Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Numbers: UI-2022-000452**
UI-2022-000453, UI-2022-000256
UI-2022-000449, UI-2022-000450, UI-2022-000451
[EA/06012/2021 & Others]

THE IMMIGRATION ACTS

Heard at Field House	**Decisions and Reasons Promulgated**
On 22 July 2022	**On 8 September 2022**

Before

Upper Tribunal Judge NORTON-TAYLOR
Deputy Upper Tribunal Judge MANUELL

Between

(1) Mr CHAUDHRY MANZAR BASHIR
(2) Mrs TAYYABA TAHIRA
(3) Mr MUBARIZ AHMAD CHAUDHRY
(4) Ms BAREERA MANZAR CHAUDHRY
(5) Mr MUAZ MANZAR CHAUDHRY
(NO ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Hussain, Counsel (instructed by ALC Solicitors)
For the Respondent: Mr C Avery, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellants appealed with permission granted by Upper Tribunal Judge Macleman on 25 March 2022, permission to appeal having been refused by First-tier Tribunal Judge Povey on 28 October 2021, against the decision of First-tier Tribunal Judge Moffatt who had dismissed their appeals. The Appellants, a family whose appeals are linked, had sought entry clearance to the United Kingdom as the Extended Family Members of their EEA sponsor, under Regulation 8(2) of the Immigration (European Economic Area) Regulations 2016 ("the EEA Regulations 2016"). Judge Moffatt found that material dependency on their EEA sponsor had not been shown. The decision and reasons was promulgated on 1 September 2021.

2. Upper Tribunal Judge Macleman considered that it was arguable that Judge Moffatt had made a factual error when saying that there was no evidence of regular money transfers until April 2021, when there was such evidence from April 2020 to April 2021, apart from December 2020. Other factual errors were argued. The grounds qualified for a hearing on whether the judge had gone wrong on the evidence before the tribunal, and if so, what followed.

4. Notice under rule 24 had been served by the Respondent, indicating that the onwards appeal was opposed.

Submissions

5. Mr Hussain for the Appellant relied on the grounds of onwards appeal and the grant of permission to appeal in the Upper Tribunal. In summary, counsel submitted that the judge had erred by failing to consider that there was a year of support by the sponsor for the Appellants, going back to 2018. There was no requirement that support was for any specific length of time, the issue was whether there was present material dependency. The sponsor had paid the bills for what was the ancestral home in Pakistan. Nor had the judge properly examined the claim that the

Appellants and the sponsor had been part of the same household in Pakistan. There was a clear failure to consider the evidence properly and the judge had misstated the evidence at [31]. The decision and reasons was unsafe and should be set aside and the appeal reheard before another judge.

6. Mr Avery for the Respondent submitted that there was no error of law, and that the determination had been misread. The judge had commented on the lack of evidence, and the vagueness of the evidence. The burden on the Appellants had not been discharged. As no material dependency had been shown, the household membership issue fell away. The appeal should be dismissed.

7. In reply Mr Hussain reiterated the points he had made earlier. Evidence had been overlooked. There was evidence that the First Appellant had received payments from the sponsor.

No material error of law finding

8. The tribunal reserved its decision, which now follows. The tribunal must reject the submissions as to material error of law made on behalf of the Appellant. In the tribunal's view, the errors asserted to exist in the decision are based on a misreading of the determination.

9. In dialogue with Mr Hussain it was established that the sponsor had left Pakistan in 2005. There was no evidence before the judge that the sponsor had ever lived in Pakistan with the Appellants in the same household after he had acquired German nationality. As the sponsor had been granted refugee status that was obviously most unlikely. The judge cited Dauhoo (EEA Regulations – regulation 8(2) [2012] UKUT 79 (IAC) showing he was aware of its potential relevance of any household point. The judge's summary of submissions (see [21] to [23] of the determination) was not challenged in the grounds of onward appeal, and makes no mention of the "same household" point. At [12] of the decision the judge refers to the Appellants' skeleton argument, however no such document was included in the appeal bundle provided to us and neither Mr Hussain nor Mr Avery had a copy. In the tribunal's view the judge did not err on the household point as, first, his reference to a shared household was prior to

2005 and hence long past, and second, the relevant property was described to us as an "ancestral" home, *not* the sponsor's. In any event, as the judge did not err on material dependency as will be explained shortly, there is no substance to the point.

10. The documentary evidence before the judge of transfers to the First Appellant from the sponsor prior to the entry clearance applications made in April 2021 was thin, on three dates, 3 July 2018, 4 May 2019 and 22 April 2020. The sums were modest. The judge did not accept the sponsor's claim that other receipts were missing.

11. At [31] the judge stated that there were no documents to show that the First Appellant had *received* (tribunal's emphasis) payments from the sponsor between 2018 and April 2021 because there were no corresponding bank statements nor evidence in the First Appellant's witness statement that he had collected money from the bank. The judge's observation is demonstrably correct and involves no misunderstanding of the evidence before him. The judge had pointed out at [25] that regular payments had only been shown since the refusal of the entry clearance applications. The appeals were heard on 20 August 2021 and the regular payments since then were just five in number. The only corresponding entries in the bank statement produced by the First Appellant were for May 2021, June 2021, July 2021 and August 2021. It is of course true that there is no prescribed duration for proof of material dependency but the dependency must be shown to have substance and the judge was entitled to find that substance had not been shown. In reaching that finding the judge was entitled to place the claim into context, which was discussed in [29] of the decision.

12. The tribunal concludes that the submissions advanced on the Appellant's behalf fail to show that the judge misunderstood the evidence or relevant law. The tribunal finds that there was no material error of law in the decision challenged. The onwards appeal is dismissed.

DECISION

The appeal is dismissed_

The making of the previous decision did not involve the making of a material error on a point of law. The decision stands unchanged.

Signed R J Manuell **Dated** 25 July 2022
Deputy Upper Tribunal Judge Manuell