



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/00973/2020

THE IMMIGRATION ACTS

Heard at Manchester (via Microsoft teams)
On 23 July 2021

Decision & Reasons Promulgated
On 12 August 2021

Before

UPPER TRIBUNAL JUDGE HANSON

Between

HASSAN IFTIKHAR
(Anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P. Shea instructed by Whitefield Solicitors Ltd
For the Respondent: Mr McVeety, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. By a decision sent to the parties on 16 April 2021 the Upper Tribunal set aside a decision of the First-tier Tribunal for the reasons stated.

Preliminary issue

2. The directions given by the Upper Tribunal specifically stated at paragraph 20(iii) *"The appellant's representatives must confirm whether an interpreter is required and if so, in what language and dialect, and for whom."* As no such confirmation was received no interpreter was booked for the hearing.
3. Mr Shea stated, notwithstanding the fact the sponsor has lived in the United Kingdom for a number of years, that the sponsor required an interpreter to give his evidence.
4. The directions also provided that the witness statements filed will stand as the evidence in chief of the maker. The statements are written in English with the sponsor's witness statement of 20 October 2020 containing no endorsement that it needed to be read back to him and translated into any other language that he understood. Mr McVeety also confirmed that, whilst not accepting the content of the statement, he had no cross examination.
5. As it was not necessary for the Sponsor to give oral evidence the absence of the interpreter did not prevent the appellant receiving a fair hearing, which proceeded by way of submissions only from the advocates.

Background

6. On 20 November 2019 Mr Ifitkar made an online application for an EEA Family Permit to enable him to join his uncle, Mr Amin Babar, an Italian Citizen ('the Sponsor') who is exercising treaty rights in the United Kingdom.
7. The appellant is a citizen of Pakistan born on 30 December 1997, who describes himself as being single and who lives in Gujarat District in Pakistan in the family home. He was born on 30 December 1997.
8. An Entry Clearance Officer (ECO) considered the application but refused it on 16 December 2019 for the following reasons:

The Decision

- You have previously been refused a Family Permit on 16 September 2016, due to insufficient evidence that you are an extended family member of a qualified EEA national under regulation 8 of the Immigration (European Economic Area) Regulations. I have considered the information in relation to your previous application and all documents you have submitted with your current application based on all the information available on its own merit and the decision is as follows.
- You state that your uncle Amin Babar is an Italian national. You have provided evidence that your sponsor holds an Italian identity card.
- Only those family members referred to under Article 2 of the Directive 2004/38/EC have an automatic right to join a company the EEA family member to another member state when the EEA national is exercising a Treaty right.
- Article 3 of Directive 2004/38/EC provides the basis for a member state to consider other relatives, such as 'extended family members' and determine the terms of entry and residence to such 'beneficiaries' in accordance with their own domestic legislation. (Article 3 (2)).
- The United Kingdom has transposed the terms of Article 3 into Regulation 8 of the Immigration (European Economic Area) Regulations 2016. As Regulation 8(4) makes clear,

the United Kingdom is allowed to set terms and allow them to reside in the United Kingdom are family members of an EEA national.

- In accordance with Regulation 8(2)(b) of the EEA Regulation 2016 (as amended) an extended family member applicant must demonstrate they were either:
 - dependent on the EEA national in a country other than the UK
 - a member of the EEA nationals household in a country other than the UK
- You state that your sponsor has resided in the United Kingdom since 16 September 2016. You are claiming to be dependent upon your EEA sponsor and have provided nine money transfer receipts from your sponsor via Small World and Express Currencies covering a period from 2 March 2019 to 4 November 2019, you have also provided a transfer statement covering the period from 19 January 2019 to 29 May 2019. However, it is noted that you have provided no evidence that you received any of the funds listed on the statement and it is also noted that your transfer receipts only cover the period immediately prior to your application (with the last nine months). Unfortunately, this limited amount of evidence in isolation does not prove that you are financially dependent on your sponsor. I would expect to see substantial evidence of this over a prolonged period, considering the length of time your sponsor has been resident in the United Kingdom.
- It is also noted that you have not provided any evidence such as your own and your mother's bank statements or other documents indicating financial ingoing and outgoings. In the absence of this evidence, this department cannot sufficiently establish your dependency, either wholly or partly, upon your EEA sponsor.
- I would also expect to see evidence which fully details sponsor circumstances which you have not provided. Their income, expenditure and evidence of their household members, which would prove that they are able to meet your essential living needs as well as their own.
- Home Office records and the documents you have provided, show that your sponsor resides with his spouse and at least two dependent children. The documents you have provided, show that your sponsor earns an average of £1280 per month. Due to his income and dependent household members, I am not satisfied that it is sustainable for your sponsor to financially support you while meeting his own needs and the needs of his family members for are already be reliant upon him.
- Furthermore, upon inspection of your sponsor's bank statements. It has been noted that your sponsor receives public funds, namely Universal Credit from the Department of Work and Pensions (DWP) (an average of 665 per month). Universal Credit is means tested, which is assessed according to a household's income and the household make up. This means the DWP have assessed your sponsor circumstances and awarded them public funds due to their low income and their dependent household. These funds have been awarded to assist your sponsor in meeting their own essential needs and the needs of their own household in the United Kingdom. Consequently, I am not satisfied that your sponsor is currently able to support you financially or be able to continue to support you should you arrive in the United Kingdom.
- On the evidence submitted in support of your application and on the balance of probability I am not satisfied you are dependent on your sponsor.
- In view of your failure to provide satisfactory evidence, I am not satisfied that you are the extended family member of an EEA national in accordance with Regulation 8 of the Immigration (European Economic Area) Regulations 2016.

I therefore refuse your EEA Family Permit application because I am not satisfied that you meet all the requirements of regulation 12 (see ECGs EUN2.23) of the Immigration (European Economic Area) Regulations 2016.

9. Following the lodging of the appeal the decision was reviewed by an Entry Clearance Manager (ECM) who, in a decision dated 16 April 2020, wrote:

I have reviewed the grounds of appeal and all the supporting documents submitted with the appeal papers.

Based on the refusal notice and the additional documentation submitted, I am satisfied the original decision to refuse were correct. The decision is therefore in accordance with the law and the EEA Regulations and I am not prepared to exercise discretion in the appellant's case.

It is acknowledged that you have provided a number of money transfer receipts, however, you have failed to show that money provided by your sponsor is for essential means. You have failed to provide any evidence of bank statements or other documents indicating financial ingoing and outgoings.

Given all of the above considerations, I maintain the ECO's initial decision to refuse entry clearance.

10. The First-tier Tribunal set out the appellant's claim between [19 - 21] of that decision in the following terms:

19. The Appellant's claim, contained in the statement submitted on his behalf by his representatives, and in the other documents submitted for the purposes of the hearing, is that his Sponsor is his uncle, upon whom he has been dependent since his own father passed away in April 2017. He states that when his father passed away it was very tragic for his family in Pakistan as he was the only source of income for the family. After his death, his uncle took responsibility to support him and his family as he was then the only source of income for them. He states that the Sponsor has been a father figure for him as he financially and morally supports him.
20. He states that his uncle has been living in the UK since September 2016 and he is working as a car mechanic at Longsight Auto Repairs Ltd. He can confirm that the money his uncle sends to him, does support him and covers his expenditures, including food, accommodation. When he made his application in November 2019, he provided the money transfer transaction statements dating back to 19 January 2017 and this covers a period of 2 years and 10 months. He submits that it is not correct for the Respondent to allege that the evidence is limited and covers only the immediate period.
21. He further states that he is currently studying at college and has never worked in his life. He has no bank account or other source of income of his own. His main expenditure are things like food and groceries, college fees, mobile top ups, buying clothes and travel expenses. He has provided evidence of his expenditure, but states that it is not common practice to keep receipts of everything you buy and that shopkeepers often do not give out receipts. In addition to this it is very hard to find work in Pakistan. He is wholly reliant on his uncle and asks that in the circumstances his appeal is allowed.

Discussion

11. Although the appellant seemed to suggest in his own evidence that the only source of financial support was from the sponsor, it also appears that there was evidence before the First-tier Tribunal that the sponsor's father also contributes to the household in Pakistan and has done so since the appellant's father died.
12. The information provided in response to directions from the Upper Tribunal was again limited, being further example of remittances sent and a copy of the UK-based sponsor's bank statements.
13. Mr Shea submitted that the money sent by the sponsor in the UK was solely for the appellant and that he was reliant in its entirety on the money from his uncle. The appellant had stated he uses the money from his uncle to pay his college fees and

that whilst accepting education is not an essential needs, that he also uses the same to pay for food, clothing, and to meet his own needs.

14. Whilst Mr Shay referred to the grant of permission against the decision of the First-tier Tribunal matters have gone beyond that and the decision of the Upper Tribunal is the one that sets out the scope of this hearing. In that document it is noted:
 39. Mr Walker relied upon the decision in Moneke (EEA – OFMs) Nigeria [2011] UKUT 00341(IAC) in which at [41] the Tribunal accepted that the definition of dependency was accurately captured by the current UKBA ECIs which read as follows at ch.5.12: “In determining if a family member or extended family member is dependent (i.e. financially dependent) on the relevant EEA national for the purposes of the EEA Regulations: Financial dependency should be interpreted as meaning that the person needs financial support from the EEA national or his/ her spouse/civil partner in order to meet his/her essential needs – not in order to have a certain level of income. Provided a person would not be able to meet his/her essential living needs without the financial support of the EEA national, s/he should be considered dependent on that national. In those circumstances, it does not matter that the applicant may in addition receive financial support / income from other sources. There is no need to determine the reasons for recourse to the financial support provided by the EEA national or to consider whether the applicant is able to support him/herself by taking up paid employment. The person does not need to be living or have lived in an EEA state which the EEA national sponsor also lives or has lived.” At paragraph 42 the Tribunal went on "We of course accept (and as the ECIs reflect) that dependency does not have to be “necessary” in the sense of the Immigration Rules, that is to say an able-bodied person who chooses to rely for his essential needs on material support of the sponsor may be entitled to do so even if he could meet those needs from his or her economic activity."
 40. The Secretary of State’s argument is that the Judge failed to properly analyse and make findings upon the question of whether the appellant is a person who would not be able to meet his essential living needs without the financial support of the EEA national. To answer this question would have required a detailed analysis of the financial circumstances of Mr Iftikhar and his home environment. This is an issue specifically raised by the ECO who was not satisfied that sufficient material had been provided to establish dependency. The EEA national sponsor in the United Kingdom could well have been paying £100 per month, as found by the Judge, but it also appears that other sources of income were being paid into the family household and there is no specific finding by the Judge that the income from other sources was not sufficient to meet Mr Ifikhar’s essential needs, including his college fees. Whilst the Judge finds that the fees are paid from the £100 per month that does not specifically answer this question. If the Judge had found in the paragraphs set out above that the income being paid into the household of which is part in Pakistan was insufficient, such that without assistance from the sponsor Mr Ifikhar would not be able to meet his essential needs, the Secretary of State will be in some difficulty. The Judge notes that the sponsor does not need to provide financial support for all those in the household in Pakistan but chooses to make payments to Mr Ifikhar. The fact such payments are made does not, per se, establish dependence in light of the required legal test.
15. It is not disputed that the Sponsor in the UK is sending money to Pakistan, but just sending money is not sufficient. Mr McVeety noted a trend arising in cases of money being sent to an individual abroad, claiming it is a payment that is to meet a dependency, even if that person lives within a family unit with no evidence of the overall income and outgoings of the unit in which the recipient lives.
16. The appellant lives within the family home in Pakistan. It was submitted by Mr McVeety that there are five members of the household, and the appellant was claiming nobody else in the household works. Whilst the First-tier Tribunal mentions an income from other sources it was not clear before the ECO or since whether the monies received within the householder are sufficient to meet all the

needs of the family, or whether the sum paid by the Sponsor is only for the appellant and, if so, why he needs £100.

17. I find there is merit in Mr McVeety's submission of a lack of candour regarding the family circumstances, their needs, and what the money from all sources is used for, a situation that has prevailed despite it being made clear by the Upper Tribunal on the last occasion what type of evidence needed to be provided.
18. It is not disputed that money is sent from the United Kingdom and received, but the issue has always been what that money is used for and whether it is necessary to meet the needs of the family unit. If payments from other sources are sufficient to meet the essential needs, and particularly if there are savings, the Sponsors payments do not establish the required dependency.
19. I accept in some cases it could be argued that if it was established that the only income received was by way of remittances from abroad that may be sufficient, but this is not so in this case as the appellant has to be dependent upon the EEA national, and it is not made out the Sponsors father is himself an EEA national. Any payments that the father is therefore making are not payments and establishes dependency in accordance with the Regulations.
20. The requirement for more detailed proof has been there since the refusal by the ECO and yet it is still not clear whether the monies from the Sponsor are used to improve the standard of living of the family who do not need the same to meet essential expenditure or whether they are required for this purpose. That is the key question in an appeal of this nature, yet which does not appear to have been adequately addressed.
21. It is not credible that the £100 would only have been sent to meet the needs of the appellant and leave other members of the household, such as the appellant's mother and siblings with no income at all and with insufficient to meet their own essential needs. The lack of clarity in the evidence still means that the true position is not known.
22. It is not made out that the evidence required is not available or could not have been provided. There is other income, as indicated by the First-tier Tribunal, but the extent of that income and expenditure of the family unit and whether the appellant's essential needs cannot be met without the payment from the Sponsor has not been disclosed. This prevents the detailed examination of the family circumstances requiring by case law and ability to satisfy the Regulations.
23. Whilst Mr Shae argued the submission to this effect made by Mr McVeety was a position not supported by the evidence, I find they are submissions to weight may be given. It is not speculation to note there is more than one member of this household, to note that the members of the household must have essential needs of their own and as a whole, and to comment upon the lack of candour and clarity in the evidence provided, notwithstanding the issues always being known.
24. Repeating the claim that the transfers from the UK-based sponsor are to meet the appellant's needs and that any other submissions are irrelevant, fails to focus on the core question in this appeal of whether the appellant had established that the support of the Sponsor is required to meet his essential needs in Pakistan.

- 25. I make no comment upon the fact the Sponsor appears to be a receipt to public funds as the bank statement show he has more coming into his account than is going out to Pakistan.
- 26. The burden of proving an entitlement to the Family Permits falls upon the appellant. I find on the evidence he chooses to make available that he has failed to discharge the burden upon him to establish that he is entitled to the family permit. As the appellant has not proved he is a person who would not be able to meet his essential living needs without the financial support of the EEA national, the appeal is dismissed.

Decision

27. I dismiss the appeal.

Anonymity.

- 28. 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 28 July 2021