



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

**Appeal Number: UI-2022-001640
On appeal from EA/52148/2021
[IA/10155/2021]**

THE IMMIGRATION ACTS

**Heard at Birmingham CJC
On the 11 October 2022**

**Decision & Reasons Promulgated
On the 02 November 2022**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

KABIR AHMED

(Anonymity direction not made)

Respondent

Representation:

For the Appellant: Mr Bates, a Senior Home Office Presenting Officer.

For the Respondent: Mr S Mohammed of Counsel.

DECISION AND REASONS

Background

1. The Secretary of State appeals with permission a decision of First-tier Tribunal Judge Shanahan ('the Judge') promulgated following a hearing on 2 February 2022 in which the Judge allowed Mr Ahmed's appeal against the decision of an Entry Clearance Officer (ECO) who refused

his application for a family permit to join his brother, an EEA national, in the United Kingdom.

2. Mr Ahmed is a citizen of Pakistan born on 13 August 1980.
3. The ECO was not satisfied Mr Ahmed was entitled to an EEA Family Permit as he or she was not satisfied he met all the requirements of regulations 8 and 12 of the Immigration (European Economic Area) Regulations 2016 for the following reasons:

“You made an application to join your brother in the UK under the provisions of the EEA Regulations 2016 on 14/12/2020. This application was refused on 30/03/2021. You sought to challenge this decision under the pre-action protocol for Judicial Review and after being reviewed, your application has been remitted to UKVI Pretoria UKVI for reconsideration.

You state that your brother is a Spanish national. You have provided evidence that your sponsor holds a Spanish passport and identity card.

As evidence of your relationship with your sponsor you have provided your Pakistan birth certificate. I note that in your previous refusal, it was noted that this document did not include details of your mother. You have now provided a new certificate which lists both of your parents and a letter from the Registration Clerk of the Municipal Corporation Jhelum in which is stated that when your birth was registered, there was no requirement for mothers to be listed. This letter also makes reference to your mother being added, and contains the signatories confirmation that your mother is your biological mother. It is not clear to me what documents or evidence you were required to produce to have such amendments made to your birth certificate. For these reasons, I am not satisfied that you have addressed the reasons for your previous refusal and the extra documentation you have provided further casts doubt over the genuineness of your birth certificate.

You have also provided a Pakistan family registration certificate. However, these documents in isolation are insufficient in evidencing your relationship. This is because family registration certificates are produced by information provided by the appellant as opposed to enquiries by independent officials. Your legal representatives have stated that this office has not sought to conduct any verification of these documents, as well as your birth certificate. However, the onus lies with the applicant to provide evidence. Coupled with my above concerns, and without further corroborating evidence of your relationship, family registration certificates alone hold little evidential value in support of your application. These certificates are known to be readily available in Pakistan and are the result of information given to the registrar by the informant without any genuine evidence being produced to validate the claimed relationships. Consequently, these documents cannot be accepted as sole evidence of your relationship.

In accordance with the Regulation 8(2)(b) of the EEA Regulations 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 are claiming dependent upon your EEA sponsor and have provided for money transfer receipts which cover the following dates and values:

- 02/06/2019 - EUR 230 £203.19
- 18/11/2020 - PKR 30,832 £146.92
- 07/12/2020 - PKR 31,800 £147.64
- 07/02/2021 - PKR 31,502 £143.58

The above four transactions total £641.33 over a period of 1.5 years.

In order for this department to establish your dependency, we must be satisfied that you require financial support, (as above) from your EEA national sponsor to meet your essential needs.

It is also noted that you have not provided any evidence such as bank statements or other documents in the absence of this evidence this department cannot sufficiently establish your dependency, either wholly or partly, upon your EEA sponsor. The money transfer slips in isolation are not sufficient evidence you require support to meet your essential needs. Furthermore, I would also expect to see evidence which fully details yours and your family's circumstances. Your income, expenditure and evidence of your financial position which would prove that without the financial support of your sponsor your essential living needs could not be met.

4. The Judge noted at [9] that Mr Ahmed is related to his sponsor as claimed and that the sponsor is an EEA national exercising treaty rights in the United Kingdom. That aspect of the decision has not been challenged by the Secretary of State.
5. The Judge set out the correct legal self-direction at [14] that to establish dependence as a family member Mr Ahmed was required to show that he required the financial support of the sponsor to meet his essential needs, even if he is able to meet some himself. Between [15 - 18] the Judge writes:
 15. The Respondent has produced a schedule of money transfer receipts which were submitted with the appeal. In addition, the Appellant has added further receipts from 2020 and receipts from another brother in Italy who has been providing some support since April 2021. The Respondent argues that these receipts do not correspond with the deposits in the Appellant's bank account and indeed the bank statements do not cover the whole period of the claimed dependence.
 16. I have carefully considered the bank statements against the receipts. It is fair to say that the deposits do not correspond exactly with the remittances sent, however the Appellant's and the sponsor's evidence is that the Appellant did not initially use his bank account for these amounts, instead using the cash for the day-to-day expenses. However, the Appellant explains that because of the sums involved he became uncomfortable with keeping this money on his person or in the house and decided to deposit it into his bank account. Bearing in mind that the remittances were sent by money transfer and not deposited by the sponsor himself through the accounts it is plausible that the Appellant paid in rounded down amounts keeping the small balance in cash. For example, there is a deposit of 85,000 PkR on 13th April 2021. There are corresponding remittances from his two brothers of 31,655 and 55.400 PkR on 17th March and 8th April 2021 which would explain the 85,000 deposit. Similarly on 28th April there is a deposit which corresponds with sums remitted on

14th April and 21st April 2021. Again, it is fair to say that not all the amounts deposited strictly correspond but the general picture is that they do. The amount of 280,000 PkR has been explained by the Appellant as a cheque paid to him for work carried out before the pandemic which he had assumed would never be paid. Therefore, on balance, I find that the Appellant has received remittances from his sponsor in the UK since 2019 and from his brother in Italy since April 2021.

17. The second aspect of the Respondent's refusal is that in any event the Appellant has failed to provide evidence of his essential needs in Pakistan. The evidence I have considered is that the Appellant lives with his mother and his wife and three young children. He has two other brothers in Pakistan but they also have families and support their mother. It has been said that as part of a joint family system the Appellant's essential needs would be met in this way but this overlooks the fact the two brothers do not live with him but in the city and have their own families to support. It is quite plausible that they are able to provide some support for their mother but not to go further and meet the needs of the Appellant and his family.
18. Bearing in mind the case law and the Respondent's own guidance the Appellant does not need to be dependent on the EEA national to meet all or most of their essential needs. Here the Appellant has relied on the sponsor, solely, until April 2021 and thereafter on both brothers more or less equally. Therefore, he has established that he is partly dependent on the sponsor in the UK to meet his essential needs and accordingly meets the requirements for a family permit.

6. The Secretary of State sought permission to appeal on the following grounds:.

The Judge of the First-tier Tribunal has made a material error of law in the Determination.

The SSHD would submit in light of the issues raised below that arguable material error is disclosed on the basis of material misdirection of law, material mistake of fact and inadequate reasoning.

This was an appeal under the EEA Reg 8 as an extended family member. Application lodged 14.12.2020 and appeal heard 2.2.2022. It is clear following the UK's exit from the EU that, as per Geci (EEA Regs: transitional provisions; appeal rights) [2021] UKUT 00285 (IAC), the relevant date for assessing compliance with the EEA Regs was 31.12.2020.

(3) The effect of the amendments is that the sole ground of appeal is now, in effect, whether the decision under appeal breaches the appellant's rights under the EU Treaties as they applied in the United Kingdom prior to 31 December 2020.

1. Nowhere does the FTTJ refer to this guidance or the appropriate date. The FTTJ's consideration of evidence post-dating this [16] strongly suggests that the FTTJ did not have the appropriate date in mind. The SSHD contends this is a material misdirection in law. The SSHD's refusal decision (22.6.2021) pre-dating the promulgation of 'Geci' (29.9.2021); nonetheless identified 3 remittances material to the assessment as at 31.12.2020 that

were subject of dispute as to establishing 'essential needs'. The SSHD observes that any remittance in 2019 would be unconnected to a disruption to the Appellant's income caused by the Covid-19 pandemic that emerged during 2020.

2. The HOPO's Record of Proceedings (attached) further raises the issue of a potential mistake of fact as to the location of the Appellant's other Pakistan based brothers. The FTTJ stating [17] neither lived with the Appellant. The RoP indicates (highlighted by author for clarity) that oral evidence suggested as least one brother (working for mobile phone company) did live with their mother and the Appellant. This was materially relevant to an assessment as to how the Appellant's 'essential needs' (irrespective of remittances from abroad) were met.
 3. Further the evidence indicated that the Appellant was themselves working and the Sponsor did not know how often per week. The HOPO noting only one remittance slip was provided for 2019 and two for 2020. It is far from clear what dates the FTTJ was considering [16] for the appropriate time [31.12.2020]. The SSHD contends that the FTTJ provided inadequate reasons for why the Appellant was dependent for their essential needs on the UK based Sponsor as at 31.12.2020 given that subsequent money transfers/bank statement credits in 2021 were immaterial.
7. In his skeleton argument dated 10 October 2022 Mr Mohammed opposes the appeal.

Error of law

8. It is not disputed that Geci recorded the importance of consideration of the correct ground of appeal in cases such as this, which is whether the decision under appeal breached and appellant's rights under the EU treaties as they applied in the United Kingdom prior to 31 December 2020 (my emphasis). That summarises the effect of the transitional provisions in relation to appeal rights following the decision of the UK to leave the European Union.
9. Mr Mohammed in his skeleton argument challenges the claim the refusal only identified three remittances which predated the material date of assessment, pointing out one of the slips is dated 2019 and could not form part of any assessment, but that at the date of the hearing the Judge had sight of 18 money transfer receipts the dates of which are set out at [13] of the skeleton argument. That shows, excluding the 2019 document, eight slips between 9 June 2020 and 7 December 2020 being sent on a monthly basis, and 12 receipts for the period 7 January 2021 to 7 September 2021 sent on a monthly basis with the exception of; two remittance receipts relating to May 2021. It is argued that Judge considered the evidence that predated the application, and which were paid prior to 31 December 2020, and that those considered after this date merely demonstrated that the arrangements between the appellant and sponsor continued which was evidence to show that the arrangements represented a genuine and ongoing arrangement for dependency.
10. It is correct to say, as submitted by Mr Bates, that there is no indication in the determination that the Judge considering the decision

in Geci; although failure to mention this reported decision does not necessarily establish legal error if a reading of the determination shows the Judge applied the correct legal basis when assessing the issues in the appeal.

- 11.** The Judge at [16] considers the money transfer receipts against the bank statements provided and accepts the deposits do not correspond exactly with remittances sent although accepted the explanation given by the sponsor in his evidence. The Judge in this paragraph make specific reference to deposits made in 2021 which is after the relevant date at which these issues should be considered. Although the Judge finds the appellant has received remittances from his sponsor in the UK since 2019, and from his brother in Italy since April 2021, the appellant needed to establish dependency upon the EEA national he was seeking to join which, in this case, is his Spanish national brother.
- 12.** The money provided by the brother in Italy is a source of other funding which is not in itself fatal to the appellant's case as monies can be received from other sources which, if not sufficient, may require the support of the EEA national to top such funds up to enable essential needs to be met.
- 13.** I find [16] of the Judges decision, when read, does not enable a reader to be confident that the Judge has assessed this appeal from the correct legal standpoint set out in case law or made clear findings in relation to whether the remittances paid by that date were sufficient to satisfy the required test. It does not entitle the appellant to succeed just because payments were made, that is not sufficient per se. As the Judge noted, it must be shown that such payments were needed to meet Mr Ahmed's essential needs.
- 14.** At [17] the Judge went on to consider the second aspect namely failure of Mr Ahmed to provide evidence of essential needs in Pakistan. It is at this point the Judge is said to have made a material error of fact in that the Judge finds the appellant lives with his mother and his wife and three young children in Pakistan and has two other brothers in Pakistan who have families of their own but who provide support for their mother. Mr Mohammed asserted the grounds of appeal overlook the fact the two brothers do not live with the appellant but "in the city" and have their own families to support, and that whilst it is plausible they are able to provide some support for their mother they could not go further and meet the needs of the appellant and his family.
- 15.** The grounds make reference to the record of proceedings provided by the Home Office Presenting Officer who attended before the Judge. That document reads:

To SAT:

Prep of 14th December 21, matters remain, and the prep is relevant and should be relied upon for this current appeal hearing.

Judge Mrs Shanahan
Counsel Mr Mohammed
Court interpreter used and issues recorded.

F2F Nottingham Magistrates Court – 2nd February 22.

Appellant's name: KABIR AHMED - D.O.B 13th August 1980 - Pakistan
Sponsor: Mr Younis Kausar Ibrar Ahmed – Spain – (related to appellant as brother).

EEA Family Permit was made on the 14th December 2020 and was refused on the 22nd June 2021

Issues:

ECO decision 30th March 21 or is it dated 22nd June 21.
Regulation 8 – extended family member. I note relationship is conceded in the (HO) review. Financial dependency – sole issue.

Evidence & chief:
Witness statement adopted.

As to the money transfer from Italy, sending money to appellant – who is that? My brother.

Money sent to brother/appellant from brother in Italy? Yes.

Cross-examination / sponsor

How often does your brother in Italy send money to the appellant?
Since 2021, things are expensive.

Is the appellant dependent on brother in Italy? I mostly sending. He recently sending.

Who does appellant lives with? Joint family.

Who is that? Mother, brother, and another brother in the City.
What about your sisters? Married.
Is there a family home in Pakistan? Yes, fathers.
What is your father doing for a living? Passed away.

Your brother living with mother, what does he do? He is working in a company, mobile phone.

How long done that? 15-20 years.

What does your brother in the City, what does he do? Software-developer.

How long have he done that? 7-10 years.

What is brother's/appellant's education in Pakistan? He did not completed FA.

Does he work? He was working before and now little bit.

What work before? He was making sculptors.

Still he is a sculptor, little bit of work? Yes.

How often per week working? I don't know, I am supporting him. He does not have enough work.

You would know, what work receiving so to decide how much to send? From last year not getting enough work.

Do your brothers give money to the appellant? No, I do not think so.

Why would they not give him money and support? They are married, things are expensive and difficult to live. No work because of COVID.

The brother working in the City does he support mother? Yes.

What additional support would the appellant then need, they are living in the same household? Because of COVID not enough work.

The ECO provided a calculation of money receipt submitted with the application - but what I want to ask you is what does the appellant need the money for? He needs it for food, kids, clothes, and shoes. Going through financial difficulties due to COVID.

Why would you need to send a separate amount of money for food when living in joint family system? He needs it as he got kids and wife.

This application was made on 14 December 20, why no remittance slips submitted to cover much of the years of 2019 because only one remittance in 2019, and 2 for 2020? I don't know could be lost or not found.

Where are the documentary evidence of your bank statements showing transaction? I send the money through money exchange.

Appellant's bank statement, could you assist with the transactions 13th April 85,000, 28th April 50,000 - who from? I do not know. I send money from hear. I do not know anything else.

There are gaps in remittance, what does he live on when no money sent? Most problem started because of COVID.

Repeat? He was working before and after COVID he got more dependency on me.

Judge "Who does the appellant live with, in the same house? My mother, brother his wife and 3 children.

Judge "So, brother/appellant, his wife and 3 children? Yes.

Judge "In Islamabad 2 brothers? Yes. Judge "Which one or both supporting your mother? Both, I also and another brother.

Judge "Do the 2 brothers' have family and children in Islamabad? Yes.

Submission:

ECO decision 30th March 21 or is it dated 22nd June 21.

Regulation 8 – Financial dependency.

- Tribunal have to consider what is said at hearing. The plausibility of such evidence. Is appellant genuinely dependent.
- When 2 brothers in Pakistan working. A brother in Italy also sending money.
- Brothers' in Pakistan supporting their mother, so why not the appellant. Their mother lives in the same household with the appellant.
- Appellant works a little bit from the evidence.
- As to the authority of LIM, is appellant's essential needs met by this sponsor or are there also other means available for this appellant's which aid to his overall essential needs. I submit that appellant's essential needs are met by himself, brothers in Pakistan and brother in Italy.
- The gaps in the remittance slips before making this application.
- No documents evidencing how the appellant is sustaining himself during such lengthy gaps of 2019 and 2020. I submit, there are other means of support for the appellant in meeting his essential needs, employment, 2 brothers in Pakistan working and brother in Italy.
- Appellant must have other means or other family members he dependent on. The credibility of further remittance slips, bank account of the appellant 2021 – no such documentary evidence of 2019 or 2020. On the recent transactions are an attempt to booster this application as past transaction does not support.

I invite the Tribunal to dismiss this appeal.

Mr L. Aigbokie
Presenting Officer
POU-Birmingham

Date: 02 February 2022.

- 16.** Although in his skeleton argument Mr Mohammed raises a question regarding the reliability of the above record he has not provided a counter schedule/copy of his own record of proceedings despite claiming that Mr Ahmed's note, which is very similar, recording a split between Mr Ahmed living with the mother and the two brothers living in the city.
- 17.** What is clear is that the sponsor's evidence to the Judge as recorded above, on which I find I can put due weight, is that Mr Ahmed lives in the joint family system in a property occupied by his mother and brother who is employed, with the appellant undertaking some work, and also receiving payments from another brother in Italy.
- 18.** I find the alleged error of fact made out which, cumulatively, is material to the decision to allow the appeal for the reasons set out below.
- 19.** In relation to the third ground, Mr Mohammed in his skeleton argument writes:

22. At paragraph 16 the FT judge finds, on balance, that the Appellant has received remittances from the Sponsor in the UK since 2019 and from his brother in Italy since April 2021.
 23. At paragraph 17 the FT Judge finds that it is plausible that the Appellant's brother in Pakistan provide some support for their mother but not go further and meet the needs of the Appellant and his family.
 24. At paragraph 18 the Judge finds that the Appellant has relied on the Sponsor solely until April 2021 and thereafter on both brothers more or less equally (the Judges referencing the Appellant's other brother in Italy).
 25. The FT Judge finds that the Appellant is partially dependent on the Sponsor in the UK to meet his essential needs and accordingly meets the requirements for a family permit.
 26. It is submitted that the above constitute entirely reasonable findings that the FT Judge was entitled to make having regard for the evidence.
 27. However, it is necessary to examine the manner in which the Respondent puts her challenge. In particular, a) by reference to the little work that the Sponsor says the Appellant has, and b) the allegation that only three remittance slips were provided.
 28. Firstly, the uncontested evidence that the Respondent seeks to rely upon is a fleeting reference made by the Sponsor to the fact that the Appellant is working a little bit, as at the time of the appeal hearing. Which confirms that the work is not enough, and the Appellant thus requires the financial assistance of the Sponsor to meet his essential needs.
 29. With respect, the Respondent's challenge is wholly misconceived and fails to appreciate the evidence as a whole. The FT Judge was entitled to find that the Appellant is dependent upon the Sponsor.
 30. Secondly, the issue concerning the money transfer slips have already been dealt with under the above heading of 'relevant date of assessment'. Those submissions are repeated. The Respondent's challenge is entirely misconceived. The FT Judge was entitled to find that the Appellant is dependent on the Sponsor.
- 20.** The above submissions focus again upon the fact that payments were made as evidenced by the remittance slips but that is not the correct basis of assessment. The Judge was required to consider the total value of the funds transferred but with the added issue that the relevant date material to the assessment was 31 December 2020. The Judge was also required to consider and make findings on the amount that was needed by Mr Ahmed to meet his essential needs. It is not disputed he lives within the joint family system within Pakistan, and I find there was clear evidence of another brother living within the same household which the Judge does not appear to have made proper reference to. There is no indication in the determination of what Mr Ahmed's essential needs actually are. The Judge was then required to properly consider and make findings on the amount of money coming into the joint family household from all sources. The payments by the brother in Italy from 2021 would not have existed prior to the relevant date according to the evidence, but evidence of the appellant's own

work which the sponsor indicated very little knowledge of, the contribution from the other brother in the household as well as by other family members in Pakistan and any income Mr Ahmed's mother received, who on his evidence is a widow, is relevant. This was an issue specifically raised in the refusal by the ECO to which the appellant was put to proof. Finally the Judge was required to make a clear finding on whether it was found Mr Ahmed required the assistance of his brother in the United Kingdom to meet his essential needs as at the relevant date to enable a finding to be made that it was appropriate to conclude that Mr Ahmed was able to meet the requirements of the 2016 Regulations. A reader of the determination is not able to establish that this exercise was properly conducted.

21. It was not made out there will be any adverse impact upon the EEA national brother's exercise of his free movement right in the UK by the refusal.
22. I find the Secretary of State has established that the Judge has erred in law in a manner material to the decision to allow the appeal. As there is a genuine concern regarding the basis on which the Judge assessed the merits of this appeal without having due regard to the guidance provided in Geci, in addition to the other matters raised in the ground seeking permission to appeal, I find there shall be no preserved findings save that relating to the relationship between Mr Ahmed and his Spanish national brother which is not contentious in any event. I find in light of the extent of the fact finding that will be required that it is appropriate to remit the appeal to the First-tier Tribunal sitting in Birmingham to be heard afresh by a Judge other than Judge Shanahan.

Decision

23. **The Judge materially erred in law. I set the decision aside. This appeal shall be remitted to the First-tier Tribunal (IAC) sitting at Birmingham to be heard afresh by a judge other than Judge Shanahan.**

Anonymity.

24. 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 11 October 2022