



**Upper Tribunal
(Immigration and Asylum Chamber)
003415**

Appeal Number: UI-2022-

EA/02535/2021

THE IMMIGRATION ACTS

**Heard at Field House
On 23 September 2022**

**Decision & Reasons
Promulgated
On 9 November 2022**

Before

**UPPER TRIBUNAL JUDGE RIMINGTON
& DEPUTY UPPER TRIBUNAL JUDGE DOYLE**

Between

**MAJID HAMEED
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr S Ahmed, counsel direct access.

For the Respondent: Ms A Ahmed, Senior Home Office Presenting Officer

DECISION AND REASONS

1. We have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence we do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Hussain promulgated on 20 June 2022, which dismissed the Appellant's appeal against the respondent's decision to refuse to grant a family permit under the Immigration (EEA) Regulations 2016.

Background

3. The Appellant was born on 2 December 1982. He is a national Pakistan who applied for an EEA family permit as the extended family member of his sister (the EEA national), a Portuguese national who lives in the UK. On 10 January 2021 the respondent refused the appellant's application.

The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Hussain ("the Judge") dismissed the appeal against the Respondent's decision,

5. Grounds of appeal were lodged by the appellant and on 7 July 2022 Judge Saffer gave permission to appeal stating

"It is arguable that the Judge materially erred by not raising matters of concern to enable the Appellant to respond, and by importing his own understanding of cultural mores in Pakistan without giving the Appellant the opportunity to deal with those issues. All grounds may be argued."

The Hearing

6. For the respondent, Mr Ahmed moved the grounds of appeal. Mr Ahmed told us that this appeal raises questions of procedural fairness. He said that the EEA national and the appellant's witness was not cross examined. The judge did not ask any questions for clarification. Mr Ahmed suggested that the Judge's findings have been unfairly made because his criticisms of the evidence led had not been put to the EEA national, nor to the witness who attended. Although Mr Ahmed was critical of the Judge for promulgating his decision approximately 3 months after the date of hearing, he did not press the point and accepted that, although this was mentioned in the preamble to the grounds of appeal, delay was no longer a ground of appeal in this case.

7. Mr Ahmed took us to [19] and [20] of the decision and told us that there the Judge provides an opinion of cultural norms in Pakistan which is not drawn from the evidence placed before him, and which he did not allow counsel for the appellant to comment on at the hearing before the First-tier Tribunal. Mr Ahmed told us that oral evidence was provided by the EEA national and one other witness, who adopted the terms of a letter reproduced in the appellant's bundle. Mr Ahmed said that witnesses' evidence was not mentioned in the Judge's decision.

8. Mr Ahmed told us that the Judge made adverse credibility findings without allowing either counsel for the appellant or the EEA national to

comment. Mr Ahmed explained that there was no Home Office presenting officer present at the hearing before the First-tier Tribunal, and said that it was incumbent on the Judge to give fair notice of any doubts he had about the quality of evidence produced, and to seek explanation for any inconsistency that he detected in the evidence.

9. Mr Ahmed told us that at [1] of the decision the Judge rehearses the appellant's immigration history, then at [23] of the decision the Judge uses that immigration history to make adverse credibility findings. Mr Ahmed said that the appellant's immigration history was not something relied on by the respondent in the decision notice, so that (once again) the Judge failed to give counsel for the appellant an opportunity to comment on aspects of evidence which would influence his decision making process. Mr Ahmed said that if the Judge had doubts about any of the evidence he should have reconvened the hearing to give either the appellant or appellant's counsel a chance to address those doubts.

10. Mr Ahmed urged us to allow the appeal and remit this case to the First-tier Tribunal to be determined afresh.

11. Ms Ahmed opposed the appeal. Ms Ahmed said that the Judge should not have incorporated comments about his view of what is expected in Pakistani culture at [19] and [20] of decision, but the decision did not contain material errors of law. Ms Ahmed told us that if we remove the Judge's opinions about Pakistani society, the remainder of the decision still stands, and does not contain a material error of law.

12. Ms Ahmed told us that the Judge considered both oral and documentary evidence and his decision can be summed up by saying that there was an insufficiency of evidence to demonstrate dependency. Ms Ahmed told us that the Judge gave adequate reasons for reaching that conclusion. Ms Ahmed told us that the Judge was entitled to take account of the appellant's unchallenged immigration history. Ms Ahmed took us to the documentary evidence placed before the Judge and said that there are only three receipts for money transfers. She told us that the consideration of the documentary evidence supports the Judge's conclusion that the appellant fails to establish financial dependency. She invited us to dismiss the appeal.

Analysis

13. The Court of Appeal in R (on the application of SS (Sri Lanka) v SSHD [2018] EWCA Civ 1391 approving the decision in Arusha and Demushi held that there was no rule that delay of more than three months rendered a decision unsafe. The correct approach was to ask whether the delay had caused the decision to be unsafe so that it would be unjust to let it stand. The only significance of the fact that delay between the hearing and the decision exceeded three months was that, where the decision is challenged on an appeal, the Upper Tribunal should examine

the FTT judge's factual findings with particular care to ensure that the delay has not caused injustice to the appellant.

14. Delay, although mentioned by Mr Ahmed, is not one of the grounds of appeal and was not pressed by Mr Ahmed but we are mindful of the passage of time when we consider the Judge's factual findings.

15. The Judge starts his findings of fact at [14] of the decision. At [15] the Judge correctly identifies that dependency is the central issue in this case. At [18] the Judge reasons

"I am not satisfied that the appellant has shown that his sponsor has been responsible for meeting his essential needs."

The Judge then starts to give his reasons at [19].

16. At [19] & [20] the Judge unnecessarily summarises his understanding of Pakistani culture. His comments about cultural norms are unattractive and unnecessary but we conclude, contrary to Mr Ahmed's submissions, they do not contaminate the decision as a whole and are in effect not material to the essence of the decision when it is read carefully. We consider those comments are extraneous to the core of the decision.

17. At [20] and [21] of the decision the Judge summarises the respondent's reasons for refusal. At [22] the Judge explains that, despite putting the appellant on notice that detailed evidence of income and outgoings is necessary, such evidence is not placed before him. That is critical.

18. The appellant's immigration history is mentioned in the respondent's decision and explanatory notice. It is not wrong for the Judge to record that immigration history in [1] of the decision; the Judge is simply recording the history which brought this appeal to the first-tier tribunal. At [23] the Judge returns to the appellant's immigration history. That history shows that the appellant made two applications for an overseas business representative visa in 2019. That is a relevant consideration in this appeal because it means that twice in 2019 the appellant said that he was employed in a position of significant responsibility.

19. The Judge had to reconcile the appellant's representation in 2019 about his employment against the evidence of the EEA national and the appellant's witness statement prepared for the appeal to the First-tier Tribunal.

20. It is incumbent on the Judge to consider all of the evidence holistically. Part of the unchallenged evidence is that the appellant made visa applications in 2019. The evidence presented to the Judge was that the appellant has been financially dependent upon the EEA national for his essential needs '*for many years.*' There is a clear inconsistency between

the EEA national's evidence and the statements made by the appellant and sponsor to support his visa applications in 2019.

21. The Judge would have made a material error of law if he had ignored such an inconsistency. The suggestion that the Judge should reconvene the tribunal because counsel for the appellant did not comment on an inconsistency in the evidence which was left with the Judge to consider at the conclusion of the hearing is entirely without foundation. The contrast in the evidence is clear on the face of the documentation and the appellant would be expected to know his very recent immigration history.

22. The Judge does not specifically mention that he heard oral evidence from two witnesses, but the Judge does record the oral evidence from the EEA national. The evidence from the second witness is restricted to adopting the terms of an 8 line letter which simply says that in 2019 the author of the letter delivered £350 from the EEA national to the appellant when he visited Pakistan. That evidence is summarised at [21] of the Judge's decision. Singh v Secretary of State [2022] EWCA Civ 1054 at [18] confirmed that although evidence does not need to take any prescribed form a mere undertaking is insufficient and held as follows:

Jia v Migrationsverket [2007] CJEU Case C-1/05 examined the meaning of that 'dependence' under the Directive's predecessor (Directive 73/148/EEC) and held that the term means that material support is needed to meet the applicant's 'essential needs' in their state of origin, or in the state from which they had come at the time when they applied to join the EU national. The evidence required to show such dependency does not need to take any prescribed form:

"43. ... Proof of the need for material support may be adduced by any appropriate means, while a mere undertaking from the Community national or his or her spouse to support the family members concerned need not be regarded as establishing the existence of the family members' situation of real dependence."

23. The fulcrum of the Judge's decision is at [22]. The documentary evidence of financial contribution is restricted to four money transfer receipts. Even now, no evidence is produced of attempts to reproduce records from any company which may have facilitated other money transfers. The money transfer receipts produced are for transfers between 5 November 2021 and 3 February 2022.

24. What the appellant cannot avoid is that he gave an incomplete picture of his circumstances to the First-tier Tribunal. There is no evidence of the appellant's expenditure. The documentary evidence produced by the appellant only gives an incomplete view of the appellant's circumstances. No coherent breakdown of the appellant's income and outgoings is produced. It is not possible to link the appellant's necessary expenditure to the periodic payments made by the EEA national

25. It is not enough to show that some financial contribution has been made. The appellant has to show dependency. The appellant coyly declines to give a candid disclosure of his circumstances.

26. The Judge sets out perfectly good reasoning for his findings of fact. The Judge carefully analysed the evidence, and then took correct guidance in law before reaching a decision well within the range of decisions available to the Judge.

27. In Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC) the Tribunal held that (i) Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge.

28. A fair reading of the decision demonstrates that the Judge applied the correct test in law. The Judge carried out a holistic assessment of all of the evidence. There is nothing unfair in the procedure adopted nor in the manner in which the evidence was considered. There is nothing wrong with the Judge's fact-finding exercise. The appellant might not like the conclusion that the Judge arrived at, but that conclusion is the result of the correctly applied legal equation. The correct test in law has been applied. The decision does not contain a material error of law.

29. The decision does not contain a material error of law. The Judge's decision stands.

DECISION

30. The appeal is dismissed. The decision of the First-tier Tribunal, promulgated on 20 June 2022, stands.

Signed **Paul Doyle**
2022
Deputy Upper Tribunal Judge Doyle

Date 27 September

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.

3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically).**

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A “working day” means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is “sent’ is that appearing on the covering letter or covering email.