



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

Appeal Numbers:  
UI-2021-000520 / EA/00032/2021  
UI-2021-000521 / EA/05407/2020  
UI-2021-000522 / EA/06498/2021

**THE IMMIGRATION ACTS**

**Heard at Field House  
On: 11 July 2022**

**Decision & Reasons Promulgated  
On: 28 September 2022**

**Before**

**UPPER TRIBUNAL JUDGE BRUCE  
DEPUTY UPPER TRIBUNAL JUDGE SAINI**

**Between**

**MALIK JAVED AKHTER AWAN  
MALIK UMAR HAYAT AWAN  
KHIZAR HAYAT MALIK  
(ANONYMITY DIRECTION NOT MADE)**

Appellants

**and**

**ENTRY CLEARANCE OFFICER**

Respondent

**Representation:**

For the Appellant: Ms K Joshi, Legal Representative; Joshi Advocates Limited

For the Respondent: Mrs A Nolan, Senior Home Office Presenting Officer

**DECISION AND REASONS**

Introduction

1. This is an appeal against the Decision of First-tier Tribunal Judge Cary dismissing the Appellants' appeals against the Secretary of State's decision dated 8 December 2020 refusing to grant EEA family permits to the three Appellants as the Entry Clearance Officer was not prepared to accept that they were dependant on their sponsoring brother for their essential living needs.

### Background

2. The Appellants appealed against that decision and were granted permission to appeal by Upper Tribunal Judge Allen in the following terms:

On balance, ground 1 identifies arguable points of challenge to the judge's decision. Ground 2 is weaker, but I do not rule it out.

3. We were not provided with a Rule 24 Response from the Appellant however Mrs Nolan indicated the appeal was resisted.

### Findings

4. We heard argument from both parties following which we reserved our decision which we now give.
5. In respect of Ground 1, we do not find that there is a material error of law. Ground 1 as pleaded by Ms Joshi focussed upon the Appellants' ability to meet the requirement that they were "members of the same household" as their Sponsor. In short, it was argued that at §46 of the Decision, the Judge states that the EEA Sponsor had not spent an "appreciable time" in the Appellants' country of residence in order to meet the "member of household" requirement. We insert §46 in its entirety so that the underlined offending finding can be read in context:

"There is no evidence that Mr Ali spends any appreciable time in Pakistan and even if he did it is difficult to see how it could legitimately be said that his three brothers formed part of his household. The evidence is that Mr Ali's home is here and that at best he simply visits Pakistan to see his family. Although his "permanent address" is shown on the reverse of his Pakistan National Identity Card as being in Pakistan his present address is recorded as being in the United Kingdom (which is referred to as his "Country of Stay"). He has not even provided me with a chronological schedule of his visits to Pakistan and there is nothing to show that he shares a household there with any of the Appellants. In evidence he told me that his mother had been responsible for running the household up

until the time she came to the United Kingdom in May/June 2019 and thereafter his sister and Khizar were in charge”.

6. Read in context, this statement does not elevate or purport to create any test or threshold that the Appellants needed to surpass. It merely forms part of the Judge’s observations that the Sponsor did not spend a great deal of time in Pakistan if it was to be argued that he had a household there that he remained the head of. As an aside, we note that the Sponsor has a family household in the UK which he is presumably head of; and we observe that whilst it is feasible to be the head of two households in different jurisdictions, evidence would be needed to demonstrate the nexus to a foreign household and the time spent in it in order for the assertion of being the head of a foreign household to have any rationality. Notwithstanding the above, we gave Ms Joshi the opportunity to illustrate the evidence of the time spent in Pakistan by the Sponsor to support her position that the Judge had overlooked any significant evidence. Ultimately, Ms Joshi could only demonstrate evidence of three periods of time spent in Pakistan. The first was from 31/03/2017 to 23/04/2017 (a period of 3 weeks), the second was 31/05/2018 to 24/06/2018 (a period of 3 weeks) and the third and last period commenced on 13/05/2019, but we were not provided with an exit date (although Ms Joshi did not seek to persuade us that it was materially longer than the previous trips). Given the above evidence that was before the Judge, it was plainly open to him to comment that the Appellant had not spent “any appreciable time in Pakistan” that could support the suggestion that he was the head of a household there.
7. In any event, to fully ventilate Ms Joshi’s arguments, we drew her attention to the reported decision in Sohrab and Others (continued household membership) [2022] UKUT 157 (IAC) that was promulgated on 5 May 2022 (after the Upper Tribunal had granted permission to appeal). Ms Joshi was unaware of the decision and was thus given time to read the judgment and consider her position.
8. We drew headnotes (4) and (6) to Ms Joshi’s attention, and asked her to address us on how her grounds were correct in the light of Sohrab or to highlight why, if she was able to, Sohrab was wrongly decided or could be distinguished in this matter: Headnotes (4) and (6) of Sohrab read as follows:
  4. *To be a member of an EEA national's household requires a sufficient degree of physical and relational proximity to the EEA national through living in the household of which the EEA national is*

*the head, living together as a unit, with a common sense of belonging. There should be a genuine assumption of responsibility by the EEA national for the EFM. Questions of the commencement of the assumption of responsibility and the duration of dependency or household membership are relevant.*

6. *It will be a question of fact and degree as to whether a person living away from the EEA sponsor's household is to be regarded as having left that household. Relevant factors are likely to include:*

- (a) the duration of the separation;*
- (b) the nature and the quality of the links maintained with the household during the extended family member's time living away;*
- (c) whether there was an intention to continue life together as a household, with the EEA national as the head, at the time the putative EFM left;*
- (d) the extent to which the departing members of the household have established their own distinct household elsewhere;*
- (e) the extent to which there remains a genuine assumption of responsibility (including financial responsibility) by the EEA sponsor for the putative EFMs during the period of physical separation, and any corresponding dependence (including financial dependence) on the part of the EFM;*
- (f) the immigration capacity in which the EFM has resided in the UK ahead of the EEA sponsor's arrival.*

9. In the event, Ms Joshi made no submissions in relation to Sohrab and we therefore find there is no good reason given not to follow this reported decision; and that the recommended approach to the “membership of household” requirement applies to this appeal and that the Judge’s approach, in hindsight, accords with the factors which Sohrab has confirmed may be relevant.

10. It was further argued by Ms Joshi under Ground 1 that the Appellants also challenged the Judge’s findings at §46 (see above) on the documentation showing the Sponsor’s ownership of the property in which the Appellants lived in Pakistan. As the above excerpt shows, the Judge assessed the documentation from Pakistan but rejected it for the reasons given which the Judge found meant that aside from what the documentation said on its face, the Sponsor nonetheless lived in the UK, not Pakistan; and there was no evidence of his being head of that household in other practical respects. That finding was plainly open to the Judge to make, particularly in light of the holistic approach suggested by Sohrab.

11. Finally, in relation to Ground 1, Ms Joshi put before us a letter dated 18 May 2020 from UKVI to the Sponsor which indicated that in relation to Mohammad Imran (a further brother of the Sponsor) it was accepted that he was a member of the same household as the Sponsor. Ms Joshi argued that the same approach should have been followed in these matters by the Judge but it was not. It also has not been shown by Ms Joshi, for example by way of a Skeleton Argument, or a transcript of the hearing, or a note of the hearing accompanying a witness statement (see BW (witness statements by advocates) [2014] UKUT 568 (IAC)), that she argued before the Judge that he needed to make findings in respect of the inconsistency in decision-making by the Respondent and in any event, we were not referred to any authority on this point either. The difficulty that the Appellants face is that the Judge appears to have been aware of the concessions in relation to other family members (see §28) and yet made his own findings on the evidence before him in relation to why he found the appellants were not members of the same household which we have already found to be consistent with the approach taken in Sohrab. Furthermore, despite there being an inconsistency between the decisions in respect of the family members at first blush, it was confirmed by Ms Joshi that the applications were not all made or decided on the same occasion, and as such it has not been demonstrated to us on the facts that there was any inconsistency between the decision-making here.
12. Turning to Ground 2, it was argued that the Judge should not have found there was insufficient evidence to establish dependency when he was provided with money transfers and bank statements and other evidence, and that the Judge placed weight on immaterial matters.
13. Again, the difficulty that the Appellants face is that the approach taken by the Judge appears to be correct in hindsight as it is consistent with higher court authority establishing that the appellants must show the dependency is required for their essential needs (see Jia v Migrationsverket [2007] CJEU Case C-1/05). Although it is true that evidence required to show such dependency does not need to take any prescribed form (see Jia at [43], for example), the Court of Appeal has stated on two occasions that dependency will not be established simply by providing financial support to a family member who can support themselves (see ECO (Manilla) v Lim [2015] EWCA Civ 1383 and SM (India) v ECO (Mumbai) [2009] EWCA Civ 1426, as approved in Singh v Secretary of State for the Home Department [2022] EWCA Civ 1054). Given that the Appellants needed to establish dependency covering their essential needs, questions such as the number of dependents each individual had, was plainly pertinent to the assessment of the sufficiency of the financial

remittances, and information regarding their everyday expenses was not provided. The burden of proving that the dependency is for the Appellants' essential needs lay on the Appellants, and the judge was entitled to find it could not be discharged on the incomplete evidence before him. Such evidence that there was raised other questions: there was no clear picture of the Sponsor's income or how he managed to support his own large family and his mother in the UK, as well as the other family members who had been recognised as extended family members in India; the Pakistani tax records of one of the Appellants indicated that he was an active tax payer with his own business. These were all matters which were raised during the hearing and were not met with a response: we note, for example, that Ms Joshi did not seek to adduce any further evidence in reply or apply for an adjournment in order to address them. There was therefore evidence before the Judge upon which he was entitled to make the adverse findings that he did. As such, Ground 2 also fails to disclose a material error of law.

14. We recognise that the outcome of this appeal may have stark consequences for the family, and that not all judges may have reached the conclusions that Judge Cary reached; however this is not a legitimate basis for an appeal nor for us to revisit his findings.
15. In light of the above findings, we find that the Decision of the First-tier Tribunal is free of material errors of law as alleged and the Decision of Judge Cary shall stand.

### **Notice of Decision**

The appeal is dismissed.

Signed: P Saini

Date 17 August 2022

Deputy Upper Tribunal Judge Saini