



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: EA/02439/2020**

THE IMMIGRATION ACTS

**Heard at Bradford
On 24 March 2022**

**Decision & Reasons Promulgated
On 26 April 2022**

Before

**UPPER TRIBUNAL JUDGE LANE
DEPUTY UPPER TRIBUNAL JUDGE ALIS**

Between

**MR MUHAMMAD AWAIS
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Not present or represented at the hearing

For the Respondent: Ms Young, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant (date of birth 23 February 1996), a Pakistani national, had applied on 26 December 2019 for a family permit with reference to Regulation 8 of the Immigration (EEA) Regulations 2016. He claimed he was the nephew of Muhammad Ashgar Baig, a German national exercising treaty rights in the United Kingdom. The respondent refused his application on 21 January 2020.
2. On 17 April 2020 the Appellant lodged his notice of appeal and his appeal was listed for a hearing on the papers, as distinct to an oral hearing,

before Judge of the First-tier Tribunal Rose (hereinafter referred to as the “First-tier Judge”).

3. In a decision promulgated on 16 February 2021 the First-tier Judge accepted the Appellant and Mr Baig were related as claimed but rejected the Appellant’s claim that he was financially dependent on Mr Baig. The Appellant sought permission to appeal that decision and on 14 April 2021 Judge of the First-tier Tribunal Judge Keane found it arguable the First-tier Judge had not explained why no weight had been attached to certain documents and granted permission to appeal.
4. The respondent filed a Rule 24 response dated 26 April 2021. In her response the respondent set out two objections to the argument there had been an error in law namely:
 - (a) It was unclear whether the documents in question had been submitted to the First-tier Tribunal. If the documents were not before the Tribunal then there was no error in law; or alternatively
 - (b) If the documents were before the First-tier Tribunal the respondent argued that the documents did not provide any context as to how each individual was known to the other, how the EEA national supported the Appellant and how the EEA national knew of the Appellant’s personal circumstances. As the documents simply repeated the Appellant’s own generalised claim any failure to specifically consider the documents did not amount to a material error in law.
5. The matter was initially listed for a remote hearing before the Upper Tribunal on 1 November 2021. Upper Tribunal Judge Sheridan adjourned the case to give the Appellant a further opportunity to attend the hearing. However, on 7 February 2022 the sponsor confirmed by email that the Appellant wanted the appeal dealt with on the papers and on 9 February 2022 the Tribunal indicated to the sponsor that the Appellant’s case would be listed for an oral hearing but confirmed the hearing would proceed in the Appellant’s and sponsor’s absence.
6. The case was listed before us today and we were satisfied both the Appellant and sponsor had been notified of the hearing.

SUBMISSIONS ON ERROR IN LAW

7. Ms Young relied on the Rule 24 letter and invited the Tribunal to find that there had been no error in law. She stated that there was no evidence before the Tribunal that the letters, attached to the permission to appeal, had been before the First-tier Judge and submitted that these documents appeared to have been lodged in response to the First-tier Judge’s criticisms of the evidence. In such circumstances, she submitted that there was no error in law. Alternatively, Ms Young argued that the letters did not

address the reasons why Judge had dismissed the appeal. She invited us to uphold the First-tier Judge's findings.

DISCUSSION AND FINDINGS

8. Whether or not specifically identified herein, we confirm that all the relevant documents available to us on the court file, together with the oral submissions have been carefully taken into account in the determination of this application.
9. The respondent had rejected the Appellant's application for a family permit because she was firstly not satisfied the Appellant and EEA national were related as claimed and secondly that the Appellant was reliant on the EEA national for his essential needs.
10. The Appellant appealed that decision and lodged the following additional evidence:
 - (a) Evidence from the Union council showed the EEA national and Appellant were cousins.
 - (b) Further evidence of money transfers.
11. On 7 May 2020 the entry clearance manager reviewed this additional evidence but upheld the original decision. The matter thereafter proceeded to a paper appeal and in dismissing the Appellant's appeal the First-tier Judge made the following findings:
 - (a) He accepted the Appellant and EEA national were related as claimed.
 - (b) The EEA national's bank statement for the period 21 December 2019 to 20 January 2020 revealed a credit balance of £737.97 and that the EEA national had withdrawn £300 on six occasions. Transfer slips between February and November 2019 showed regular transfers of £100 and monthly transfers of £100 in 2020.
 - (c) There was no evidence from anyone who knew the Appellant in his home area and no documentary evidence to support the Appellant's claim that he was unemployed and dependent on the EEA national for his essential needs. The Appellant failed to provide evidence of his own family circumstances.
 - (d) No weight was placed on the respondent's assertion the EEA national had to support eight other people.
12. Permission to appeal had been granted for the reasons set out in paragraph [3] above. Ms Young today relied on the Rule 24 response and the oral submissions set out above.
13. Having considered the oral and written submissions and having reviewed the Tribunal's own file we are satisfied the First-tier Judge did not have the

four statements annexed to the application for permission to appeal (IAFT4). The Judge only had the original application form, the original decision and entry clearance manager's review, the grounds of appeal and papers submitted with those grounds.

14. The application form (pages 5-13 of the respondent bundle) did not identify what documents were submitted. The grounds of appeal did identify the documents submitted and these are summarised in paragraph [10] above. Neither the application form nor the grounds of appeal referred to the four statements that were attached to the permission to appeal. Ms Young stated those statements had not been served on the respondent prior to permission application and we accept those documents were not before the First-tier Judge because there was no evidence from either the Appellant or the sponsor that these documents had been sent to the First-tier Judge before he promulgated his decision on 16 February 2021.
15. The Judge had referred to the available evidence in paragraphs [8] to [12] of his decision and we have concluded these four statements were only submitted with the permission to appeal which was after the First-tier Judge dismissed the Appellant's appeal.
16. In the circumstances, the Judge cannot be said to have ignored this evidence and given the findings at paragraphs [11] and [12] of his decision we are satisfied there is no identifiable error in law.

NOTICE OF DECISION

17. We uphold the original decision of the First-tier Tribunal and dismiss the appeal.

Signed

Dated



Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT **FEE AWARD**

No fee award made as the appeal has been dismissed.

Signed

Dated

A handwritten signature in black ink, appearing to read "SPAL" with a flourish underneath.

Deputy Upper Tribunal Judge Alis