens who move to or reside in a Member State other than that of which they are a national, and to their family members as defined in point 2 of Article 2 who accompany or join them.*

*2. Without prejudice to any right to free movement and residence the persons concerned may have in their own right, the host Member State shall, in accordance with its national legislation, facilitate entry and residence for the following persons:*

*(a) any other family members, irrespective of their nationality, not falling under the definition in point 2 of Article 2 who, in the country from which they have come, are dependants or members of the household of the Union citizen having the primary right of residence, or where serious health grounds strictly require the personal care of the family member by the Union citizen;*

(b) *the partner with whom the Union citizen has a durable relationship, duly attested.*

13. This requirement has been transferred into the Regulation 8(2)(a) as “*is dependent upon the EEA national or is a member of his household.*”
14. The relevant chronology is that prior to the sponsor leaving for Spain in 1997, both the appellant and the sponsor were living in the home of their grandfather. The appellant was living with her parents and the sponsor with his father, the appellant’s grandfather. The grandfather died two months after the appellant arrived in the UK in 2012. In his witness statement the sponsor describes it as his parents’ home, i.e. the home of the appellant’s grandparents. As worded, the requirement of Regulation 8(2) is that the appellant be a member of the sponsor’s household, not that they were merely members of the same household, as the words used in the regulation are “his household.” However, Mr Malik submitted that being in the same household as each other was sufficient.
15. I bear in mind that the purpose of the Regulations in applying EU law appears intended to facilitate the movement of those persons who were in a dependent or close family relationship to the sponsor prior to coming to the UK. It appears to me that the appellant was either a member of either her grandfather’s or grandparents’ household, or that of her own parents. Whether she could be a member of the sponsor’s household at any time depends on the construction of the phrase “a member of *his* household”. The judge reached a similar view, based on who was the ‘head’ of the household.
16. However, whether or not either of these interpretations of the Regulations is correct, in her submissions Ms Pettersen pointed that as the sponsor left the joint family household in 1997 to work in Spain, at which time the appellant was around 8-9 years of age and living with her own parents and other family members in a property owned by her grandfather, the appellant could not properly be described in the period between 1997 and when she left for the UK as a student in 2012 as a member of the sponsor’s household.
17. I accept that following the ruling of the CJEU in Rahman, it is not necessary in the dependency consideration for the EFM to live in the same country as the EEA national. This is confirmed in the Home Office guidance on Extended Family Members v7.0 of 27.3.19. However, the decision did not extend that principle to the issue of ‘membership of household’. Even if membership of the same household is sufficient, as Mr Malik argued, it is difficult to see how an appellant can be a member of a sponsor’s household where that sponsor has lived in an entirely different household for years before the appellant leaves her country to come to the UK, where, even there, she was not part of his household for some three further years. I also note that the sponsor was not an EEA national when he left Pakistan in 1997. I am satisfied that thereafter, whilst remaining in Pakistan, the appellant cannot have been a member of the sponsor’s household, in any sense of that word. He was living and working in Spain and did not return to live in Pakistan, except on vacation. Meanwhile, the appellant herself left for the UK

in 2012. Even if Mr Malik's interpretation of household is correct, it cannot be the case that the appellant remained a member of his household once he had settled in Spain. For that interpretation to be correct, it would mean that living under the same household at any point in time prior to an appellant leaving her home country to come to an EEA Member State would be sufficient to meet the requirements. That cannot be right as it would make a nonsense of the Regulations.

18. It follows that the judge's reference to inheritance law is irrelevant and in any event, as pointed out above, was phrased by the judge at [17] of the decision as an alternative, stating, "if it be suggested that.." It follows that no material error of law is disclosed by this ground.
19. In relation to prior dependency, I am satisfied that on the evidence, the judge was entitled to conclude that the money the sponsor was sending to Pakistan from Spain was for the support of his parents' household, including his own family and that of the appellant, as they were living in a joint family system. There was nothing to indicate that any of these monies were specifically earmarked for the appellant. Only in the most vague and general sense can it even be suggested that the appellant was in any way dependent on or the beneficiary of monies sent to the joint family household by the sponsor from Spain. The evidence to support that proposition was entirely inadequate. Further, as the judge pointed out, there is no evidence that the sponsor funded the appellant's visa application and education in the UK and the sponsor did not state that he did.
20. In this regard, I have carefully considered the appellant's and the sponsor's witness statement, which I find entirely insufficient to support the claim of prior dependency in any meaningful sense. For example, the sponsor stated that he insisted to his brother, the appellant's father, that he ensure she was educated. If there ever was an opportunity for him to state that he provided funds for her education in Pakistan, or financed her visa application, or sponsored her to come to the UK as a student, it was in that statement. Instead, the statement is remarkably silent on all those issues.
21. The particular point argued in the grounds is that the conclusion that the appellant was not dependent on the sponsor is inconsistent with the judge's acceptance of the evidence of the appellant and the sponsor as truthful and credible, and that this supposed inconsistency was not put to the appellant and the sponsor for response. However, I am not satisfied that the findings are necessarily inconsistent.
22. In her witness statement, the appellant said, "*I was dependent on him when he was living in Pakistan I consider him as father figure in my life.*" However, the sponsor's statement was that "*I wished to see the appellant secure education future and I always insisted my brother to give opportunity to the appellant to get education.*" He does not say that he in any way financed her education. At [5] of his witness statement the

sponsor stated, *"I submit that I visited Pakistan on various occasions to provide moral and financial support to the Appellant and her parents when I was in Spain. I was sending money from Spain to the Appellant's family in Pakistan as I am a part of our joint family system."*

23. At no point does the sponsor's statement indicate that funds he remitted were earmarked particularly for the appellant, rather than the whole household, including his parents and own wife and child. Whilst stating that she was dependent on the sponsor, it can be seen that the appellant's own statement is expressed in the most vague and general terms, crying out for particulars.
24. In relation to present dependency, the respondent again points out that the appellant left Pakistan in 2012 to come to the UK as a student, and the sponsor left Pakistan in 1997 to work in Spain and did not come to the UK until 2015. Leaving aside the issue of continuity of dependency, the evidence that was before the First-tier Tribunal did not establish that the appellant had been dependent on the sponsor in the period between April 2012 and 2015. At [24] of the decision, the judge also observed that there was no mention of financial support from the sponsor in the appellant's student application in 2012. The statements of the appellant and the sponsor do not address how the appellant was being financed in the UK from 2012 until 2015. Obviously, she was living in the UK without him until he arrived in 2015. On the written and oral evidence, the sponsor was sending money from Spain to Pakistan but there was no evidence at all before the Tribunal that he sent any money to the appellant in the UK. In the circumstances, the judge was entitled to conclude that he was not supporting her financially at that time and not paying for her education in the UK. However, leaving aside the issue of continuity, the issue was whether the appellant is presently dependent on the sponsor or a member of his household, which the judge accepted.
25. I am not satisfied that any of these witness statements or anything else said in evidence by either the appellant or the sponsor (as recorded in the decision) was inconsistent with the judge's findings as to dependency. Whether the appellant was and/or continued to be dependent on the sponsor within the meaning of the regulations is a legal consideration and a very different question from the appellant's or the sponsor's personal appreciation or understanding.
26. It follows that whilst the appellant may have established present dependency and membership of household, there was no material error in the finding of the First-tier Tribunal that the appellant failed to discharge the burden of proving prior dependency or membership of household. It follows that the appeal could not have succeeded.
27. In the circumstances and for the reasons set out above, I find no material error of law in the decision of the First-tier Tribunal so that it must be set aside.

## **Decision**

The appeal to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal stands and the appellant's appeal remains dismissed.

I make no order for costs.

I make no anonymity direction.

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 20 August 2020

